



California Fair Political Practices Commission

February 27, 1989

C. Michael Thompson
Office of Assemblywoman K. Jacqueline Speier
State Capitol
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-88-487

Dear Mr. Thompson:

This is in response to your request for advice on behalf of Assemblywoman Jacqueline Speier, regarding application of the campaign contribution provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. If individuals or organizations choose to contribute funds to the Speier-Sierra Family Foundation (the "foundation"), in lieu of providing honoraria to Assemblywoman Speier, what limitations and reporting requirements does the Act impose?
2. What, if anything, can Assemblywoman Speier do to ensure that the foundation is not a controlled committee? Can Assemblywoman Speier or her husband exercise control over the distribution of monies from the foundation and still ensure that the foundation is not a controlled committee?
3. May Assemblywoman Speier contribute from her campaign fund to the Speier-Sierra Family Foundation?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSIONS

1. Honoraria to Assemblywoman Speier are the equivalent of gifts to her. There is nothing in the Act to prevent Assemblywoman Speier from donating these gifts to a charitable organization. Any gift made directly to Assemblywoman Speier and donated to a charitable organization within 30 days of receipt need not be reported by her so long as she does not claim the donation as a charitable contribution for tax purposes.

Payments made directly to a charitable foundation in lieu of an honorarium to Assemblywoman Speier could be seen as payments made for political purposes at the direction of the Assemblywoman. In that situation, the payments would be considered political contributions which must meet the reporting requirements and contribution limitations of the Act.

2. In order to ensure that the foundation is not a controlled committee, Assemblywoman Speier should insulate herself from any participation in the raising of funds or in the distribution of the funds of the foundation.

If Assemblywoman Speier participates in the decisionmaking of the foundation, the activities of the foundation could be deemed to be for political purposes. Absent evidence of a purely personal involvement in the decisions of the foundation, the Assemblywoman's spouse would be her agent to the foundation. If the Assemblywoman and her spouse avoid participating in the decisions of the foundation, they can ensure that the foundation is not a controlled committee.

3. To ensure that the foundation does not become a political committee, Assemblywoman Speier should not contribute funds from her campaign committee to the foundation.

FACTS

The Peninsula Community Foundation is a nonprofit charitable organization. Assemblywoman Jackie Speier and her husband would like to form an account entitled "The Speier-Sierra Family Foundation" (the "foundation") within the Peninsula Foundation umbrella organization. All money distributed from the proposed foundation would go through the umbrella organization, and would be disbursed for charitable purposes only.

ANALYSIS

Payments made to elected officeholders for which full and adequate consideration is not made to the donor are either

contributions or gifts. (Sections 82015 and 82028.) Contributions are defined in Section 82015 to include:

...a payment, ... except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

A gift to an elected official is also defined as "a payment to the extent that consideration of equal or greater value is not received." (Section 82028.) However, the definition of "gift" specifically excepts campaign contributions required to be reported under the Act. (Section 82028(b)(4).) In other words, a contribution is a gift made for political purposes.

In order to determine whether a payment is a gift or contribution to an elected official, therefore, it is necessary to look at the purpose of the payment, the circumstances under which the payment was made and the political benefit to the elected official. (Watson Advice Letter, No. A-83-158 and McCarty Advice Letter, No. I-88-320, copies enclosed.)

Honoraria are payments made to an elected official for a speech, article or published work. An honorarium is either income or a gift to an elected official. (Regulation 18728, copy enclosed.) The law provides, therefore, that honoraria paid directly to an elected official are not political contributions.

Donations to a foundation are contributions if the donor "earmarks" the donations for political purposes. A payment is "earmarked" when, at the time of making the payment, the donor knows or has reason to know that the payment will be used to make political contributions or expenditures. (Regulation 18215, copy enclosed.) Thus, if a person makes a donation to a charitable foundation and specifies that the donation is made for a political purpose, or the donor has reason to know that the foundation will use the funds for political purposes, the donation would be a contribution.

