

Law Offices of
OLSON, CONNELLY, HAGEL & FONG

August 14, 1989

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FPPPE

Kathryn Donovan
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

RE: Cathedral City Citizens For Progress

Dear Ms. Donovan:

This office represents a recipient campaign committee known as Cathedral City Citizens For Progress, a Committee Sponsored by Emerald Court Associates Limited. The Committee has registered as a recipient committee with the Secretary of State's office and has been assigned an identification number. The purpose of the Committee is to qualify and support the passage of a local initiative measure to allow card rooms in Cathedral City.

Nearly all of the campaign funds raised by the Committee are being donated by a limited partnership known as Emerald Court Associates, Limited. Emerald Court also makes the decisions relative to the receipt of contributions and making of expenditures.

Mr. George Hardie owns approximately 40% of the Emerald Court Partnership and serves as general managing partner. He also serves as the Mayor of Cathedral City and has filed a Candidate Intention Form with your agency seeking election to the City Council in 1992. Mr. Hardie has a separate controlled campaign committee for purposes of his reelection to the City Council in Cathedral City in 1992.

Presently, the Statement of Organization on file with the Secretary of State indicates that the Committee is a sponsored committee and that the sponsor is Emerald Court Associates, Ltd.

The question that my client would like resolved is whether the Committee is a sponsored Committee as presently registered or whether the Committee is a controlled committee of Mr. Hardie?

LANCE H. OLSON
BRUCE J. HAGEL
LEROY Y. FONG
ROBERT E. LEIDIGH

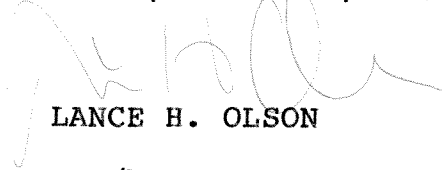
OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

Kathryn Donovan
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Thank you for your attention to this matter. If you require any additional information please direct such inquiries to my attention.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG



LANCE H. OLSON

LKO/bw
cc: George Hardie
0431.lho



California Fair Political Practices Commission

August 21, 1989

Lance Olson
Olson, Connelly, Hagel & Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Letter No. 89-488

Dear Mr. Olson:

Your letter requesting advice under the Political Reform Act was received on August 16, 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
General Counsel

KED:plh



California Fair Political Practices Commission

September 14, 1989

Lance H. Olson
Olson, Connelly, Hagel and Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-488

Dear Mr. Olson:

This is in response to your letter requesting advice on behalf of Cathedral City Mayor George Hardie and Cathedral City Citizens For Progress regarding their responsibilities under to the Political Reform Act (the "Act").^{1/}

QUESTION

If Mayor Hardie owns 40% of a business entity that sponsors a recipient committee known as Cathedral City Citizens For Progress, is the sponsored recipient committee a candidate controlled committee for campaign disclosure purposes of the Act?

CONCLUSION

Cathedral City Citizens For Progress is a candidate controlled committee for purposes of the Act. Therefore, the name and the statement of organization of the committee should be amended to include the controlling candidate's name in the committee name. In addition, because Cathedral City Citizens For Progress supports a ballot measure as its primary activity, the name of the committee must also identify the measure's ballot number or letter and indicate whether the committee supports or opposes the measure.

^{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.

FACTS

Cathedral City Citizens For Progress (the "committee") is registered as a sponsored recipient committee. Emerald Court Partnerships, Ltd. ("Emerald Court") is the committee's sponsor. Nearly all campaign funds raised by the committee are contributed by Emerald Court. In addition, Emerald Court controls the committee's contributions and expenditures. The committee was formed to qualify and support the passage of a local initiative measure to allow card rooms in Cathedral City.^{2/}

Mayor George Hardie is the managing partner and owns 40% of the Emerald Court. Mayor Hardie has filed a candidate intention statement and campaign bank account statement (Forms 501 and 502) in anticipation of his campaign for Cathedral City City Council in 1992. Mayor Hardie has a separate controlled committee for his city council campaign.

ANALYSIS

Section 85201 provides that all contributions or loans made to a candidate, or to the candidate's controlled committee shall be deposited in a single campaign bank account. The Commission has interpreted this to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each campaign. (Regulation 18521; Riddle Advice Letter, No. A-88-409, copies enclosed.)

