



California Fair Political Practices Commission

July 27, 1989

Teresa Craigie
Pillsbury, Madison & Sutro
P. O. Box 7880
San Francisco, CA 94120

Re: Your Request for Advice
Our File No. A-89-236

Dear Ms. Craigie:

This is in response to your request for advice concerning your client, Agenda for the 90's. You ask whether certain activities of the Agenda for the 90's are "independent expenditures" under the Political Reform Act (the "Act")^{1/}.

You initially wrote for advice on April 19, 1989 and asked whether these activities were contributions subject to the contribution limits under the Act. In a telephone conversation on May 19, 1989 you indicated to me that, instead you wanted to know whether these activities were "independent expenditures." Also, on July 13, 1989 you indicated that candidates may be involved in fundraising for the committee. You asked us to address whether this is a permissible activity under the Act.

QUESTIONS

1. Are partisan voter registration and get-out-the-vote activities conducted by a committee that is neither candidate controlled nor affiliated with a political party classified as contributions to candidates and therefore subject to the contribution limits, or are they independent expenditures to support or oppose candidates, or other expenditures, not subject to the contribution limits?

^{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.

2. Are contributions received for these activities subject to the contribution limitations of the Act?

3. If candidates solicit contributions for the committee, will it become a controlled committee?

CONCLUSION

1. If the committee's voter registration or get-out-the-vote activities are not done at the behest of a candidate, they are not contributions to candidates under the Act and are not subject to the contribution limits. However, depending on how these activities are conducted, they must be reported as either independent expenditures to support or oppose candidates, or expenditures under the Act.

2. If these activities are not contributions, contributions raised to conduct these activities are not subject to the Act's contribution limitations. If these activities are independent expenditures, they may be subject to the notice requirements of Sections 85600 or 85604.

3. If candidates solicit contributions for the committee, the committee will not become a controlled committee unless one or more candidates have significant influence on the actions or decisions of the committee or act jointly with the committee in making expenditures.

FACTS

Your firm represents Agenda for the 90's (the "Agenda"), which is a registered recipient committee as defined in Section 82013(a). The Agenda is an independent partisan organization formed for the purpose of furthering the election of Democratic candidates to state and local offices in California. The Agenda has goals similar to the Democratic Party, including the election of Democratic candidates, but is neither an official arm of the Democratic Party nor a controlled committee of any candidate.

The Agenda intends to spend funds to increase Democratic registration and for partisan get-out-the-vote drives in targeted districts. It will commission polls and surveys to determine in which localities such activity will be the most favorable. The Agenda will select specific areas or precincts for its efforts, set targets for the numbers of new voters desired and establish a "grass roots" get-out-the-vote effort.

The Agenda does not intend to make contributions to candidates or their controlled committees. However, some candidates will benefit from the Agenda's efforts. Furthermore, candidates may be involved in the Agenda's fundraising efforts.

ANALYSIS

Section 82025 essentially defines an "expenditure" as any payment made for a political purpose. Regulation 18225(a)(2)(D) states that a payment is "made for a political purpose" when it is made by an organization which exists for the purpose of influencing or attempting to influence the action of voters for or against the election of candidates. Based upon the facts presented, voter registration and get-out-the-vote activities conducted by the Agenda would, at the very least, constitute expenditures under the Act. (See In re Welsh (1978) 4 FPPC Ops. 71; Guerrero Advice Letter, No. A-84-168; copies enclosed.)

An expenditure made at the behest of a candidate is a contribution under the Act. (Section 82015.) Under the facts presented, the Agenda does not intend to act at the behest of any candidate.^{2/} Therefore, expenditures for voter registration and get-out-the-vote activities by the Agenda are not contributions to a candidate, even if the purpose and result of the expenditures is a benefit to certain candidates. Because they are not contributions to candidates, expenditures on these activities are not subject to the Act's contribution limitations.^{3/}

An expenditure becomes an "independent expenditure" under the Act if it is made:

... in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate ... but which is not made to or at the behest of the affected candidate....

Section 82031.

As stated above, the Agenda's activities will not be conducted at the behest of any candidates for office. However, there are insufficient facts to determine whether these activities will constitute communications which expressly advocate the election or defeat of clearly identified candidates.

For example, if the Agenda conducts a get-out-the-vote drive which, on election day, urges voters in a specific district to "Vote Democratic," and there is only one Democratic candidate on the ballot, expenditures thereon will probably constitute

^{2/} Regulation 18215(b) states that a payment is "made at the behest" of a candidate when it is "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."

^{3/} See Sections 85301, 85302, 85303 and 85305.

independent expenditures.^{4/} However, if the same drive merely urges voters to "Vote," expenditures thereon will not be independent expenditures because no candidate is clearly identified.

Likewise, expenditures on a voter registration drive which urges potential voters to "Register to Vote. Vote for Mayor Jones," is a communication that expressly advocates an identified candidate's election. It will thus constitute an independent expenditure to support Mayor Jones. On the other hand, if the same registration drive merely urges potential voters to register, expenditures thereon will be reported as expenditures, but not independent expenditures.

Thus, whether the Agenda's expenditures on voter registration or get-out-the-vote activities constitute independent expenditures will necessarily be determined on a case-by-case basis.

In the event the Agenda's activities are independent expenditures, the Agenda may be subject to the notice requirements of Sections 85600 and 85604. Section 85600 requires the printing of a specific disclaimer on independent expenditures for a mass mailing^{5/} which supports or opposes any legislative candidate. Section 85604 requires notification of the Commission and certain candidates when an independent expenditure of more than \$10,000 is made that supports or opposes any legislative candidate.