If an elected official or candidate has a significant influence over the activities of the foundation, the foundation is considered a controlled committee. (Section 82016.) Contributions to the foundation would be considered contributions to the elected official or candidate for purposes of the Act's contribution limits and reporting requirements. (Sections 84209, 85301 and 85303.)

The foundation which Assemblywoman Speier would like to establish would receive donations, and make payments to charitable organizations in her name and that of her family. If these donations are made or used for political purposes, they would be political contributions. Regulation 18215 (copy enclosed) clarifies whether a payment is made for political purposes:

(a) . . . A payment is made for political purposes if it is:

* * *

(2) Received by or made at the behest of:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was received or made at his or her behest for personal purposes unrelated to his or her candidacy or status as an office holder....

* * *

(b) "Made at the behest" means a payment made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate, controlled committee, official committee of a political party, or organization formed or existing primarily for political purposes.

Regulation 18215(a) and (b).

Any payments made to the foundation independent of the direction, suggestion, coordination, etc., of the Assemblywoman would not be considered political contributions. However, payments made to the foundation at the direction of the Assemblywoman, such as payments made in lieu of an honorarium to her, would be payments made at her behest, and are directly related to her status as an officeholder. We conclude, therefore, that payments made to the foundation in lieu of an honorarium to Assemblywoman Speier would be payments made for political purposes, and must be reported as contributions to the Assemblywoman.

Keep in mind, however, that honoraria paid directly to Assemblywoman Speier generally are gifts to her, not contributions. There is nothing in the Act to prevent the Assemblywoman from donating these gifts to a charitable organization. In fact, any gift made to Assemblywoman Speier and donated to a charitable organization within 30 days of receipt need not be reported by her, so long as she does not claim the donation as a charitable contribution for tax purposes. (Regulation 18726.1, copy enclosed.)

If Assemblywoman Speier is involved in the decisions of the foundation, a payment made by the foundation to a charity would be a political expenditure "unless it is clear from the surrounding circumstances that it is not made for political purposes." Regulation 18225 clarifies that an expenditure is made for political purposes if it is made by:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an officeholder.....

Regulation 18225(a)(2)(A) (emphasis added).

Any dispersing of funds by the foundation which are under the control or direction of the Assemblywoman would be deemed to be political expenditures, unless she can demonstrate that the expenditures are for purely personal purposes. Absent such evidence, the foundation would be deemed a "controlled committee" for purposes of the Act. (Sections 82013 and 82016.)

In order to ensure that the foundation is not a controlled committee, Assemblywoman Speier should not participate in the raising of funds or in the distribution of the funds of the foundation. Should she decide to move forward with the concept of the family foundation, and separate herself from all fundraising and distribution decisions, she would have no control or affiliation with the foundation other than use of her family name. In that case, the foundation would not meet the test of a "controlled committee," and no requirements of the Act would apply.

Participation by an Elected Official's Spouse

As was stated previously, the Assemblywoman's participation in the activities of the foundation would, in most instances, make the foundation a controlled committee. A candidate "controls a committee" whenever the candidate or her agent has a significant influence on the actions or decisions of the committee. (Section 82016.)

The Commission has previously concluded that a legislator who is a voting member of the governing board of a committee ordinarily will be considered to have a significant influence over the actions or decisions of the committee. (Gross Advice Letter, No. A-84-143, and Ferguson Advice Letter, No. A-86-044, copies enclosed.) This presumption of control by the legislator applies, as well, to her agent.

Although the Act does not define "agent" for purposes of Section 82016, it is safe to assume that the spouse of an elected official is acting as her agent where he is participating in activities which could benefit the elected official's political

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position or image. Thus, the restrictions on participation by Assemblywoman Speier would also apply to her husband's participation when he is acting as her agent.

