

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION  
December 11, 1996

Dr. Kenneth J. Hoffer  
St. Mary's Eye Surgical Center  
1441 Broadway  
Santa Monica, California 90404

Re: Your Request for Advice  
Our File No. I-96-280

Dear Dr. Hoffer:

This is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Because you have not identified the name of the political club, we are treating your request as one for informal assistance pursuant to Regulation 18329(c).<sup>2</sup>

QUESTIONS

1. Is the duly elected treasurer of a political club that supports candidates or positions in a statewide election considered an "officer of the State" or an "official of the State"?
2. Are membership dues of a political club contributions that qualify the club as a "committee" under the Act?

CONCLUSIONS

1. No. The definition of "public official" contained in Government Code Section 82048 does not include elected treasurers of political clubs.
2. Whether membership dues will be considered "contributions" and qualify the political club as a committee will depend upon the club's history of making contributions or expenditures to candidates or ballot measures as discussed in the analysis below.

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<sup>1</sup> Government Code Sections 81000-91015. Commission regulations appear at Title 2, Sections 18000-18995 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

You asked in writing if a treasurer of a political club would be considered an officer or official of the state. In a telephone conversation on September 30, 1996, you stated that you were considering becoming the treasurer of a local political club. You also asked if the political club receives membership dues whether the dues would be considered contributions. You clarified in a telephone conversation in November that the club's dues are used to fund such activities as voter guides, telephone banks, office rent, and monthly meetings where community speakers, officeholders and candidates may appear. You did not indicate the amount of dues raised in a calendar year.

ANALYSIS

Question 1.

Section 82048 of the Act defines "public official" as follows:

"Public official" means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government....

A treasurer for a partisan political club does not fall under the definition of a "public official." However, if the political club qualifies as a "committee" as discussed below, the treasurer is required to maintain detailed accounts, records, bills and receipts that are necessary to prepare campaign statements and to comply with the provisions of the Act. (Section 84104.) The recordkeeping guidelines are outlined in the Commission's Campaign Disclosure Informational Manual which is enclosed.

Question 2.

The political club will qualify as a committee if it receives contributions totaling \$1,000 or more in a calendar year. (Section 82013(a).) The term "contribution" is defined in Section 82015 as a payment made for political purposes. A payment is made for political purposes if it is made "for the purpose of influencing or attempting to influence the action of the voters for or against qualification or passage of any measure".... In addition, the term "contribution" is also defined in Regulation 18215(b)(1) as follows:

Any payment made to a person or organization other than a candidate or committee, when, at the time of making the payment, the donor knows or has reason to know that the payment, or funds with which the payment will be commingled, will be used to make contributions or expenditures. If the donor knows or has reason to know that only part of the payment will be used to make contributions or expenditures, the payment shall be apportioned on a reasonable basis in order to determine the amount of the contribution.

There shall be a presumption that the donor does not have reason to know that all or part of the payment will be used to make expenditures or contributions, unless the person or organization has made expenditures or contributions of at least one thousand dollars (\$1,000) in the aggregate during the calendar year in which the payment occurs, or any of the immediately preceding four calendar years.

According to your facts, the club's membership dues are used for both political and non-political activities. Therefore, it may apportion its membership dues to determine whether it has received \$1,000 or more in contributions to qualify as a "committee." Moreover, under Regulation 18215(b)(1), the initial \$1,000 in contributions or expenditures<sup>3</sup> made from membership dues will not qualify the club as a committee under the presumption that the donors did not have reason to know that all or part of their membership dues were used to make expenditures or contributions.<sup>4</sup>

You will need to review your records to determine if the club made expenditures or contributions of \$1,000 or more in any of the previous four years or in 1996. If yes, the members have a reason to know that their dues are used for political purposes. If additional expenditures or contributions total \$1,000 or more during 1996, the club will qualify as a committee under Section 82013. Two examples may help clarify the rule in Regulation 18215(b)(1) (commonly referred to as the "first-bite of the apple" rule). If the club made contributions of \$500 in 1994 and \$1,000 in 1996, the club would not qualify as a committee. However, if in 1996 the club made contributions of \$1,000 in January and in September, an additional \$1,500 in contributions were made and the club would then qualify as a committee.

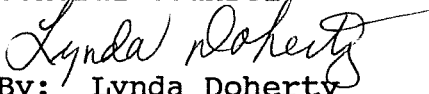
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<sup>3</sup> The term "expenditure" is defined in Section 82025 as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.

Once you have reviewed your history of expenditures and contributions, please feel free to contact the Commission's Technical Assistance Division at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel

  
By: Lynda Doherty  
Political Reform Consultant  
Legal Division

Enclosure

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<sup>4</sup> Regulation 18215(b)(1) does not apply to money received by the club which is earmarked for the purpose of making contributions or expenditures.