You ask whether candidates can solicit contributions on behalf of the Agenda. The Act requires all candidates, before receiving contributions, to file a statement of intention to be a candidate for elective office. (Section 85200.) All contributions received by a candidate or his or her controlled committee must be deposited into a bank account relating to the elective office sought. (Section 85201(c).) All expenditures of these contributions must be made from this account and relate to this elective office. (Section 85202(b).) These requirements effectively preclude candidates from establishing controlled committees other than those related to a campaign for office.^{6/}

^{4/} Federal Election Commission v. Furgatch (9th Cir. 1987) 807 F. 2d 857, 864, states that a communication expressly advocates the election or defeat of a clearly identified candidate if, "when read as a whole and with limited reference to external events," is "susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate."

^{5/} "Mass mailing" generally means over 200 substantially similar pieces of mail. (Section 82041.5.)

^{6/} The only exception to this general rule recognized by the Commission is where a candidate controls a committee which supports or opposes a ballot measure. (Olson Advice Letter No. A-89-363.)

However, we do not view these requirement as precluding a candidate from merely soliciting contributions for committees that he or she does not control. Section 82016 defines controlled committee as:

[A] committee which is controlled directly or indirectly by a candidate or state measure proponent or which acts jointly with a candidate, controlled committee or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee.

Where a candidate solicits contributions for a committee over whose actions or decisions he or she has little or no influence, and with which he or she does not act jointly in making expenditures, contributions to the committee are not contributions to that candidate or that candidate's controlled committee. Thus, the requirements concerning deposit of the contributions into the candidate's campaign account and expenditure of the contributions only for items relating to a particular elective office do not apply.

Finally, we note that your letter makes reference to subdivision (c) of Section 85303. You apparently rely on this subdivision to support your view that the Act's contribution limits do not apply to the Agenda's activities described above. We do not view Section 85303(c) as being determinative of whether or not the Agenda, or any committee, is making a contribution to a candidate. That determination is made under Section 82015 and Regulation 18215 (copy enclosed). However, we agree that Section 85303(c) permits contributions to the Agenda that are not subject to the Act's limits if they are collected for Agenda expenditures which are not contributions to candidates.^{7/} Please note, however, that, when received, these contributions must be earmarked for purposes other than making contributions directly to candidates and deposited in an account that does not contain moneys that may be contributed to candidates. (Regulation 18531, copy enclosed.)

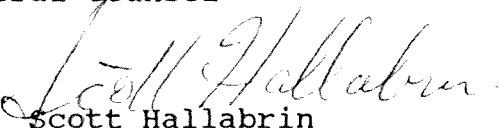
^{7/} Consideration of the extent of these kinds of contributions will begin at the Commission's August 15, 1989 meeting.

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I hope that this letter has been of assistance. Should you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

KED:SH:ld

Enclosure

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO

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WRITER'S OFFICE AND
DIRECT DIAL NUMBER

235 Montgomery Street
(415) 983-1968

April 19, 1989

HAND DELIVERED

Kathryn E. Donovan, Esq.
General Counsel
Legal Division
Fair Political Practices Commission
428 J Street
Suite 800
Sacramento, CA 95814

Dear Kathy:

Further to our conversations, this letter constitutes a request for formal written advice pursuant to Government Code section 83114(b).

This firm represents Agenda for the 90's, a registered recipient committee ("the Committee"). The Committee is an independent partisan organization formed for the purpose of furthering the election of Democratic candidates to state and local offices in California. Although the Committee has goals similar to those of the Democratic party, and it will make expenditures as described below to further the election of Democratic candidates for office, it is neither an official arm of the California Democratic Party nor a controlled committee of any candidate for state or local office.

The Committee intends to spend funds to increase Democratic registration and for partisan get-out-the-vote drives in targeted districts. The Committee will commission polls and surveys to determine in which localities such activity will be the most favorable. The Committee will select specific areas or precincts for its efforts, set targets for the numbers of new voters desired and establish a grass roots get-out-the-vote effort. The Committee will not make any contributions (Gov't. Code § 82015) to candidates

Kathryn E. Donovan, Esq.
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for elective office or their controlled committees. It is obvious, however, that some candidates will be beneficiaries of the Committee's efforts.

The Committee believes that the above described activities are not subject to the limitations imposed by Proposition 73. Gov't. Code § 85301-85305. Government Code section 85303(c) states that, notwithstanding the contribution limitations imposed by Proposition 73, nothing in Proposition 73 shall limit a person's ability to provide financial or other support to one or more political committees or broad-based political committees provided the support "is used for purposes other than making contributions directly to candidates for elective office" (emphasis added). The clear implication is that unlimited amounts may be spent for "indirect" activities. As we have discussed, it appears to us that partisan voter registration and get-out-the-vote drives which are not conducted at the behest of a candidate, controlled committee, or political party committee do not constitute contributions which can be deemed to be made "directly" to candidates for elective office.

We would appreciate confirmation of the foregoing conclusions, which we believe are not only of concern to the Committee but also to the established political parties.

Very truly yours,


Teresa Craigie

cc: Ms. Jeanne Pritchard

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO

OTHER OFFICES

LOS ANGELES, CALIFORNIA
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Very truly yours,


Teresa Craigie

cc: Ms. Jeanne Pritchard



California Fair Political Practices Commission

April 20, 1989

Teresa Craigie
Pillsbury, Madison & Sutro
P.O. Box 7880
San Francisco, CA 94120

Re: Letter No. 89-236

Dear Ms. Craigie:

Your letter requesting advice under the Political Reform Act was received on April 19, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. 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. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

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,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Acting General Counsel

KED:plh