Once again, should Assemblywoman Speier demonstrate that her involvement, or that of her spouse, is for purely personal purposes, the activities of the foundation would not be deemed to be political. In that case, her spouse would not be acting as her agent in controlling the actions of the foundation for her political benefit.

Use of Campaign Funds

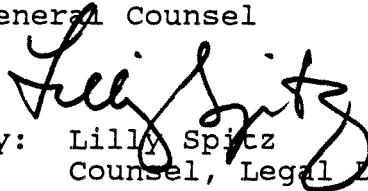
Elections Code Section 12400, et seq., prohibits the use of campaign funds for personal purposes. Thus, any lawful use of campaign funds would necessarily be deemed for political purposes.

We conclude, therefore, that if Assemblywoman Speier's goal is to protect the foundation from becoming a controlled committee she should not make contributions to the foundation from her campaign fund.

I trust this answers your questions regarding Assemblywoman Speier's participation in the foundation. If you would like further clarification, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosures



ASSEMBLY
CALIFORNIA
LEGISLATURE

EPBC
DEC 27 8 25 AM '88

K. Jacqueline Speier
Assemblywoman, Nineteenth District
Representing San Francisco
and San Mateo Counties

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NATURAL RESOURCES

December 12, 1988

John Larson, Chairman
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 800
Sacramento, CA 95804

Dear Mr. Larson:

I am writing to request information regarding the formation of an account established under the non-profit charitable organization "The Peninsula Community Foundation," ID# 94-2746687.

The account would be established by Assemblywoman Jackie Speier and her husband Dr. Steven Sierra. It would be titled, "The Speier-Sierra Family Foundation."

All money distributed from the Speier-Sierra account would go through the umbrella organization, The Peninsula Community Foundation. All money disbursed would be for charitable purposes only.

My questions regarding this matter are as follows:

1. What reporting requirements must be met if individuals or organizations choose to contribute to the aforementioned foundation in lieu of honorarium?
2. May Assemblywoman Speier contribute from her campaign fund to the Speier-Sierra Family Foundation?

December 14, 1988

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3. What, if any, other requirements are necessary before establishing this account?
4. Can Assemblywoman Speier or her husband exercise control over the distribution of monies from the aforementioned account?

Thank you in advance for your assistance and please don't hesitate to call me if you need additional information or have questions regarding this matter.

Sincerely,

Michael Thompson

C. MICHAEL THOMPSON



ASSEMBLY
CALIFORNIA
LEGISLATURE

FPPC
DEC 27 8 25 AM '88

K. Jacqueline Speier
Assemblywoman, Nineteenth District
Representing San Francisco
and San Mateo Counties

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Thank you in advance for your assistance and please don't hesitate to call me if you need additional information or have questions regarding this matter.

Sincerely,

Michael Thompson

C. MICHAEL THOMPSON



California Fair Political Practices Commission

January 19, 1989

C. Michael Thompson
c/o Assemblymember Speier
State Capitol
P.O. Box 942849
Sacramento, CA 95249-0001

Re: Your Request for Advice
Our File No. 88-487

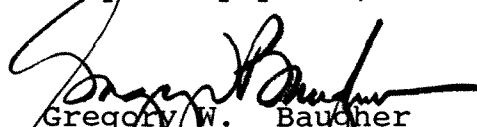
Dear Mr. Thompson:

Your letter requesting advice concerning the recently enacted campaign finance reform initiatives (Government Code Section 85100, et seq.) was received on December 27, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan an attorney in the Legal Division, directly at (916) 322-5901.

Because of the delayed operative date of most of the provisions of these initiatives, and the numerous inquiries we are receiving relative to implementation, we are attempting to respond to questions regarding interpretation in an organized and efficient fashion. Due to the volume of requests and complexity of the issues involved, we will answer your question in a timely manner, but not within the usual twenty-one working days. (Government Code Section 83114(b).)

If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Gregory W. Baugher
Executive Director

GWB:plh:73FORM3