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FAIR POLITICAL PRACTICES COMMISSION

July 1, 1997

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

**Re: Your Request for Advice
Our File No. A-97-297**

Dear Mr. Frommer:

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

QUESTIONS

1. Can a person as defined by Government Code Section 85500(c), who gives \$100 or more to a candidate also contribute up to \$250 to an independent expenditure committee as defined by Government Code Section 85500(b), which will make expenditures in support of the same candidate or in opposition to the same candidate's opponent?
2. May an independent expenditure committee use the names of elected officials or political party officers as supporters in solicitations for contributions if those leaders are members of the same political party as the candidates the committee supports?
3. May elected officials or political party officers solicit contributions for independent expenditure committees which support the election of candidates of the same political party?
4. May an organization or individual pay for the establishment of and administration of an independent expenditure committee?
5. If several committees established to make independent expenditures for or against separate specific candidates are commonly controlled and/or administered by the same organization or groups, may individuals contribute the maximum \$250 to each such committee?

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

CONCLUSIONS

1. We read Section 85500(c) to combine only independent expenditures made directly by the contributor in support of the candidate with contributions to the candidate. This does not include contributions made to other persons, who, in turn, make independent expenditures in support of the same candidate or in opposition to the same candidate's opponent. Therefore, a contributor who makes a \$100 contribution to a candidate may also contribute to an independent expenditure committee in an amount of \$250, consistent with Section 85500(b).

2. Yes. However, under certain circumstances, a contribution to the candidate or candidates the independent expenditure committee supports may result.

3. Yes. However, under certain circumstances a contribution to the candidate or candidates the independent expenditure committee supports may result.

4. An organization, but not an individual, may pay for the establishment of and administration of an independent expenditure committee under Regulation 18215(c)(16).

5. Yes. Nothing in the Act prohibits such activity. However, the contributions made by the committees may be considered to be made from a single person under Section 85311, resulting in aggregation of the contributions from the committees.

FACTS

You are legal counsel to Galanty & Co., a full service media production and political consulting firm based in Santa Monica. Several individuals and organizations who are clients of Galanty & Co., have approached Galanty & Co., about establishing independent expenditure committees with a goal of making independent expenditures to advocate the election or defeat of various candidates for statewide and legislative offices.

In order to promote the independent expenditure committees, Galanty & Co., plans to obtain permission to use the names of prominent business and civic leaders, elected officials and political party leaders on committee mailings and solicitations for funds. These individuals would not control the independent expenditure committee. Also, the independent expenditure committee would not make expenditures in support of those individuals. Galanty & Co.'s clients would list the names of these individuals on literature and fundraising solicitations, and they would send out fundraising letters over the signature of the endorsers.

In order to maximize fundraising, you propose setting up separate independent expenditure committees for each office or race that your clients wish to make independent expenditures. Contributors would then be asked to contribute up to \$250 to one or more of the committees. However, Galanty & Co., and its clients would retain common control over each separate committee.

ANALYSIS

You have asked a series of questions regarding Section 85500 (copy enclosed.)

Question #1

In question #1, you asked whether Section 85500(c) combines independent expenditures made indirectly by the contributor in support of the candidate with contributions to the same candidate or in opposition of the same candidate's opponents. We have previously advised that we read Section 85500(c) to combine only independent expenditures made *directly* by the contributor in support of the candidate with contributions to the same candidate or in opposition of the same candidate's opponents. This does not include contributions made to other persons, who, in turn, make independent expenditures in support of a candidate. Therefore, a contributor who makes a \$100 contribution to a candidate may also contribute to an independent expenditure committee in an amount of \$250, consistent with Section 85500(b). However, a contributor who makes a \$100 contribution to a candidate may only make an additional \$150 in direct independent expenditures, assuming there is a \$250 contribution limit under Section 85301. (*Grindle* Advice Letter, No. I-97-050.)

Questions #2 and #3

In questions #2 and #3, you ask whether certain individuals may make solicitations for and endorsements of an independent expenditure committee. Nothing in the Act prohibits an elected official or a political party officer from making an endorsement *per se* of an independent expenditure committee, even if the committee for which the endorsement is made supports members of the same political party as the candidates the committee supports. Similarly, nothing in the Act prohibits elected officials or political party officers from soliciting contributions for independent expenditure committees that support the election of the candidates of the same political party *per se*.

