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CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 22, 1997

Julia A. Moll
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City of San Francisco
Fox Plaza
1390 Market Street, Fifth Floor
San Francisco, California 94102-5408

**Re: Your Request for Advice
Our File No. A-97-080**

Dear Ms. Moll:

This letter is a response to your request for advice regarding of the Political Reform Act (the "Act").¹

We have previously advised that the Act preempts the City and County of San Francisco from designating the Ethics Commission as the *exclusive* filing officer for the City and County under Section 84215. (*Moll* Advice Letter, No. A-96-315.) Your present advice request focuses on the limits of the City and County's authority under Section 81009.5 to transfer filing officer responsibilities *only* for those candidates and committees described in that section.

Section 81009.5 authorizes local government agencies to impose "filing requirements additional to or different from" those in the Act but only upon certain types of candidates and committees. *Where* to file is no less a "filing requirement" than *what* to file. Therefore, as to the types of candidates and committees described in Section 81009.5, the City and County is authorized to redesignate the filing officer.

QUESTIONS AND ANSWERS

"1. When is a committee 'formed or existing primarily to support or oppose' a local candidate, or the qualification of, or passage of, a local ballot measure, within the meaning of section 81009.5?"

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

The answer to this question depends upon the *type* of committee at issue. The Act thoroughly classifies committees according to their purpose and their scope of geographic activity. This classification provides the logical starting point from which to answer your question.

The Act's definition of "committee" is in Section 82013:

"Committee" means any person or combination of persons who directly or indirectly does any of the following:

(a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.

(b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or

(c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214."

Thus, there are three types of committees: "recipient committees" (Section 82013(a)), "independent expenditure committees" (Section 82103(b)), and "major donor committees" (Section 82013(c)).

Once classified as recipient, independent expenditure or major donor, each committee controlled by a candidate or officeholder must be further classified as either a "general purpose committee" (Section 82027.5) or a "primarily formed committee" (Section 82047.5.) By definition, independent expenditure committees and major donor committees are classified as general purpose committees. (Section 82027.5(a).)

A recipient committee is a primarily formed committee if it "is formed or exists primarily to support or oppose":

- a *single* candidate or measure;
- groups of *specific* candidates being voted upon in the *same* city, county, or multicounty election;
- two or more measures being voted upon in the *same* city, county, multicounty, or state election.

(Section 82047.5(a)-(d).) If a given recipient committee satisfies any of the conditions in Section 82047.5, it is a primarily formed committee. Otherwise, it is a general purpose committee. (Section 82027.5(a).)

Each committee that qualifies as a committee under Section 82013(a), i.e., as a recipient committee, must file a statement of organization with the Secretary of State. (Section 84100.²) On that statement of organization, the committee must state whether it is a primarily formed committee. (Section 84102(d).)

Turning to general purpose committees, they are further classified as “state,” “county,” and “city” general purpose committees:

- If the committee “support[s] or oppose[s] candidates or measures voted on in a state election, or in more than one county,” then it is a “state general purpose committee.” (Section 82027.5(b).)
- If the committee “support[s] or oppose[s] candidates or measures voted on in *only one county*, or in more than one jurisdiction within one county,” it is a “county general purpose committee.” (Section 82027.5(c), emphasis added.)
- If the committee “support[s] or oppose[s] candidates or measures voted on in *only one city*,” then it is a “city general purpose committee.” (Section 82027.5(d), emphasis added.)

We interpret Section 81009.5 to permit the City and County to require two types of committees to file with the Ethics Commission rather than with the Director of Elections. First, the City and County may require those primarily formed committees which support or oppose a single City and County candidate or measure, or a group of specific candidates being voted upon in the same City and County election, or two or more measures being voted upon in the same City and County election, to file with the Ethics Commission. (See Section 82047.5(a)-(d).) We base this interpretation on the fact that both Section 82047.5 and Section 81009.5 use the same crucial phrase, “formed or existing primarily,” to describe the relevant candidates and committees. Viewed properly in the context of the Act as a whole, whether a committee is “formed or existing primarily,” as that phrase is used in Section 81009.5, depends upon whether the committee is “formed or existing primarily” under Section 82047.5. The Commission remains the final arbiter of whether a given committee is properly characterized as primarily formed.

