



California
Fair Political
Practices Commission

SUPERSEDED

IN PART

By: 18215 (c)(10)

February 6, 1995

Frederick K. Lowell, Esq.
Pillsbury Madison & Sutro
400 Capitol Mall, Suite 1700
Sacramento, California 95814

Re: Your Request For Written Advice
Our File No. I-95-015

Dear Mr. Lowell:

We write in response to your January 5, 1995, request for informal written advice regarding application of the Political Reform Act (the "Act")¹ to the following hypothetical fact pattern:²

A small group of local business leaders meet informally for lunch or at other times to discuss politics in their community. At these meetings, the business leaders may talk about upcoming elections involving specific candidates or ballot measures and whether the candidates or ballot measures will be supportive of the local business community.

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 The Commission does not provide advice on matters which are purely hypothetical. (Regulations 18329(b)(8)(D) and 18329(c)(4)(D).) However, as a courtesy, we have accepted your request for advice based on your oral representation that the facts presented in your advice request are representative of actual events, and the individuals involved require guidance on whether their conduct is regulated under the Act. Please note that we limit our analysis to the provisions of the Act. Nothing in this letter should be construed to apply to local laws which may regulate the conduct at issue. Local laws which impose additional requirements and which do not conflict with the provisions of the Act are valid under state law. (Section 81013.)

Occasionally a candidate or representative of a ballot measure campaign is invited to the lunch so that the business leaders may obtain this information directly.

The business leaders often hold similar views about which candidates or measures should be supported or opposed; however, they do not raise or spend money as a group to support or oppose any candidate or ballot measure. The group is organized only informally and does not have a bank account. Although participants may urge each other to support or oppose certain candidates or measures, no money is collected for that purpose at the meetings. No business leader has the power to direct or control the contributions made by any other participant in the meetings, and no business leader in fact exercises direction or control over contributions made by the other participants.

Each business leader independently decides whether he or his business will contribute funds or engage in other activities, such as hosting a fund-raiser, to support or oppose specific candidates or ballot measures. Some business leaders may attend the same fund-raisers or contribute to the same campaigns. There is no pooling of funds or sharing of expenses for these activities. [Footnote: The only shared expense is the cost of the meals or refreshments served when these discussions occur.] Each business leader or entity who makes reportable contributions or expenditures complies fully with the campaign reporting requirements of the Act.

QUESTION

Does the above outlined activity cause the group to become a committee under the applicable provisions of the Act?

CONCLUSION

The group activities outlined in your advice request generally will not cause the group to qualify as a committee. However, under certain circumstances, more fully described below, the shared expenditures of the group may constitute an expenditure for political purposes and therefore may be considered a contribution or independent expenditure. If such contributions or

independent expenditures exceed the threshold reporting level for a committee, the group will be subject to the reporting requirements of the Act.

ANALYSIS

In order to qualify as a "recipient" committee under Section 82013(a), a person or group of persons must receive contributions totaling \$1,000.00 or more in a calendar year.

A contribution is defined in the Act as any payment for which full and adequate consideration is not received, unless it is clear from the surrounding circumstances that it is not made for political purposes. (Section 82015; Regulation 18215.) A payment is made for political purposes if, among other things, the payment is made 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 the qualification or passage of any measure, or made to or at the behest of a candidate or candidate controlled committee. (Regulation 18215.)

Under the Act, if the group pools its funds for the purpose of making contributions or independent expenditures, and the pooled funds of the group equal \$1,000.00 or more in a calendar year, the group will become a "recipient" committee. (Culver Advice Letter, No. I-94-005; Mark Advice Letter, No. I-93-139; Gross Advice Letter, No. A-93-128; Robeck Advice Letter, No. I-90-448; Bell Advice Letter, No. A-88-166.) We therefore must examine whether the actions of the group you have outlined in your request may be construed as contributions or independent expenditures.

