

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

February 18, 1997

Gene Raper
Russo Marsh & Raper, Inc.
770 L Street, Suite 950
P.O. Box 1863
Sacramento, California 95812

**Re: Your Request for Advice
Our File No. I-97-036**

Dear Mr. Raper:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please note, the Act requires the Commission to provide formal written advice only to persons whose duties under the Act are in question or their authorized representatives. The Commission will not provide formal written advice to a representative unless the name of the person whose duties are in question is provided. (Section 83114(b); Regulation 18329(b)(2)(A), copy enclosed.) Consequently, we can only provide the following informal guidelines with respect to your questions.²

QUESTIONS

1. Are there any restrictions on the solicitation of funds by elected officials or candidates on behalf of their respective political parties?³
2. Are there any restrictions on the solicitation or arranging of contributions by lobbyists to political parties?

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 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; Regulation 18329(c)(3).)

³ Requestor, Gene Raper, called to clarify his request on February 13, 1997. Requestor was concerned that the advice letter answer the specific question, "Can an elected official or candidate solicit and arrange contributions to a political party from a lobbyist?"

CONCLUSIONS

Generally, the Act does not restrict the solicitation of funds by elected officials or candidates on behalf of political parties or the solicitation or arranging of contributions by lobbyists to political parties.

ANALYSIS

1. Public Officials

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. 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 party committee,⁴ but does not control the committee as described above, then the limitations in Sections 85301 and 85305 will not apply.⁵

⁴ The Act defines “political party committee” as “the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code.” (Section 85205.)

⁵ Section 85303 limits contributions to political parties to \$5,000 per calendar year.

2. Public Officials and Lobbyists

Section 85704:

“No elected officeholder, candidate, or the candidate’s controlled committee may solicit or accept a campaign contribution or contribution to an officeholder account 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.”⁶

The Act does not explicitly prohibit a lobbyist from soliciting or arranging contributions to political party committees. However, if a candidate or officeholder has a significant influence on the actions or decisions of the political party committee, the committee would be controlled by that candidate or officeholder. (See “1. Elected Officials” above.) Therefore, political party committees falling into that category could not accept contributions arranged or solicited by a lobbyist described in Section 85704.

Neither does the Act explicitly prohibit a candidate or elected official from soliciting or arranging contributions *for a political party* from any lobbyist. However, if a candidate or officeholder has a significant influence on the actions or decisions of the political party committee, the committee would be controlled by that candidate or officeholder. (See “1. Elected Officials” above.) Therefore, a candidate could not solicit or accept a contribution for that committee from a lobbyist described in Section 85704.

3. Earmarking of Contributions Prohibited

In addition, the Act prohibits persons from making contributions to a political party or committee that are earmarked for a particular candidate. Section 85703 provides as follows:

“No person⁷ shall make and no person, other than a candidate or the candidate’s controlled committee, shall accept any contribution on the condition or with the agreement that it will be contributed to any particular candidate. The expenditure of funds received by a

⁶ Note that Section 85313(c) includes a complementary prohibition against soliciting or accepting donations to an officeholder account from, through, or arranged by lobbyists.

⁷ “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.” (Section 82407.)

File No. I-97-036
Page 4

person shall be at the sole discretion of the recipient person.”

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 "Marte Castaños", with a stylized flourish at the end.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:ak