



# California Fair Political Practices Commission

March 12, 1990

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

Re: Your Request for Advice  
Our File No. A-90-118

Dear Mr. Olson:

In your letter of February 5, 1990, you requested our advice concerning the reporting provisions of the Political Reform Act (the "Act").<sup>1</sup> Your request is on behalf of Assemblymember Tom Hayden, a candidate for Assembly in 1990 and a proponent of the Environmental Protection Act of 1990 initiative measure.

## QUESTION

Assemblymember Hayden is on the steering committee of a committee formed to support qualification and passage of the Environmental Protection Act of 1990 initiative measure. Other candidates who are proponents of that same initiative measure are considering forming their own committees to support its passage and qualification.

Will Assemblymember Hayden or the other candidates/proponents have made or received an in-kind contribution from other candidates as a result of the consultation and coordination between the various candidate-controlled ballot measure committees formed to support the initiative measure?

## CONCLUSION

Under the facts given, Assemblymember Hayden and the other candidates/proponents will not have made or received an in-kind

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<sup>1</sup> 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.

contribution from the other candidate-controlled ballot measure committees as a result of consultation and coordination between the various committees formed to support qualification and passage of the Environmental Protection Act of 1990 initiative measure.

In light of the answer to this question, it is unnecessary for us to address other questions raised in your letter concerning the propriety and reporting of in-kind contributions.

#### FACTS

Assemblymember Hayden is an incumbent representing the 44th Assembly District. He expects to be a candidate for re-election on the 1990 ballot. He is also a proponent (as that term is used in Elections Code Section 3502) of the Environmental Protection Act of 1990 initiative measure ("Environmental Initiative Measure").

The Hayden Committee is a recipient committee organized pursuant to Section 82013(c). The purpose of the Hayden Committee is to support the qualification and passage of the Environmental Initiative Measure.

The Hayden Committee is governed by a steering committee involving representatives from several environmental organizations and Assemblymember Hayden. The Hayden Committee has registered as a candidate-controlled committee pursuant to Section 82016.

Assemblymember Hayden is one of seven proponents of the Environmental Initiative Measure. Of the remaining six proponents, two others are also elected public officials. These officials have formed or are considering forming their own individually controlled ballot measure committees for the purpose of qualifying and promoting the passage of the Environmental Initiative Measure.

Assemblymember Hayden has transferred funds from his re-election committee to the Hayden Committee for purposes of paying the various expenses of the Committee. The other officials have or will transfer funds from their election committee to their own individually controlled ballot measure committees.

During the course of the qualification process the various proponents, including the elected officials and their respective controlled ballot measure committees, expect to consult with one another and coordinate efforts. Assuming the Environmental Initiative Measure qualifies, similar consultation and coordination is likely to occur during the campaign phase of the election.

Although the candidates and their controlled ballot measure committees will consult with each other, each committee will pay its own operating and campaign expenses. For example, each committee will pay for its own petitions, campaign consultants,

fundraising expenses, direct mail, media buys, promotional materials, etc. However, the committees may well use the same consultants, direct mail vendors, and pollsters. When vendors are shared, costs will be apportioned and paid by each committee.

#### ANALYSIS

In Advice Letter, No. A-82-096 (copy enclosed), we explained that payment by a controlled committee for one-half of the cost of a ballot measure committee's advertisement mentioning the candidate in a way which would otherwise give rise to an in-kind contribution would be permissible under the Act.

We also note that the Hiltachk Advice Letter, No. A-89-533 (copy enclosed), confirmed telephone advice that transfers of contributions from a candidate-controlled committee to a ballot measure committee controlled by another candidate are prohibited by the Act. The Hiltachk letter states that a candidate-controlled committee<sup>2</sup> may make contributions to a ballot measure committee<sup>3</sup> from campaign funds but that this rule does not apply where the committee making the contribution is controlled by one candidate, and the committee receiving the contribution is controlled by another candidate.<sup>4</sup>

A "contribution" is a payment for political purposes, where the recipient does not provide adequate consideration to the contributor. (Section 82015.) If the costs of the goods and services supplied by each vendor are apportioned equally and the payments of the apportioned costs are made directly by each candidate's committee and the ballot measure committee, this would not constitute a contribution by or to any of the candidate

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<sup>2</sup> Under Section 82016, a controlled committee is "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."

<sup>3</sup> Section 82043 defines a measure as "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."

<sup>4</sup> The advice in the Hiltachk letter may be reconsidered by the Commission, depending upon the Commission's decision in a pending opinion request, In re McCarthy, No. 89-007. The McCarthy opinion also concerns the activities of candidate-controlled ballot measure committees.

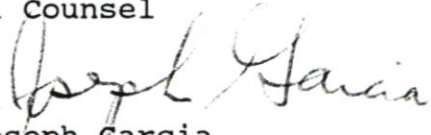
controlled ballot measure committees. Since that is the situation you describe in your letter, there is no contribution under the facts stated.

This advice is limited to interpretation of the Political Reform Act.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Joseph Garcia  
Counsel, Legal Division

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Enclosures