



California Fair Political Practices Commission

May 18, 1990

Tracey S. Buck-Walsh
Diepenbrock, Wulff, Plant & Hannegan
300 Capitol Mall, Suite 1700
Post Office Box 3034
Sacramento, CA 95812-3034

Re: Your Request for Advice
Our File No. I-90-239

Dear Ms. Buck-Walsh:

You have requested advice on behalf of the campaign committee of Daniel E. Lungren, a candidate for Attorney General, concerning the treatment of fundraising activities using 900-number telephone lines under the Political Reform Act (the "Act").¹

You have requested written advice pursuant to Section 83114(b) of the Act. Because your inquiry is general in nature and does not involve a specific set of facts, we are treating your request as one for informal assistance.²

QUESTIONS

1. Is the use of 900-number telephone calls in the manner suggested by Option A, below, a legal way to raise money under the Act?

2. If so, must the committee include either in the television advertisement or in the 900-number call, a disclaimer that a

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

portion of the cost of the call will be considered a contribution to the candidate?

3. May a contribution made pursuant to Option B, below, be placed directly on the caller's telephone bill to be collected through the telephone company?

a. May the phone operator obtain a VISA or Master Charge number and charge the contributor via his or her credit card?

b. May the committee use a tele-network to collect the money raised?

CONCLUSIONS

1. A campaign may raise funds by use of a 900-number telephone line, provided the procedures for solicitation and reporting of contributions comply with the provisions of the Act.

2. The television advertisement and the message provided over the 900-number line should contain a statement that the call will result in a contribution to the candidate.

3. The Act does not prohibit the making of a contribution by credit card. It is also permissible to collect the contribution by means of a tele-network using the telephone company as a collection agent. However, any costs associated with the collection is an expenditure of the committee. The full amount charged to the caller is the amount of the contribution.

FACTS

You are requesting advice on behalf of the Lungren campaign committee regarding the raising of campaign funds by use of a 900 telephone number. The committee would run a television commercial at the end of which would appear a message inviting the viewer to call a 900 number for further information concerning the Lungren campaign. The message would also notify the viewer that the 900 call is a toll call.

A person who calls the 900 number will be presented with several options which may result in direct or indirect contributions to the candidate. The committee does not foresee problems keeping track of the contributions. You have raised questions concerning issues which may arise under the Act under each option.

Option A

Under Option A, the caller will hear a message thanking him or her for calling and asking if the caller wishes to hear the candidate's position on various issues. If the caller chooses to hear a message, he or she selects the number of the message and receives that recorded message. The caller will be charged for

the first minute and for every minute thereafter, beginning immediately after the call is answered. The telephone company would receive a portion of that charge as a user fee. The remaining money would be received by the committee.

Option B

Option B would include the process set forth in Option A, but would also ask the caller if he or she would like to make a contribution to the Lungren campaign. The caller would then press a number for contributions and make a contribution to the campaign.

ANALYSIS

We have previously rendered written advice on the issue of telephone fundraising to solicit credit card contributions. (Schwartz Advice Letter No. A-78-193, copy enclosed.) In Schwartz, we were asked if the Act prohibited fundraising activity in which donors would charge political contributions to their credit card accounts by telephone. The contributor would make the telephone contribution by calling a toll-free number shown on television during a political commercial. The caller would be connected with the staff of a toll-free answering service who would record the amount of the contribution and the caller's credit card number. This information would be forwarded to the candidate's bank to be credited to the candidate's account in the amount of the contribution. The credit card company would then bill the caller.

The advice provided in Schwartz was that the Act would not prohibit such fundraising, but that the operation would have to comply with the requirements of the Act. The advice provided in Schwartz was rendered in 1978. Therefore, we will review the requirements imposed by the Act as amended and pursuant to regulations interpreting the Act which may have been adopted in the interim.

1. Section 84300(c) provides that any contribution of \$100 or more must be made by written instrument containing the name of the donor and the name of the payee. Thus, for any contribution of \$100 or more during a calendar year, a copy of the credit card voucher must be sent to the committee receiving the contribution. The voucher must be sent as soon as practicable after the donor instructs that the contribution be made. (Schwartz, supra.)

2. Section 84104, Regulation 18401, and the Commission's recordkeeping guidelines provide that for each contribution of \$25 or more from a single source, the following information must be retained by a candidate or committee: the contributor's full name, street address, occupation, employer or name of business if self-employed, date and amount of each contribution received during the reporting period and, if a loan, the interest rate, and the cumulative amount of contributions. Section 84211(f) requires

that the foregoing information be itemized on the campaign statement for any person whose cumulative contributions are \$100 or more during a calendar year.