In your advice request, you pose a number of hypothetical questions focusing on borderline cases of whether a committee is “formed or existing primarily,” as that phrase is used in Section 81009.5. As explained above, as to primarily formed recipient committees, that determination depends upon whether the committee is “formed or existing primarily” under Section 82047.5. Questions will inevitably arise about whether a given committee is properly characterized as “formed or existing primarily” within the meaning of Section 82047.5. Unfortunately, this phrase is not defined in the Act or in the Commission’s regulations. It has

² Independent expenditure committees and major donor committees are not required to file statements of organization.

not been, as far as we can determine, the subject of written advice by the Commission staff.

We believe that a committee should be *presumed* to be a primarily formed committee if it makes 80 percent or more of its total contributions to and/or expenditures on behalf of a single candidate or measure, or a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election. We stress that this is *not* a hard and fast rule -- it is a rule of thumb. In any given case, this presumption may be rebutted by a showing that the facts of the situation, viewed as a whole, warrant a contrary conclusion.

This relatively high percentage seems appropriate in this context. Subdivisions (a)-(d) of Section 82047.5 each has a tight focus on very particular candidates or measures. Allowing a large proportion of a committee's resources to be devoted to candidates or measures *other* than the candidates or measures that the committee is supposedly "primarily formed" to support would seem to defeat the primacy of purpose intrinsic in the notion of a "primarily formed committee."

The second type of committee the City and County may require to file with the Ethics Commission are county³ general purpose committees (see Section 82027.5), if the committee is "active only" in the City and County. (See next question.)

2. *"When is a city or county general purpose committee 'active only' in that city or county within the meaning of section 81009.5?"*

The Act defines a "county general purpose committee" as one which "support[s] or oppose[s] candidates or measures voted on in *only one county*" (Section 82027.5(c), emphasis added.) Section 81009.5 itself refers to "city or county general purpose committees active *only* in that city or county, respectively." (Section 81009.5, emphasis added.) In the context of these closely related provisions which use very consistent language ("in only one county," "active only in that ... county"), the answer to your question is straightforward: a county general purpose committee which conducts more than de minimis activity outside the county is *not* a committee which is "active only" in the city or county.

Whether a given activity is de minimis will necessarily depend on the overall activity and history of the committee.⁴ For example, a \$100 contribution to a state-wide candidate would

³ Under the Act, "county" includes a city and county. (Section 82017.)

⁴ In the context of determining a committee's proper filing status as "state" or "county" general purpose committee under Section 82027.5, we have advised that "[a]n occasional contribution to a candidate for state office will not alter [a] committee's filing status" as a county general purpose committee where the overall activity of the committee is otherwise within the county. (*Whitaker* Advice Letter, No. A-87-115.) "However," we warned, "if the Committee begins to regularly make contributions to candidates for state office, or becomes involved to any

probably be considered de minimis for a committee with a history of making many, very large contributions to local candidates. Conversely, the same \$100 contribution may be more than de minimis for a committee of modest means.

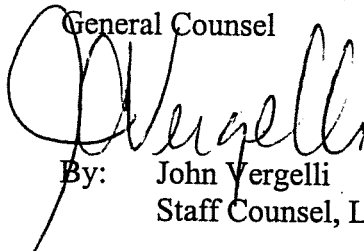
3. "May San Francisco impose additional or different disclosure requirements on slate mailer committees that endorse San Francisco candidates or measures?"

Section 81009.5 permits, under certain circumstances, the imposition of varying filing requirements on candidates and committees. As you are aware, "committee" is a term with a specific meaning in the Act. (See Section 82013.) Under the Act, slate mailer *organizations* are distinct from committees. (Section 82048.4, defining "slate mailer organization.") Indeed, the definition of "slate mailer organization" explicitly excludes many types of committees. (Section 82048.4(b).) Section 81009.5 is silent about slate mailer organizations. Therefore, we interpret section 81009.5 *not* to allow, under any circumstances, a local government agency to impose filing requirements on slate mailer organizations which are additional to or different from those of the Act.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: John Vergelli
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significant degree in state elections, it should begin filing as a 'state' general purpose committee." (*Ibid.*)