

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

March 10, 1997

David Bauer  
400 Capitol Mall, Suite 1560  
Sacramento, California 95814

**Re: Your Request for Advice  
Our File No. I-97-069**

Dear Mr. Bauer:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Since you are not asking as the authorized representative of an individual whose duties are in question, we are treating this as a request for informal advice only.<sup>2</sup>

### QUESTIONS

1. Is it necessary to designate with "\$\$\$" slate mailer endorsements which are paid for by independent expenditures?
2. Is any other disclosure language on the slate mailer required if the endorsement is paid for by an independent expenditure?

### CONCLUSIONS

1. No. Section 84305.5 does not require a slate mailer to designate by "\$\$\$" a candidate whose fee to appear in the slate mailer was paid for by an independent expenditure.
2. No. Section 84305.5 is the only provision of the Act which contemplates requiring any disclosure requirements on the slate mailer itself.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 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, subd. (c)(3).)

### ANALYSIS

Proposition 208 amended Section 84305.5 which regulates when a candidate shall be designated by \$\$\$<sup>3</sup> on a slate mailer. Section 84305.5 applies to slate mailer organizations and committees primarily formed to support or oppose one or more ballot measures. In pertinent part, section 84305.5 states:

“(a)(4) Each candidate and each ballot measure that has paid to appear in the slate mailer is designated by \$\$\$ . Any candidate or ballot measure that has not paid to appear in the slate mailer is not designated by \$\$\$ .

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(b) For purposes of the designations required by paragraph (4) of subdivision (a), the payment of any sum made reportable by subdivision (c) of Section 84219 by or at the behest of a candidate or committee, whose name or position appears in the mailer, to the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures, shall constitute a payment to appear, requiring the \$\$\$ designation. The payment shall also be deemed to constitute authorization to appear in the mailer.”

The Commission has in the past interpreted section 84305.5 in the following manner: when a payment is received from a third party for the purpose of including a candidate or ballot measure in a slate mailer, inclusion of the \$\$\$ designation will depend upon whether the third party's payment was made at the behest of the candidate or ballot measure committee or if it was made as an independent expenditure as that term is defined in section 82031. (*Huebscher Advice Letter, No. I-92-100*).

Therefore, a \$\$\$ designation must appear next to the name of each candidate for which the slate mailer organization or a committee primarily formed to support or oppose one or more ballot measures has received a payment from the candidate or at the behest of the candidate. And finally, a \$\$\$ designation is not required for payments which are not made at the behest of the candidate or committee and are, therefore, independent expenditures. (*Huebscher Advice Letter, supra.*)

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<sup>3</sup> Before the passage of Proposition 208 a “\*” designation was used rather than a “\$\$\$” designation.

However, the passage of Proposition 208 necessitates another look at this issue. Prior to the passage of Proposition of 208, the Act defined an independent expenditure as a payment for a communication that supports or opposes a candidate which is not made to or at the behest of the candidate. (Section 82031.) Regulation 18225.7 defines “made at the behest of.”<sup>4</sup> Proposition 208 does not change the definition of “independent expenditure” in Section 82031 or the definition of “made at the behest of” in regulation 18225.7. However, Proposition 208 explicates the definition of independent expenditure in “Chapter 5. Limitations on Contributions.”

Section 85304 of Chapter 5, added by Proposition 208, states, “[a]ny expenditures made by a political party committee in support of a candidate shall be considered contributions to the candidate.” Section 85500(c) of Chapter 5, added by Proposition 208 states, “[a]ny contributor that makes a contribution of one hundred dollars or more per election to a candidate for elective office shall be considered to be acting in concert with that candidate and shall not make independent expenditures and contributions which in combination exceed the amounts set forth in Section 85301 in support of that candidate or in opposition to that candidate’s opponent or opponents. (Section 85500(c) [Emphasis added].) Also, section 85500(d) of Chapter 5, added by Proposition 208, states:

“(d) An expenditure shall not be considered independent, and shall be treated as a contribution from the person making the

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<sup>4</sup> Regulation 18225.7:

“(a) ‘Made at the behest of’ means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code Section 82031.

(b) An expenditure is presumed to be at the behest of a candidate or committee if it is:

(1) Based on information about the candidate’s or committee’s campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or

(2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.

(c) An expenditure is not made at the behest of a candidate or committee merely when:

(1) A person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or the candidate’s agents concerning the expenditure; or

(2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate’s agents.”

expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made either:

- (1) With the cooperation of, or in consultation with, any candidate or any authorized committee or agent of the candidate.
- (2) In concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of the candidate.
- (3) Under any arrangement, coordination, or direction with respect to the candidate or the candidate's agent and the person making the expenditure.
- (4) By a candidate or officeholder supporting another candidate or officeholder of the same political party running for a seat in the same legislative body of the candidate or officeholder.

For purposes of this section, the person making the expenditure shall include any officer, director, employee, or agent of that person.”

Again, the Commission has in the past required a \$\$\$ designation to appear next to the name of each candidate for which the slate mailer organization has received a payment from the candidate or at the behest of the candidate. (*Huebscher* Advice Letter, *supra*.) The Commission has also said a \$\$\$ designation is not required for payments which are not made at the behest of the candidate or committee and are, therefore, independent expenditures according to section 82031. (*Ibid*.)

The question begged by the passage of Proposition 208 regarding the designation requirements of section 84305.5 of “Chapter 4. Campaign Disclosure.” is whether the changes to what is or is not considered an independent expenditure in Chapter 5 should apply to the analysis in section 84305.5 of Chapter 4. Section 85202 states that unless specifically superseded by Proposition 208, the definitions and provisions of the Act govern the interpretation of Proposition 208.

We see no apparent intent by the voters to change the analysis of who is required to have a \$\$\$ designation according to section 84305.5 by changing what payments will be considered independent expenditures in Chapter 5. We find this intent or lack thereof from the drafter's failure to change the definitions of “independent expenditure” or “made at the behest of” and from failing to amend section 84305.5 itself in this regard when it amended other portions of the section.

Therefore, the analysis from the *Huebscher* Advice Letter, *supra* applies. Further, whether an independent expenditure is made at the behest of the candidate or committee for purposes of slate mailer designations shall be determined by regulation 18225.7 and section 82031 which define “made at the behest of” and “independent expenditure,” respectively.

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", written over a horizontal line.

By: Marte Castaños  
Staff Counsel, Legal Division

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