



California Fair Political Practices Commission

October 16, 1990

Jonathan Steinberg
Irell & Manella
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276

Re: Your Request for Advice
Our File No. A-90-605

Dear Mr. Steinberg:

You are seeking advice as legal counsel on behalf of the "No on 131 and 140" Committee regarding its duties and responsibilities under the disclosure of major funding sources provisions of the Political Reform Act (the "Act").¹

Although you have requested informal advice pursuant to Regulation 18329 (copy enclosed), we are treating your request as one for formal advice because your request concerns the committee's present obligations and responsibilities under the Act.

The following advice is based upon the facts provided in your letter of September 24, 1990 and in several telephone conversations. Because the Commission does not provide advice concerning past conduct, the advice is prospective in its application. (Regulation 18329.)

QUESTION

(1) Can contributions from the "No on 131 and 140 Committee" to other ballot measure committees make the No on 131 and 140 Committee a major funding source for the other committee(s) if the requisite financial thresholds are met?

(2) Is the "No on 131 and 140 Committee" obligated to disclose any "person" as a major donor, provided the requisite financial thresholds are met, in any advertising for which it authorizes and pays?

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.

CONCLUSION

(1) On the basis of the facts provided, the "No on 131 and 140 Committee" can constitute a major funding source for other ballot measure committee(s)'s advertisements if its contribution to such committee(s) meets the requisite threshold amounts and if it is involved in activities with respect to the two propositions in addition to making contributions to other committees.

(2) The "No on 131 and 140 Committee" is obligated to disclose all major funding sources, as applicable, as required by the Act.

FACTS

The "No on 131 and 140 Committee" ("No on 131 and 140") has been formed to oppose Propositions 131 and 140 on the November, 1990 ballot. It anticipates receiving most of its funding from two major sources. It also anticipates making contributions to two other ballot measure committees, the "No on 131" Committee and the "No on 140" Committee.

The "No on 131" Committee ("No on 131") and the "No on 140" Committee ("No on 140") would be constituted with different board members from each other and from the board members of "No on 131 and 140." "No on 131" and "No on 140" each expect to receive contributions from other sources in addition to "No on 131 and 140."

ANALYSIS

Sections 84501 through 84514 were added to the Act as a result of the enactment by the voters of Proposition 105 in the November 1988 election. These provisions, effective January 1, 1990 impose specific disclosure requirements on committees which pay for or authorize an advertisement in support of or opposition to an initiative. The disclosure requirement is applicable only to an advertisement the content of which is more than 50 percent devoted to one initiative² (Section 84512), paid for and authorized by any committee which has made expenditures of at least \$50,000. (Section 84502.) When required, the disclosure consists of an acknowledgment, contained in the advertisement, of the major funding sources of the organization which authorized and paid for the advertisement.

Because Propositions 131 and 140 on the November, 1990 ballot are "qualified state initiative[s]," the provisions of Proposition 105 are applicable to the requisite advertisements in support of or in opposition to either proposition. An advertisement which supports or opposes both propositions, or supports one and opposes the other, is not subject to the disclosure requirements of Proposition 105. (Section 84512.)

² An initiative is defined as "a qualified statewide initiative measure or a qualified statement referendum measure" (Section 84501).

In the facts you have provided, when each committee authorizes and pays for an advertisement on behalf of either proposition, it is required to comply with the disclosure requirements concerning its major funding sources pursuant to Section 84507.³

The basis of your questions is in what manner, if any, can "No on 131 and 140" be a "major funding source" of the other committees under Section 84507, and whether the funding sources of "No on 131 and 140" must be examined for purposes of the other committees' disclosure obligations under Proposition 105.

It is our conclusion that if "No on 131 and 140" makes a contribution to either "No on 131" or "No on 140" (or both) at or above the requisite amounts specified in Section 84507(b), it constitutes the "person" making the largest contribution to such committee(s) and is therefore disclosed as such. Similarly, "No on 131 and 140" is required to examine its contributions to determine what, if any, disclosure thresholds are met for purposes of any advertisements it authorizes and pays for. The disclosure of "No on 131 and 140" funding sources is required for its contributions to either "No on 131" or "No on 140" if it engages in no other

³ This section reads as follows:

§ 84507. Disclosure of Major Funding Sources.

