



RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

August 13, 1997

Mr. Carl Borden
California Farm Bureau Federation
1601 Exposition Boulevard, FB3
Sacramento, California 95815-5195

Re: Your Request for Advice
Our File No. A-97-320

Dear Mr. Borden:

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

FACTS

California Farm Bureau Federation ("CFBF") is a nonprofit membership organization. CFBF sponsors a broad-based, general purpose recipient committee under California's Political Reform Act. CFBF also sponsors a separate segregated fund under the Federal Election Campaign Act. Both of these sponsored committees are known as California Farm Bureau Federation Political Action Committee ("FARM PAC").

QUESTIONS AND CONCLUSIONS

1. *May CFBF establish a new recipient committee that will make independent expenditures of at least \$1,000 supporting or opposing candidates?*

Yes, CFBF may establish a new recipient committee to make independent expenditures supporting or opposing candidates.

2. *If the answer to question 1 is "yes," may unlimited funds raised before January 1, 1997, be transferred from the state FARM PAC account or from the federal FARM PAC account, or both, to this new independent expenditure recipient committee before the committee has made independent expenditures of at least \$1,000 supporting or opposing a candidate?*

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

No. Unlimited funds raised before January 1, 1997, may not be transferred from the state or federal FARM PAC account to the new independent expenditure recipient committee before that committee has made independent expenditures of \$1,000 supporting or opposing a candidate. The Commission on July 3, 1997, rescinded the *Sher* Advice Letter, No. A-97-278, which would have allowed such a transfer.

Section 85500(b) provides that "any committee that makes independent expenditures of one thousand dollars or more (\$1,000) supporting or opposing a candidate shall not accept any contribution in excess of two hundred fifty dollars (\$250) per election." The new independent expenditure recipient committee you describe must raise funds at the \$250 per election limit of section 85500(b).

3. Are a committee's independent expenditures supporting or opposing different candidates aggregated to determine whether the \$1,000 threshold of section 85500(b) has been reached, or must a committee make independent expenditures totaling \$1,000 for or against a single candidate to reach the threshold of section 85500(b)?

The \$250 per election limit on committees that make independent expenditures applies to committees that make independent expenditures of \$1,000 or more supporting or opposing an individual candidate, or independent expenditures of \$1,000 or more supporting or opposing each of numerous candidates.

4. Government Code Section 85500(a) provides that a committee making independent expenditures of at least \$1,000 supporting or opposing any candidate must notify the filing officer and all candidates for the same seat within 24 hours by facsimile transmission or overnight delivery each time the \$1,000 threshold is met. Where a candidate does not have the equipment to receive facsimile transmission, must such a committee notify such a candidate by overnight delivery, or does the candidate's lack of such equipment excuse such a committee from this requirement, or does this provision by implication require all candidates to have the ability to receive facsimile transmissions?

If a candidate does not have a facsimile machine, a committee making independent expenditures of \$1,000 or more supporting or opposing the candidate must notify the candidate by personal or overnight delivery. The committee making the independent expenditure is not excused from the notification requirement, nor are all candidates' committees required to have facsimile machines. Enclosed is a copy of proposed regulation 18550 regarding independent expenditure reporting. The regulation will be considered by the Commission at its September 4, 1997, meeting.

5. May two or more committees, working in concert, jointly make independent expenditures supporting or opposing a candidate? For example, may such committees, working together but not at the behest of the affected candidate, each expend funds to pay for a share of the cost of creating and publishing a single joint advertisement supporting a candidate?

Your question pertains to the making of joint independent expenditures by two organizations that are not affiliated such as CFBF and Western Growers. The Act does not restrict two or more committees that are not affiliated from making joint independent expenditures supporting or opposing a candidate.

6. If two or more organizations establish a single committee, would the costs of internal communications made by each organization to its own members, employees or shareholders for the purpose of soliciting from them contributions to the committee be considered either a contribution or independent expenditure?

Section 85312 provides as follows regarding communications within an organization:

“The costs of internal communications to members, employees, or shareholders of an organization, other than a political party, for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or measures shall not be considered a contribution or independent expenditure under the provisions of this act, provided such payments are not for the costs of campaign materials or activities used in connection with broadcasting, newspaper, billboard, or similar type of general public communication.”

Under this section, a corporation, labor union, association, or other organization may make internal communications to its own members, employees, or shareholders to advocate the election or defeat of candidate(s) or ballot measures without the cost of such communications being considered a contribution or independent expenditure. In addition, an organization may solicit funds for its own political committee from its own members, employees, or shareholders. An organization may communicate with its own members, employees, or shareholders to encourage them to vote for, support, or contribute to particular candidates or committees. However, it is not within the scope of the internal communication exception for an organization to facilitate the making of contributions (e.g., by providing a return envelope, solicitation response card, etc.) for a committee that is not established by the organization itself or that is established by several unrelated organizations. The expenses of such a solicitation would count as a contribution to the committee for which the funds are being raised.

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 that reads "Hyla P. Wagner". The signature is written in a cursive style with a long horizontal flourish at the end.

By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosure

SGC:HW:tls