Contributions:

You state that the group meets to discuss politics in order to further their mutual goals. The group is not formally constituted and does not engage in any activity to influence the action of the voters. Rather, the group is an informal aggregation of like-minded persons who meet to discuss their own views on issues and candidates.

On occasion, a candidate or measure proponent may be invited to address the group. As you are aware, any payment made to an elected officer or candidate for his or her food is a gift and not a contribution. (Regulation 18941.1.) Therefore, if a candidate is invited to address the group and the group pays for the candidate's meal or refreshment, that payment is not a contribution.

Under certain circumstances, providing a forum for a candidate to appear and speak may result in a contribution to that candidate. (Davis Advice Letter, A-94-221; Shield Advice Letter, No. I-94-117; Mancuso Advice Letter, A-94-370.) The expenditures, if any, associated with the provision of the forum are considered to be made at the behest of the candidate invited to speak. (Regulation 18215(a)(2).) If the hypothetical group rents a hall

and invites a candidate to address the group's members, the cost of renting that hall may be an expenditure made at the behest of the candidate, and, therefore, a contribution. However, if the group provides a forum for all the candidates for the same office, as in a debate format for example, the costs associated therewith are not considered to be a contribution to any candidate. (Goldfarb Advice Letter, No. I-92-453.)³

Therefore, if the group pools its funds to provide a forum at which a candidate will speak, it may have made a contribution to that candidate. Since your facts do not indicate if any funds are necessarily expended when a candidate speaks to the group, we assume that in most instances there is no expenditure associated with this activity. However, if such expenditures are incurred, and their total equals or exceeds \$1,000.00 in a calendar year, the group will qualify as a "recipient" committee by virtue of the fact that the members pooled their funds for such purposes.

Independent Expenditures

An independent expenditure is a payment in connection with a communication which expressly advocates the election or defeat of a candidate, the passage or defeat of a ballot measure, or which unambiguously urges a particular result in an election. (Section 82031.) A communication expressly advocates a particular result in an election when it refers to a clearly identified candidate or measure and when, in its entirety, with limited reference to external events, it unambiguously urges a particular result in an election. (Regulation 18225(b)(2); Federal Election Commission v. Furgatch, 807 F. 2d 857, 864 (1987).) A communication which merely centers on issue discussion without expressly advocating a particular result in an election is protected political speech. (Buckley v. Valeo, 424 U.S. 1, 43-45, 78-82 (1976).) The disclosure and reporting requirements applicable to expenditures for express advocacy are not applicable to purely issue-oriented discussion. (Id.) Under Commission Regulations, expenditures for express advocacy include all the costs directly attributable to the communication, including, among other things, administrative or overhead costs attributable to the communication, but excluding normal overhead costs which are incurred in similar amounts regardless of the communication. (Regulation 18225(b)(3)(A).)

Your facts state that the members of the group may talk about specific candidates and measures and whether or not these candidates and measures are supportive of the local business community. Such activities generally are not considered express advocacy. (Sewell Advice Letter, No. A-90-310.)

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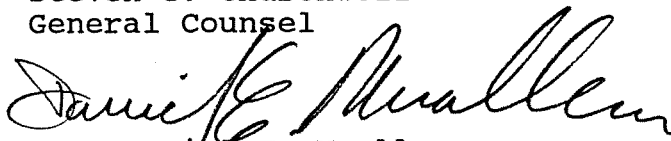
In addition, the cost of any meeting or fund-raiser in a home or office is not a contribution by the occupant of the home or office if the cost is \$500.00 or less. (Section 82015.)

Therefore, although the activities of a small informal group that meets to discuss candidates and issues generally will not qualify as a "recipient" committee, expenditures made for the purpose of providing a forum for a candidate to address the group may be a contribution by the group to the candidate. If such contributions equal or exceed \$1,000.00 in a calendar year, the group will incur reporting and disclosure obligations under the Act.

Should you have additional questions, you may contact the undersigned at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "Daniel E. Muallem". The signature is written in a cursive style with a large, prominent initial "D".

By: Daniel E. Muallem
Counsel, Legal Division