However, any expenses incurred in making the solicitations will be considered expenditures.² This is important because many expenditures will be considered contributions under Section 85500 and Regulation 18225.7. (*Shaw* Advice Letter, A-97-066.) For instance, if the solicitor or the endorser is: (1) a candidate,³ (2) who is running for a seat in the same

² An "expenditure" is a payment for political purposes. (Section 82035.) "Payment" is defined broadly, to include "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.) A payment is "for political purposes," if, among other things, it is for the purposes of influencing the voters or made by a candidate, unless it is clear that the candidate made the payment for personal purposes. (Regulation 18225(a)(1),(2).)

³ Section 82007 defines candidate, in pertinent part, as "[A]n individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure... [A]n individual who becomes a

legislative office as the individual being endorsed, (3) of the same political party, and (4) he or she makes expenditures to publicize the fact of his/her endorsement of the committee or incurs expenses in making a solicitation, the endorser will be deemed to have made a contribution to the candidate(s) the committee supports. (Section 85500(d)(4).) The expenditure will not be considered independent. (Section 85500(d)(4).)

Also, according to Section 85500(c), any contributor who makes a contribution of \$100 or more per election to a candidate for elective office shall be considered to be acting in concert with that candidate and shall not make independent expenditures and contributions which in combination exceed the amounts set forth in Section 85301 in support of that candidate or in opposition to that candidate's opponent or opponents. Therefore, expenditures made in connection with an endorsement by the endorser when made in addition to contributions over \$99 already made by the endorser *may* put some contributors over the contribution limits of Section 85301. Of course, the rest of Section 85500 and Regulation 18225.7 may also become applicable depending on the circumstances.

Question #4

In question #4, you ask about the applicability of Regulation 18215(c)(16) in the context of committees that make independent expenditures. Regulation 18215(c)(16) provides that the term "contribution" does not include:

"A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A 'sponsoring organization' may be any person (see Gov't Code § 82047) except a candidate or other individual (see Gov't Code § 82048.7). 'Establishment and administration' means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee."^{4 5}

candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214."

⁴ A recent Superior Court ruling invalidated the version of this regulation passed as an emergency regulation. However, the Superior Court ruling is stayed pending the Commission's appeal. Since that time the Commission adopted the regulation as a permanent regulation.

⁵ "Person means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert." (Section 82047.)

According to Regulation 18215(c)(16), any person, *other than an individual* or candidate, may be a sponsoring organization. In addition, the regulation does not distinguish between different types of committees. Therefore, any person, other than an individual or candidate, may pay for the establishment and administration of an independent expenditure committee and take advantage of the exception to the definition of contribution found in Regulation 18215(c)(16). Additionally, nothing in the regulation prohibits a person, other than an individual or candidate, from sponsoring more than one committee.

Question #5

In question #5, you ask about the interplay between Section 85311 and committees that make independent expenditures. Nothing in the Act prohibits individuals from contributing \$250 to any number of independent expenditure committees even if the committees are commonly controlled and/or administered by the same person. To many, this may be considered a loophole and an end around the \$250 contribution limit to independent expenditure committees and is not consistent with the “spirit” of Proposition 208 and the Act. However, nothing in the Act purports to prohibit this activity, even though the act shall be liberally construed to accomplish its purposes.

Section 85311 comes the closest. It provides:

“All payments made by a person established, financed, maintained, or controlled by any business entity, labor organization, association, political party, or any other person or group of such persons shall be considered to be made by a single person.”

However, this section only aggregates payments “by” affiliated entities to others thereby preventing affiliated entities from getting around the contribution limits to candidates found in Article 3. Section 85311 does not aggregate payments made “to” affiliated entities. (*Dennis Advice Letter, No. A-97-272.*) Therefore, an organization may set up multiple independent expenditure committees to maximize the contributions it may receive.

Section 85311 does limit what payments may be made by these same independent expenditures committees. This may not be important when persons affiliated pursuant to Section 85311 only make independent expenditures since there are no limits on independent expenditures. However, if any person does make a contribution to a candidate then contributions will be aggregated with affiliated persons. One instance where this distinction is important is in the context of Section 85500(c). Under 85500(c), if one person gives \$100 in contributions to a candidate, then any additional expenditures made by that person and persons affiliated pursuant to Section 85311 will be considered contributions and subject to the contribution limits in Section 85301.

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 stroke extending to the right.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:ak