

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

February 18, 1997

John Bovée
The Bovée Company
1127 - 11th Street, Suite 226
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. I-97-027**

Dear Mr. Bovée:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Since your advice request does not name specific officials, we are treating your request as one for informal assistance.²

QUESTIONS

1. Can a member of the state Legislature solicit funds in 1997 for a 501(c)(4) non-profit association as long as that member does not control where or how those funds are eventually used?
2. Can a member of the state Legislature solicit funds for a political action committee in 1997 as long as that member does not control where or how those funds are eventually dispersed?
3. What is the total amount an individual can contribute to a political action committee per calendar year and per election cycle? Does the primary election count as one election and the general election as a second election?

CONCLUSIONS

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18000 - 18995, 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. (Section 83114; 18329(c)(3).)

1. Yes. Proposition 208 did not change existing law with regard to candidates soliciting funds for non-profit associations.
2. Yes. Proposition 208 did not change existing law with regard to when a committee becomes controlled by a candidate.
3. The total amount an individual can contribute to a political action committee varies depending on the activities of the committee. The primary and general elections are considered separate elections under the Act.

ANALYSIS

The contribution limitations contained in Section 85301 set limits on contributions made “to any candidate or the candidate’s *controlled committee*.” (Section 85301, emphasis added.) Section 85305 contains time restrictions on when a candidate may accept contributions. Contributions a candidate solicits for himself or herself, or for the candidate’s controlled committee, will be subject to the limits set forth in Sections 85301 and 85305.³ Conversely, if the candidate solicits contributions for a committee or organization not controlled by the candidate, then the limits in Sections 85301 and 85305 do not apply.

Proposition 208 did not amend the definition of a controlled committee. A “controlled committee” is defined in the Act as:

“[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.” (Section 82016.)

The Commission has interpreted the definition of “controlled committee” broadly to include any significant participation in the actions of a committee by a candidate, his or her agent, or representatives of any other committee he or she controls. (*Higdon* Advice Letter, No. I-94-189.) Therefore, if a candidate solicits funds for a political action committee, but does not control the committee as described above, then the limitations in Sections 85301 and 85305 will not apply.

³ In addition, please keep in mind that no elected officeholder may solicit or accept campaign contributions “from through, or arranged by a registered state or local lobbyist if that lobbyist finances, engages, or is authorized to engage in lobbying the governmental agency for which the candidate is seeking election or the governmental agency of the officeholder.” (Section 85704.)

Similarly, if a candidate solicits funds for a non-profit association, the limitations in Sections 85301 and 85305 will not apply unless the association is actually the candidate's controlled committee. Regulation 18217 provides an alternative definition of controlled committee applicable to organizations that are tax exempt under Section 501 of the Internal Revenue Code, provided they are not formed or existing primarily for political purposes. (Regulation 18217(f).) Subdivision (a) of Regulation 18217 provides that a non-profit association will be considered a controlled committee if:

"(1) A candidate, his or her agent, or any committee he or she controls, exercises significant influence over the actions and decisions of the organization, or acts jointly with the organization in connection with the making of expenditures.

(2) The organization qualifies as a committee under Government Code Section 82013(a), and the organization is operated for political purposes. For purposes of this regulation, an organization is 'operated for political purposes' if either of the following applies:

(A) The organization receives or expends funds 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.

(B) The organization makes contributions to candidates or their controlled committees." (Emphasis added.)

A candidate may be involved with a non-profit without the entity becoming an additional controlled committee of the candidate if certain criteria are met. Subdivision (b) of Regulation 18217 provides that a non-profit is presumed not to be significantly influenced by a candidate if:

"(1) The candidate is not substantially involved in the day-to-day operations of the organization, and the organization is controlled by a board of directors with 3 or more members, two-thirds of whom are not:

(A) Candidates;

(B) Agents, campaign staff, employees, or persons otherwise under the control of a candidate; or

(C) Brothers, sisters, parents, children, spouses, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law or fathers-in-law of a board member who is a candidate.

(2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (b)(2) the term 'name of the candidate' means the candidate's first and last name or some other unambiguous reference to the candidate."

Finally, subdivision (c) of Regulation 18217 provides that a non-profit is presumed not to be operated for political purposes if:

“(1) The organization does not make contributions to candidates.

(2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (c)(2) the term 'name of the candidate' means the candidate's first and last name or some other unambiguous reference to the candidate.

(3) The organization does not spend funds in excess of the amount permitted under Section 501(h) of the Internal Revenue Code to influence or attempt to influence legislative action.

(4) The organization does not spend funds to influence or attempt to influence the qualification or passage of any measure in an amount sufficient to qualify the organization as a committee under Section 82013 of the Government Code." (Regulation 18217.)

Therefore, if the association that the candidate is raising money for is not a controlled committee as defined by Regulation 18217, then the candidate may solicit contributions to the association without violating the contribution limits of Section 85301 or the fundraising time restrictions in Section 85305.⁴

You also ask the total amount an individual can contribute to a political action committee per calendar year and per election cycle. The contribution limits for committees are as follows: 1) if the committee makes contributions to candidates, the limit is \$500 per *calendar year*; 2) if the committee is a small contributor committee, the limit is \$50 per *calendar year*; and 3) if the committee makes independent expenditures, the limit is \$250 per *election*. (Sections 85301(d), 85203, 85500(b).)

Section 85500(b), which sets forth the contribution limit to independent expenditure committees, sets a limit that applies per election, rather than per election cycle. Primary and

⁴ Moreover, the donations solicited are not reportable gifts to the legislators. (*In re Nejedly*, 2 FPPC Ops. 45.)

File No. I-97-027

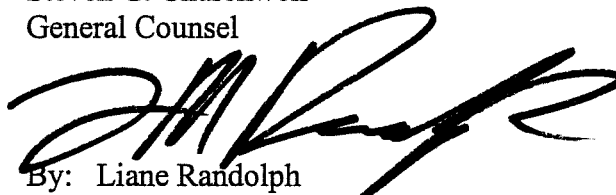
Page 5

general elections are defined in the Act as "separate elections." (Section 82022.) Therefore, the primary election counts as one election and the general election counts as a second election.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "Liane Randolph", written over the typed name.

By: Liane Randolph
Staff Counsel, Legal Division

SGC:LR:ak