

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 4, 1997

The Honorable Roderick D. Wright
Assembly Member, 48th District
State Capitol
Post Office Box 942849
Sacramento, California 94249-0001

**Re: Your Request for Advice
Our File No. A-97-093**

Dear Assembly Member Wright:

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

QUESTION

May you use campaign funds or officeholder account funds to pay the California Legislative Black Caucus your annual membership dues?

CONCLUSION

Yes. A legislator may use campaign funds to pay for the annual membership dues for the California Legislative Black Caucus, because the payment of these expenses is "directly related to a political, legislative, or governmental purpose." A legislator may also use officeholder account funds for this purpose, since it is "related to carrying out the official duties" of the legislator, and not made in connection with any campaign for elective office or ballot measure.

However, because the caucus may be a candidate controlled committee under the provisions of the Act, the payments may be considered campaign contributions to a member who behests or receives the payments, subject to the contribution limitations of Section 85301, time restrictions of Section 85305, and transfer ban of Section 85306. These restrictions would not apply if the caucus is established pursuant to the officeholder account provision of Section 85313. However, no contribution of more than \$250 from any person may be made during a

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

calendar year to the officeholder account.

FACTS

The California Legislative Black Caucus ("LBC") is a membership association comprised of seven members of the California Legislature (four in the Senate and three in the Assembly). You presently serve as the treasurer for the LBC. The unincorporated association is not presently organized as a nonprofit organization, nor as a recipient committee under Section 82013 of the Act. Membership dues are \$500 per year. The purpose of the association is to take positions on legislative measures and discuss public policy considerations affecting Black Americans for input into the legislative process. The association holds meetings on a regular basis to discuss issues of concern to its membership.

Payments from members are used for the day-to-day operation of the caucus and to pay for educational events, receptions, meetings, dinners, and, on occasion, gifts to constituents, members, and staff for bereavement and similar purposes. The association does not make payments in connection with any campaign for elective office or ballot measure. In the past, the association's funds have been controlled by the chair of the caucus and its treasurer. However, decisionmaking concerning the use of the caucus funds rests in the entire membership.

ANALYSIS

The general rule of the "personal use" provisions of the Act which regulate the expenditure of campaign funds is that any expenditure of campaign funds must be, at a minimum, reasonably related to a political, legislative, or governmental purpose. However, where an expenditure confers a substantial personal benefit on the candidate or elected officer, the expenditure must be directly related to a political, legislative, or governmental purpose. (Section 89512.)

When the voters enacted Proposition 208, the initiative established the option of noncampaign officeholder accounts. Section 85313(a) provides that an officeholder may accept contributions "for expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer, provided aggregate contributions to such funds do not exceed ten thousand dollars (\$10,000) within any calendar year and that the expenditures are not made in connection with any campaign for elective office or ballot measure." The contributions are not campaign contributions but are limited to \$250 per person per calendar year. (Section 85313(b).)

1. LBC Dues.

As you described, the LBC is a membership association comprised of members of the California Legislature. Membership dues are \$500 per year. Because the payment of your membership dues is directly related to a political, legislative, or governmental purpose, you may use campaign funds to pay for the dues. (See *Kaloogian* Advice Letter, No. A-97-111 (a

legislator may use campaign funds or officeholder account funds to pay for membership dues for the American Legislative Exchange Council); *Garcetti* Advice Letter, No. A-93-042 (Los Angeles District Attorney may use campaign funds to pay membership dues for local bar associations). Similarly, the payment of your membership dues to the LBC is related to carrying out your official duties as a member of the Assembly, as required by Section 85313. Therefore, you may pay LBC dues with either campaign funds or funds from an officeholder account set up pursuant to Section 85313.

2. Payments Received by the LBC.

Prior to passage of Proposition 208 on November 5, 1996, payments received or behested by a candidate or his or her controlled committee were considered campaign contributions, unless some exception applied. A "contribution" is a payment made for political purposes. (Section 82015; Regulation 18215.)

A payment is made for political purposes if it is 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 if it is received or made at the behest² of a candidate*. (Regulation 18215(a)(1)(2).) Therefore, any payment made *to a candidate* is presumed to be a contribution unless an exception set forth in Regulation 18215(c) applies.

Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, legislators are considered candidates under Section 82007 and any payments they behest are presumed to be for political purposes and could be considered contributions. (*Danner* Advice Letter, No. A-96-056.)

Payments made to an association or group controlled by legislators may be deemed to be made for a political purpose, and, therefore, "contributions" to the candidate receiving the funds as discussed below. (See *Bergeson* Advice Letter, No. I-92- 093; Sections 82016 and 85201.)³

Section 82016 states:

" 'Controlled committee' means a committee which is controlled

² A candidate "behests" a contribution when the contribution is 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." (Regulation 18225.7(a).)

³ "Legislative caucus committees" may be established as a committee under Section 82013. (Regulation 18430.) However, the "blackout" (Section 85305) and other provisions of the Act may affect the activities of the committee as discussed below.

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.”

Proposition 208 did not amend the definition of a controlled committee as defined in Section 82016. (Section 85202.) 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.)

An association may also become a controlled committee if it receives contributions in excess of \$1,000. For example, in the *Evans* Advice Letter, No. I-91-031, we advised a task force formulated of legislators to solicit public input on the role of government with respect to the family that it would become a joint candidate controlled committee once it collected \$1,000 in contributions. This may be applicable to your facts with respect to payments behested or received by a member of the caucus in the form of membership dues. If so, the contribution limitations added by Proposition 208 and contained in Section 85301 which set limits on contributions made “to any candidate or the candidate’s controlled committee” are relevant. (Section 85301.) In addition, Section 85305 contains time restrictions on when a candidate or his or her controlled committee⁴ may accept contributions. Finally, Section 85306 established an inter-candidate transfer ban. Therefore, contributions received by a candidate or the candidate’s controlled committee will be subject to these limitations.

However, according to your facts, Section 85313(a) would apply to the LBC. The payment of the membership dues is an expense related to carrying out the official duties of the legislators and the expenditure would not be made in connection with any campaign for elective office or ballot measure. Therefore, if LBC is established under Section 85313, the prohibitions of Section 85301 and 85305 would not apply. Moreover, we have advised that the transfer ban of Section 85306 does not apply to Section 85313. (*Marenco* Advice Letter, No. A-96-373.) However, consistent with Section 85313(b), contributions to an officeholder account are limited to \$250 during any calendar year from any person. Therefore, if the LBC elects to be established under Section 85313, it may not receive membership dues from members that exceed \$250.

⁴ Regulation 18217 provides an alternative definition of controlled committee applicable to organizations that are tax exempt under Section 501 of the Internal Revenue Code. (Copy of Regulation 18217 enclosed.) Regulation 18217(a) provides that certain nonprofits will only be considered controlled if both: (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; and (2) The organization qualifies as a committee under Government Code Section 82013(a), and the organization is operated for political purposes.

We note that the issues presented in your letter are difficult in the context of the new limitations imposed by Proposition 208. The Commission will continue to examine these and other issues more fully in the context of the advice and regulatory process.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Senior Staff Counsel, Legal Division

Enclosure
SGC:LM:ak