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CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 25, 1997

Dario J. Frommer
Attorney at Law
2500 Wilshire Boulevard, Suite 504
Los Angeles, California 90057

**Re: Your Request for Advice
Our File No. A-97-148**

Dear Mr. Frommer:

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

QUESTIONS

1. Is a payment to underwrite a portion of the cost of a conference or a payment for administrative costs of the Coalition considered a contribution or expenditure under the provisions of the Act?
2. Would the monetary difference between the per participant cost of the conference described herein and the fee charged to attendees of the Conference constitute a contribution or a gift from the Coalition to a candidate?
3. Would the acceptance of sponsorships and/or the expenditure of funds by the Coalition for the conferences described herein trigger any reporting duties under the Act.

CONCLUSIONS

1. A payment to underwrite a conference or used for the administrative costs of the Coalition does not constitute a contribution or an expenditure.
2. A gift or contribution would not occur if the attendees paid a fee which covered the cost of food and refreshments at the conference. However, if a reception were held free of

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

charge, then a gift to a candidate would occur in the amount of the fair market value of food and refreshments by the "source" of the food and refreshments.

3. The Coalition would not have any reporting obligations unless it qualified as a committee under the Act. (Section 82013.) Under the facts given, the Coalition is not a committee.

FACTS

Coalitions for Effective Leadership ("Coalition") is an unincorporated, not for profit association comprised of individuals and organizations that wish to facilitate the discussion of current issues in government and politics between leaders in various fields and prospective and/or declared candidates for public office. The Coalition envisions holding a series of conferences where prospective candidates for political office and leaders from diverse professions will discuss key issues facing the state of California. Towards that end, the conferences will feature guest speakers and panelists discussing these issues and issues surrounding campaign management and candidate development.

The Coalition members wish to underwrite the administrative costs of operating the association and administering such conferences including, but not limited to: printing and mailing invitations and materials for the conferences; retaining a consultant to oversee the conferences; retaining legal counsel; costs for rooms for the conference; travel costs and, in some instances, fees for the speakers. Contributions will be solicited to pay for the above or to host a particular reception. Attendees will be required to pay a fee for their participation. While the fees charged will cover the cost of meals and incidentals for the conference, the fees charged will not cover all of the administrative costs of the conference or the association. The Coalition will not engage in political fundraising or make contributions to candidates and is not a registered political committee at this time. The Coalition will not attempt to influence the actions of the voters.

ANALYSIS

Administrative Costs of the Coalition

1. Contributions?

Section 82015, in part, defines a contribution as a payment² except to the extent that full and adequate consideration is received unless it is clear from the circumstances that it is not made for political purposes. Regulation 18215(a) provides that a payment is made for political purposes if it is:

² "Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.)

- “(1) 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 candidates, or the qualification or passage of any measure; or
- (2) Received by or made at the behest of the following or any agent thereof:
- (A) A candidate;
 - (B) A controlled committee;
 - (C) An official committee of a political party, including a state central committee . . .
 - (D) An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union or corporation.”

The Coalition does not meet the requirements of 18215(a)(1) since the Coalition’s purpose is not to influence or attempt to influence the action of the voters. The conferences are meant only to educate the attendees on certain issues and to facilitate discussion between members of the public and candidates regarding certain issues.

In addition, the standard of Regulation 18215(a)(2) is not met since no payment is received by or made at the behest of any of the listed entities.³ A payment is “made at the behest of” if it 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. (Section 18225.7.) The Coalition is not cosponsoring these conferences with any candidate or political committee. Candidates will merely be invited to certain events. We do not view their mere attendance to trigger Regulation 18215(a)(2).

2. Expenditures?

Section 82025, in part, provides that an expenditure means a payment unless it is clear from the surrounding circumstances that it is not made for political purposes. Regulation 18225(a) states, in pertinent part, a payment is made for political purposes if it is:

- “(1) 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 candidates, or the qualification or passage of any measure; or

³ 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, elected officials are considered candidates under Section 82007 and any payments they behest are presumed to be for political purposes and could be considered contributions. (*Leidigh Advice Letter, A-97-126.*)

- (2) Made by:
- (A) A candidate . . .
 - (B) A controlled committee;
 - (C) An official committee of a political party . . .
 - (D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.”

For the same reasons that the payments by the Coalition to underwrite the conferences and to pay for its administrative costs were not contributions, we do not view the payments as expenditures.

Contributions or Gifts to Candidate Attendees

1. Contributions?

Since we concluded that the payments were not made for political purposes as discussed above, no contribution results to any candidate who attends a conference sponsored by the Coalition. This would be the case even if no fee was charged to the attendee.

2. Gifts?

Section 82028, in pertinent part, defines a gift as any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business without regard to official status. Section 89503 and Regulation 18940.2 limit the amount in gifts a candidate or public official may receive from any single source during any calendar year to \$290. In addition, gifts to a public official are reportable.

The value of food and beverages received by officials attending a reception is considered to be a gift. (Regulation 18941.1; *Wagerman* Advice Letter, No. A-96-327.) However, food and beverages will not be considered gifts or contributions if full and adequate consideration is provided. This remains true even if overhead for the conference is not covered by the attendees of the event. (*Leidigh* Advice Letter, No. A-96-233.) Therefore, if you charge candidates and public officials a fee covering the costs of food and incidentals, no gift will result. However, if you put on a reception at no cost to the attendees and provide food and beverages, then a gift will result in the amount of the value of the food and beverages served.

The next question is to whom is the gift attributable. Regulation 18945 provides in part:

- “(a) General Rule. A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.
- (1) If a person makes a payment to a third party and in fact directs

and controls the use of the payment to make a gift to one or more clearly identified officials, the person is the source of the gift to the official or officials.

* * *

(b) **Presumption of Source by Officials.** An official may presume that the person delivering the gift or, if the gift is offered but has not been delivered, the person offering the gift to him or her is the source of the gift unless either of the following are met:

- (1) The person delivering or offering the gift discloses to the official the actual source of the gift; or
- (2) It is clear from the surrounding circumstances at the time the gift is delivered or offered that the person delivering or offering the gift is not the actual source of the gift.”

We have advised as follows regarding the source of a gift. Where the NCSL set up a "host committee" and sought contributions from various public and private sources to help underwrite the costs of its annual meeting, we advised that the NCSL was the source of any gifts provided to attending legislators (in excess of their own registration fees). (*Brown* Advice Letter, No. A-93-040; *Gregory* Advice Letter, No. A-93-169. Copies enclosed.)

In this case, few facts are given regarding the application of this issue. Therefore, we can only provide the general guidance above. If the Coalition does determine that it is the source of gifts to a candidate then it is recommended that the Coalition notify each public official of the amount of the gift since public officials must report the source of gifts aggregating \$50 or more in a calendar year.

Reporting Obligations

The Coalition would not have any other reporting obligations unless the Coalition were to qualify as a committee. Section 82013 states that a committee is 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 expenditures⁴ totaling one thousand dollars or more in a calendar year.
- (c) Makes contributions totaling ten thousand dollars (\$10,000) or

⁴ “‘Independent expenditure’ means an expenditure by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.” (Section 82031.)

more in a calendar year to or at the behest of candidates or committees.”

Since it has been determined that the Coalition will not be making any contributions or expenditures, the Coalition will not become a committee pursuant to Section 82013 which would trigger reporting requirements.

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 long horizontal flourish extending to the right.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:ak