Any advertisement authorized by a committee shall include a statement that each of the following, where applicable, is a major funding source:

(a) Any industry which is both the largest industry contributor to the committee and whose combined contributions to the committee are five hundred thousand dollars (\$500,000) or more, or are fifty thousand dollars (\$50,000) or more and constitute 25 percent or more of all contributions.

(b) A person whose contributions to the committee are one hundred thousand dollars (\$100,000) or more and who is the largest contributor.

(c) Corporations as a group when their combined contributions to the committee are one hundred thousand dollars (\$100,000) or more and constitute 50 percent or more of all contributions, and unions as a group when their combined contributions to the committee are one hundred thousand dollars (\$100,000) or more, and constitute 50 percent or more of all contributions.

(d) Out-of-state contributors as a group, when their combined contributions to the committee are one hundred thousand dollars (\$100,000) or more, and constitute 50% or more of all contributions.

activity beyond making contributions to the other committees. We reach this conclusion for the following reasons.

While each committee may share similar objectives, you have indicated that they are, in fact, different committees. They are controlled and managed by different people and arguably have different sponsors.

We have previously advised that Proposition 105's disclosure requirement does not call for disclosure of the major donors of a major funding source required to be disclosed under Section 84507. The Hiltachk Advice Letter, No. A-90-336 (copy enclosed), concluded that a committee could constitute a major funding source for another committee which has authorized an advertisement. This advice was premised on the understanding that the two committees were separate and distinct entities.⁴

However, as you have described it, contributions to "No on 131 and 140" are not, in effect, contributions to either, or both, "No on 131" and "No on 140."⁵

Our conclusion is different if "No on 131 and 140" simply acts as an "intermediary" for funds for "No on 131" and "No on 140." A committee may act as an intermediary for the receipt of contributions for another committee. (Robeck Advice Letter, No. I-90-448, copy enclosed.) However, an intermediary is required to disclose the true source of any contributions, and the recipient is required to disclose both the intermediary and the true contributor. (Sections 84302, 84302.5; Regulation 18432.5, copy enclosed.)

If, therefore, "No on 131 and 140" acts as an intermediary for purposes of raising funds for "No on 131" and/or "No on 140," it is required to disclose the names of the true contributors, as well as itself, to the other committee(s). With this information, "No on 131" and "No on 140" would then be in the position to determine their obligations, if any, with respect to the Proposition 105 disclosure requirements.

To recapitulate, when "No on 131 and 140" makes contributions to either "No on 131" or "No on 140," its funding sources are not relevant in determining the Proposition 105 disclosure obligations in advertisements of "No on 131" or "No on 140" because the three

⁴ The factual reference for this conclusion in the Hiltachk Advice Letter, concerned the Pete Wilson for Governor - 1990 committee and the Crime Victims for Justice, Yes on 115 committee.

⁵ Be advised that the Commission has required the cumulation of contributions under certain circumstances. (See Olson Advice Letter, No. A-90-302; Regulation 18531.5 (although currently in the rulemaking process and therefore not presently effective, it does express the Commission's policy concerning cumulation of contributions.)

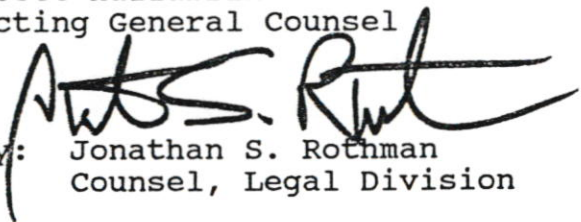
committees are sufficiently distinctive in terms of purposes, control and sponsors. However, if "No on 131 and 140" simply acts as an intermediary for contributions to the other committee(s), the sources of contributions to "No on 131 and 140" must be evaluated by the other committee(s) to determine what if any Proposition 105 disclosure obligations apply to the other committee's advertisements.

We are continuing to refine our advice concerning Proposition 105 and are in the process of drafting further regulations to implement its provisions. The advice you have been provided in this letter may change if the Commission adopts a regulation or regulations, or if subsequent advice is provided, which reaches a difference conclusion from that suggested in this letter.

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

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Jonathan S. Rothman
Counsel, Legal Division

SH:JSR:plh

Enclosures