

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

August 04, 1997

Clark Guinan
City of San Rafael
Post Office Box 151560
San Rafael, California 94915-1560

Re: Your Request for Advice
Our File No. I-97-305

Dear Mr. Guinan:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Because you have not disclosed the identity of the person or persons for whom you seek this advice, we are treating this as a request for informal advice, as required under Regulation 18329.²

QUESTIONS AND CONCLUSIONS

Does the contribution prohibition of Government Code section 85705 apply to appointees to temporary, ad hoc committees or boards or commissions appointed by a legislative body for a specific limited purpose and with a definite termination point?

The contribution prohibitions in Government Code section 85705 will apply to any government appointee who holds a position with the authority to make governmental decisions. (*Lions* Advice Letter, No. A-97-203.) To determine whether an appointee is a member of a board or similar body authorized to make governmental decisions, we look to Regulation 18700(a)(1), which furnishes reasonable, objective criteria:

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329, subd. (c)(3).)

“A board or commission possesses decision making authority whenever:

- (A) It may make a final governmental decision;
- (B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or
- (C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”

Thus, if any appointed board, commission, committee or similar body, whether created by statute, ordinance or city council resolution, has “decision making authority” as defined in regulation 18700(a)(1), appointments to that body are governed by section 85705. For purposes of analysis of section 85705, it is irrelevant that the position occupied by the appointee is a temporary, ad hoc position, or that the appointment was made for a specific limited purpose with a definite termination point if any of the criteria of regulation 18700(a)(1) is satisfied.

Does the word "solicit" in Government Code section 85705 prohibit an appointed official from requesting, asking, or otherwise seeking in any manner (written or oral), other persons to contribute to a campaign committee?

Yes. The word “solicit” means to ask or appeal for something. (See Black’s Law Dict. (6th ed. 1990) p. 1392, col. 2.) Thus, “solicit” within the context of section 85705,³ which prohibits contributions from government appointees, means that an appointee may not ask or appeal for any contribution for the appointing official, any committee controlled by the appointing official, or any other entity with the intent that the recipient of the donation be any committee controlled by the appointing official. Therefore, a governmental appointee may only request, ask, or otherwise seek contributions for officials who did not make their appointment. This advice is consistent with previous advice letters interpreting similar language. (See *Calvert* Advice Letter, No. A-94-263; Regulation 18438.6.)

³ Section 85705 provides that “no person appointed to a public board or commission or as Trustee of the California State University or Regent of the University of California during tenure in office shall donate to, or solicit or accept any campaign contribution for, any committee controlled by the person who made the appointment to that office or any other entity with the intent that the recipient of the donation be any committee controlled by such person who made the appointment.”

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 'Douglas White', written over a horizontal line.

By: Douglas White
Graduate Assistant, Legal Division

SGC:DW;jlw