3. Section 84302 requires that anyone acting as an intermediary or agent of another in making a contribution of \$100 or more disclose his or her own name, street address, occupation, employer or, if self-employed, his or her principal place of business and also disclose the same information as to the contributor. Information concerning both the intermediary and the contributor must be disclosed on the committee's campaign statement. A person is an intermediary if he or she delivers a contribution to the committee from another person unless the contribution is from the person's employer, immediate family or an association to which the person belongs. The treasurer of the committee and the controlling candidate are not intermediaries. (Section 84302.5.) This information would have to be obtained from the caller and provided to the committee.

It should be noted that an intermediary does not include a person who "is a campaign consultant, professional fundraiser, or other independent contractor, who is under contract to provide campaign services to the candidate or committee to which the contribution is made, if acting within the scope of his or her contract." (Regulation 18432.5, copy enclosed.)

4. Section 84306 requires that all contributions received by a person acting as an agent of a candidate or committee be reported promptly to the candidate or committee treasurer. "Promptly" means no later than the closing date of any campaign statement the candidate or committee is required to file.

5. Sections 85301 and 85303 impose limits upon contributions by persons or committees to a candidate or the candidate's controlled committee and also prohibit a candidate or campaign treasurer from soliciting contributions in excess of those limits.

6. Section 85201(e) provides that all campaign expenditures shall be made from the campaign bank account. Since there may be a delay in receipt of contributions billed, it is possible that some expenditures will be incurred prior to receipt of the contributions. In order to assure that all expenditures are made from the campaign account, the estimated pre-contribution costs should be paid by the campaign as a deposit. Alternatively, Regulation 18526 (copy enclosed) provides that expenditures paid by an agent or independent contractor will be deemed expenditures made from the campaign bank account if certain requirements are met.

(1) The expenditures are made pursuant to a written contract between the candidate or committee and the agent or independent contractor which provides for the reimbursement of such expenditure.

(2) The treasurer of the committee is provided with a dated receipt and a written description of each expenditure prior to reimbursement.

(3) Reimbursement is paid within 45 calendar days after the expenditures are paid by the person to be reimbursed.

Regulation 18526(b)(1) - (3).

If reimbursement is not paid within 45 calendar days, the expenditure must be reported as a nonmonetary contribution received on the 45th day after the expenditure was paid by the agent or independent contractor, unless that person has made a good faith effort to obtain reimbursement and has been unable to collect. (Regulation 18526(d).)

Contribution by credit card.

So long as the above requirements are met, the Act does not prohibit the making of a contribution by credit card. The amount charged on the credit card is the amount of the contribution which must be reported. Any fees paid to the credit card company for this service will be reported as an expenditure on Schedule E of the campaign statement.

Contribution placed on caller's telephone bill.

If the contribution is placed upon the caller's telephone bill, a question is raised as to when the contribution is "made." For purposes of this analysis, it is assumed that the telephone company will not forward the "contribution" to the committee until the caller pays the telephone bill. Unless the telephone company has a contractual right to enforce the payment of such a charge on the telephone bill, placing the contribution on the telephone bill is not a contribution. However, when the payment is received by the telephone company a contribution has been made. As indicated above, and in Schwartz, supra, any telephone fundraising operation must comply with the Act. Therefore, if collection is to occur through the telephone company, the telephone company will have to collect and provide to the campaign in a timely fashion all information necessary for campaign reporting, including the date of the contribution and required information about the contribution.

Contribution collected by tele-network.

You indicated in our telephone conversation of April 23, 1990, that collection by "tele-network" refers to a system by which a tele-network organization leases 900-number lines from the telephone company. The organization contracts with the campaign to put a recorded message on the organization's lines. Callers are billed by the telephone company for each 900-number call. The telephone company merely acts as the billing agent for the

organization, and forwards the amounts collected after deducting its costs. In accordance with its contract with the campaign, the organization then deducts its fee and remits the balance to the campaign.

Subject to the same requirements of the Act as set forth above, the tele-network system of collection is not prohibited by the Act. As in the case of the credit card contribution, the amount of the contribution is the amount collected from the caller. Any portions retained by the tele-network are treated as fundraising costs by the campaign.

Contribution of "profit" under Option A.

The procedure set forth in Option A differs somewhat from that in Schwartz, because the caller does not expressly make a contribution to the campaign. Therefore, a statement should be included advising the caller that the cost of the call is a contribution to the committee. This service is in the nature of a fundraising event to which the caller gains access by making the toll call. The cost of the telephone call paid by the caller is a contribution from the caller. The amounts retained by the telephone company and the tele-network organization are costs of the fundraiser.

I trust that this letter has provided you with the guidance that you need. If you have any questions, please contact me at (916) 322-5901.

Sincerely, _____

Scott Hallabrin
Acting General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

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Enclosures