

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 25, 1997

The Honorable Quentin L. Kopp
State Senator, 8th Senatorial District
State Capitol
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. A-97-108**

Dear Senator Kopp:

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

QUESTION

Is the San Francisco Taxpayers Association your controlled committee within the meaning of the Act with respect to payments received by the association in connection with a fundraising event to be held to recruit members?

CONCLUSION

No. Provided you do not significantly influence the actions of the association at this time, the association is not a committee controlled by you within the meaning of Regulation 18217. If you resign as president of the board of directors or as a member of the board, clearly you do not control the association's actions. However, this may not be necessary. Provided the presumption in Regulation 18217(b) is met, payments for the fundraising event are not payments received by your controlled committee.

FACTS

Kopp's Good Government Committee is a committee controlled by you. The San Francisco Taxpayers Association is a nonprofit organization established under Section 501(c)(4) of the Internal Revenue Code which, in the past, has been identified as a committee controlled by

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

you (FPPC No. 93/392). The San Francisco Taxpayers Association does not endorse or oppose candidates for public office; its activities are limited to litigation to prevent waste of taxpayer money, expression of opinions with respect to public policy fiscal issues and public statements and campaigns in support of, or opposition to, ballot measures in San Francisco and State of California ballot measures. The board of directors of the organization is presently comprised of six other directors and you. You are the president of the board of directors and one other member serves as treasurer for the Kopp's Good Government Committee.

The San Francisco Taxpayers Association contemplates a fundraising event to secure membership by means of a \$25 per member contribution at an event in April 1997 at the Slavonian Hall in San Francisco for which a ticket or dues membership will be \$25 per person. You ask if it is necessary for you to step down as president or member of the board of directors in order for the event to take place.

ANALYSIS

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. (Section 82015; Regulation 18215.)²

The contribution limitations added by Proposition 208 and 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 or his or her controlled committee may accept contributions. Therefore, 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

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 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.)

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 committee, but does not control the committee as described above, then the limitations in Sections 85301 and 85305 will not apply. Similarly, if a candidate solicits funds for a nonprofit organization, the limitations in Sections 85301 and 85305 will not apply unless the organization is actually the candidate’s controlled committee.

In interpreting Section 82016, we have advised that where a candidate is a voting member of an organization’s leadership, the candidate is presumed to be the controlling candidate since the candidate exercises significant influence on the actions or decisions of the organization. (*Ferguson* Advice Letter, No. A-86-044; *Gastelum* Advice Letter, No. A-96-113.) Where a candidate was the president of the board of directors of a nonprofit organization established to raise scholarship funds, we concluded he had significant control over the scholarship funds, and therefore, the organization was considered his controlled committee. (*Terrell* Advice Letter, No. I-90-730.)

An organization may also become a controlled committee if a candidate acts in concert with an organization in making campaign expenditures. By coordinating the expenditures, a candidate, in effect, can bolster his or her campaign for office through the organization. (Section 82025; Regulation 18225; *Casey* Advice Letter, No. A-93-082; *Gastelum* Advice Letter, *supra*.)

Regulation 18217, adopted in 1990, provides an alternative definition of controlled committee applicable to organizations that are tax exempt under Section 501 of the Internal Revenue Code. Subdivision (a) of Regulation 18217 provides that a nonprofit organization will be considered a controlled committee if *both* of the following apply:

- "(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.)

Pursuant to Regulation 18217(c), a tax-exempt organization 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."

The purpose of subdivision (a)(2) of the regulation is to avoid classifying a nonpolitical nonprofit organization as a controlled committee merely because donations are received at the behest of candidates, for example. (*Evans* Advice Letter, No. I-91-031; *Mello* Advice Letter, No. A-91-150; *Casey* Advice Letter, No. A-93-082 .) However, according to your facts, the association campaigns in support of, or opposition to, ballot measures in San Francisco and statewide ballot measures. Therefore, the association is operated for political purposes within the meaning of Regulation 18217.

We note that Regulation 18217 also provides for a presumption that a nonprofit organization is *not* a controlled committee for purposes of subdivision (a)(1) of the regulation if certain criteria are met. Subdivision (b) of regulation 18217 provides that a nonprofit 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."

According to your letter, the organization does not include your name. The board of directors of the organization has three or more members and two-thirds of the board of directors are not candidates, your agents, or your relatives. Therefore, so long as you are not involved in the day-to-day operation of the organization the presumption described above is applicable and payments received by the organization in connection with the fundraising event would not result in a violation of Sections 85301 or 85305. To ensure this is the case, you should examine the membership of the board of directors and its practices on an ongoing basis. If, in fact, you and the other member who is connected to your campaign committee control the decisions of the organization, the presumption would not apply. This could occur, for example, if only three or four of the board members regularly attend meetings at which decisions are made.

You also ask in your letter whether your removal as president or as a member of the board would alter our conclusions. Clearly, if you are not the organization's president, or a member of the board, and the organization does not bear your name, the presumption of Regulation 18217(b) would apply. However, as discussed above, your removal may not be necessary.

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

SGC:LM:ak