Section 82016 defines controlled committee as follows:

"Controlled committee" means 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.

According to Section 82016 there are two ways in which a general purpose committee may become a controlled committee. First, the candidate might exert significant influence on the

^{2/} "Measure" means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot." (Section 82043.)

actions or decisions of the committee. Second, the candidate and the committee may act jointly in making expenditures.^{3/}

You have informed us that Mayor Hardie is the managing partner and owns 40% of Emerald Court. You have also stated that Emerald Court makes the decisions with respect to the committee's contributions and expenditures. Absent evidence to the contrary, it appears that Mayor Hardie, as managing partner of the sponsoring entity, has significant influence on the actions or decisions of the committee.^{4/} Consequently, Cathedral City Citizens For Progress is a controlled committee of Mayor Hardie.

You have also informed us that the committee is currently registered as a sponsored committee pursuant to the definition in Section 82048.7 and Regulation 18419 (copy enclosed) of the Act. However, these sections specifically exclude controlled committees from the definition of a sponsored committee; therefore, a controlled committee cannot also be a sponsored committee.

You have asked which designation applies to Cathedral City Citizens For Progress. In the Olson letter (Advice Letter No. A-89-304, copy enclosed), we concluded that where the controlling person is a candidate for elective office, the "controlled committee" designation best served the purposes of the Act and the interests of the public.

Assuming the mayor actually controls the committee through Emerald Court, the identification requirements for sponsored committees would contribute little to the public's knowledge of who controls the committee. The public would have to also be informed of the mayor's control of Emerald Court to determine that the mayor also controls the committee. Thus, according to these

^{3/} Section 82025 defines "expenditure" as any payment, forgiveness of a loan, payment of a loan by a third party, or any enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Regulation 18225, copy enclosed.)

^{4/} Of course if Mayor Hardie in fact is not involved with the committee, the committee may not be controlled for purposes of the Act.

facts, the controlled committee identification requirement better serves to inform the public of the controlling entity behind the committee.^{5/}

Therefore, Cathedral City Citizens For Progress is a controlled committee and not a sponsored committee for purposes of the Act and must include the controlling candidate's name in the committee name.^{6/} (Section 84106.) In addition, if Emerald Court makes over \$10,000 in contributions, including those provided to the committee, receives contributions totaling \$1,000, or makes independent expenditures totaling \$1,000 or more in a calendar year, it too will be a recipient committee under the Act and will be required to file independent campaign statements. (Section 82013.)

However, please note that because the committee is a ballot measure committee, Mayor Hardie may maintain both committees without violating Section 85201 of the Act. (Bagatelos Advice Letter, No. I-89-240, copy enclosed.) In addition, contributions to ballot measure committees are not subject to the contribution limits of the Act. (Roberti Advice Letter, No. A-89-358, copy enclosed.) However, those funds may not be transferred to Mayor Hardie or any other candidate for elective office. Finally, a committee that supports ballot measures as its primary activity must identify the measure's ballot number or letter and indicate whether the committee supports or opposes the measure in the committee's name. (Section 84107; Powers Advice Letter, No. A-86-221, copy enclosed.) This requirement is in addition to the requirements of Section 84106.

^{5/} In the Scully letter (Advice Letter No. A-88-054, copy enclosed) we considered whether a committee which qualified as a controlled committee, due to involvement of a ballot measure proponent, and also qualified as a sponsored committee, was best classified as sponsored or controlled. We concluded in that case that the "sponsored committee" designation better served the purposes of the Act. Consistent with Scully, Section 82048.7, the definition of sponsored committee, has been amended to exempt only candidate controlled committees. Because Mayor Hardie is a candidate, this letter presents a factual situation distinct from the one in Scully.

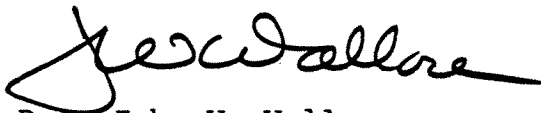
^{6/} Section 84106 provides in its entirety: "The name of any committee shall include or be accompanied by the name of any individual, entity or other person by which the committee is controlled. Any committee required to file a statement of organization shall amend its statement to comply with this section within 30 days of the effective date of this Act."

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If you have any further questions regarding this matter,
please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

A handwritten signature in black ink, appearing to read "John W. Wallace". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures