

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

May 30, 1997

The Honorable Richard G. Polanco
Senator
22nd Senatorial District
State Capitol
Room 2032
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. I-97-236**

Dear Senator Polanco:

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

QUESTIONS

You have asked whether a charitable organization and/or other candidates may use your name for fundraising purposes or have you participate in actual fundraising activities. Your specific questions are:

1. May a state elected official lend his or her name to an organization with Internal Revenue Code Section 501(c)(3) status (nonprofit) for fundraising purposes, i.e., use his or her name to chair the event or use his or her name in a letter or invitation soliciting contributions?
2. May a state elected official engage in fundraising activity for a nonprofit organization?
3. May a state elected official lend his or her name to a political fundraiser where the proceeds go to another elected official outside the state of California, i.e., use his or her name in a letter or invitation soliciting contributions?

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations. Informal assistance does not provide the requestor with the immunity provided by formal written advice. (Section 83114; Regulation 18329.)

4. May a state elected official engage in fundraising activity for an elected official outside the State of California?

CONCLUSIONS

1. As a general rule, the mere inclusion of a state elected official's name in a written communication that solicits donations for a nonprofit organization will not result in a contribution to the official who solicits the donations.

2. If an official acts as chair or otherwise participates in a fundraising event of a nonprofit organization, he or she should determine whether the nonprofit is operated for political purposes within the meaning of Regulation 18217. Payments to the nonprofit from third parties may be contributions to the state elected official if the nonprofit is "controlled" by the official. Whether a given nonprofit organization is controlled by a state elected official depends upon the facts of the situation.

3. A state elected official may lend his or her name to solicit contributions for other state candidates or act as chair of an event outside the State of California without the contribution being deemed a contribution to the official making the request. The Act does not limit a state elected official from lending his or her name to federal and out-of-state candidates.

4. When engaging in other fundraising activities for other state candidates includes the making of expenditures by the endorsing candidate, the expenditures made by the endorser may result in contributions to the endorsee. Whether a contribution would result must be determined on a case-by-case basis. The Act does not limit a state elected official from engaging in other fundraising activities for federal or out-of-state candidates.

ANALYSIS

You ask if inclusion of a state elected official's name in a letter or invitation, or the inclusion of the official's name as chair, would trigger a problem under the Act. In addition, you ask to what extent a state elected official may engage in fundraising activity for a nonprofit or an out-of-state candidate.

A. Nonprofit Organizations

Under the Act, a contribution is defined broadly. Payments received or behested by an elected official are considered campaign contributions, unless some exception applies. Section 82015 defines "contribution" as any payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. 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 (2) received by or made at the behest of a candidate. (Regulation 18215(a).)²

Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. Until his or her status as a candidate has terminated pursuant to Section 84214, a state elected official is considered a candidate under Section 82007, and any payments he or she behests are presumed to be for political purposes and could be considered contributions. (*Danner Advice Letter*, No. A-96-056.) The term "candidate" does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971.

1. *Lending Your Name to a Nonprofit*

If an exception to the term "contribution" applies, no contribution to the state elected official, i.e., candidate, will result. For example, Regulation 18215(c)(4) provides that communications are not contributions if they do not contain express advocacy, do not make reference to the candidate's candidacy for elective office or the candidate's opponent for elective office, and do not solicit contributions to the candidate or to third persons for use in support or in opposition to the candidate's opponent. Therefore, if Regulation 18215(c)(4) applies to a written communication sent by a nonprofit, such as a fundraising letter or an invitation that references a state elected official, no contribution will result if the official's name is used in the communication.³

2. *Other Fundraising Activities*

You also whether a state elected official may engage in fundraising activity for a nonprofit organization.

As you are aware, Proposition 208 added to the Act significant limitations on contributions to candidates and their controlled committees. For example, 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 85305 contains time restrictions on when a candidate or his or her controlled committee may accept contributions. Section 85306 prohibits intercandidate transfers. Therefore, contributions that a candidate

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 Similarly, we advised in the *Schmidt Advice Letter*, No. A-97-145, that where a payment fell within the definition of contribution in Section 82015, but was excepted under Regulation 18215(c)(4), no contribution to the officeholder account would occur. (Section 85313.) Therefore, we conclude that the mere use of an official's name in a letter or invitation soliciting donations to a nonprofit would not result in a contribution to the officeholder account of the official.

solicits for himself or herself, or for the candidate's controlled committee, will be subject to the limits set forth in these sections.⁴

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 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 nonprofit organization, the limitations in Sections 85301 and 85305, for example, will not apply unless the organization is actually the candidate's controlled committee.

Section 82016, in essence, describes two ways in which an organization may become a candidate's controlled committee. First, the candidate might exert significant influence on the actions or decisions of an organization. (See *Ferguson* Advice Letter, No. A-86-044; *Terrell* Advice Letter, No. I-90-730; and *Gastelum* Advice Letter, No. A-96-113.) Second, a candidate acts in concert with the 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*.)

To assist candidates and nonprofits determine when an issue under the Act may arise, the Commission adopted Regulation 18217 in 1990. The regulation 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 association 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

⁴ Also, please keep in mind that no person can make and no person, other than a candidate or the candidate's controlled committee, can accept any contribution on the condition or with the agreement that it will be contributed to any particular candidate. (Section 85703.)

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.)

Subdivision (b) of the regulation provides that a nonprofit is presumed *not to be significantly influenced* by a candidate for purposes of subdivision (a)(1) of Regulation 18217 if: (1) the candidate is not substantially involved in the day-to-day operations of the organization, and the organization's board of directors is not controlled by candidates, their agents, or their relatives; and (2) the name of the organization does not include the name of the candidate.

In addition, pursuant to subdivision (c) of the regulation, it is presumed that most tax-exempt organizations, including those organized under Internal Revenue Code Section 501(c)(3), are *not operated for political purposes* within meaning of subdivision (a)(2) of the regulation if: (1) the organization does not make contributions to candidates; (2) the name of the organization does not include the name of 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; and (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.

For example, in the *Leidigh* Advice Letter, No. A-97-140, we advised that where a nonprofit organization does not make contributions to candidates or spends funds to influence legislative action or to support or oppose ballot measures it is not operated for political purposes.⁵ Therefore, no contribution resulted where the names of the officials were used in connection with a fundraising event for the nonprofit organization. Thus, generally, even if a candidate exercises some control over a nonprofit organization, it will not be considered a controlled committee unless facts exist indicating that it is operated for political purposes. (Regulation 18217(f).)

⁵ If an organization makes contributions to candidates, it runs the risk of being treated as a controlled committee. Regulation 18217 essentially provides that donations to a nonprofit are not considered contributions to a candidate because the organization would not otherwise make contributions to candidates.

B. Out-of-State Candidates

You also ask about fundraising for elected officials outside of California. We have addressed potential situations involving: 1) federal and out-of-state candidates; and 2) other state candidates where the fundraising event is held outside of California.

1. Federal and Out-of-State Candidates

If a state elected official is considering raising funds for a federal or an out-of-state candidate, the Commission has no jurisdiction with regard to raising funds for these candidates and committees. Therefore, the Act does not limit you from lending your name or engaging in other fundraising activities for these candidates.

2. Lending Your Name to Another State Candidate for an Event Outside of California

With respect to other state candidates, not federal or out-of-state candidates, Regulation 18215(d) provides, "A contribution made at the behest of a candidate for a different candidate or a committee not controlled by the behesting candidate is not a contribution to the behesting candidate." Therefore, a state elected official may lend his or her name to solicit contributions for other state candidates or act as chair of an event, for example, without the contribution being deemed a contribution to the official making the request. This exception applies whether or not the event is held outside of California.

3. Other Fundraising Activities for Other State Candidates for an Event Outside of California

If an endorser makes expenditures to publicize the fact of his or her endorsement of another state candidate, it is possible that a contribution to the endorsed candidate may result whether or not the event is held outside of California. For example in the *Edmonds Advice Letter*, No. A-97-137, we advised that to publicize an endorsement is a contribution to the endorsee, unless it is absolutely clear that the expenditure was not made at the behest of the candidate. (Section 82105; Regulation 18215.) Whether a contribution results must be determined on a case-by-case basis.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Luisa Menchaca".

By: Luisa Menchaca
Senior Staff Counsel, Legal Division

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