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FAIR POLITICAL PRACTICES COMMISSION

July 24, 1997

James Sutton
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
591 Redwood Highway, #4000
Mill Valley, California 94941

**Re: Your Request for Advice
Our File No. A-97-333**

Dear Mr. Sutton:

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

QUESTIONS

1. May the California Republican Party ("CRP") accept a contribution that the contributor has indicated it may only use to support Republican candidates for statewide office? Republican candidates for the state Assembly? Republican candidates for the state Senate?
2. Would your answer be different for contributions accepted for the primary or general elections?

CONCLUSIONS

1. No. The CRP may not accept a contribution under the condition that the CRP spend the contribution on any class or category of candidates.
2. No. The CRP may not accept a contribution under the condition that CRP spend the contribution on a particular election.

FACTS

The CRP raises and spends money to support various Republican candidates for state office. The CRP seeks guidance on whether Section 85703 prohibits it from soliciting

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

contributions to support a category of candidates.

ANALYSIS

Section 85703 provides:

“No person shall make and no person, other than a candidate or the candidate’s controlled committee, shall accept any contribution on the condition or with the agreement that it will be contributed to any particular candidate. The expenditure of funds received by a person shall be made at the sole discretion of the recipient person.”

While the first sentence arguably proscribes only those contributions earmarked for “any particular candidate,” the second sentence of Section 85703 goes further and indicates that the expenditure of funds received by a person shall be made at the sole discretion of the recipient person.² If a contribution is accepted under a condition that it be spent on a certain class of candidates or a specific purpose, then the recipient person would not have sole discretion. Therefore, the CRP may not accept contributions which impose limitations on the expenditures made with that money.³

You also seek guidance on whether Section 85703 prohibits the CRP from soliciting contributions to support a category of candidates. If this means you wish to accept contributions under the condition that the CRP may only spend that money on a certain class of candidates, then the answer is no, you may not “solicit” contributions to support a category of candidates. The CRP may no more agree or offer a condition (“no person shall accept”) than may the contributor (“no person shall make”). The CRP may solicit contributions by noting to the potential contributor the purposes for which the CRP makes expenditures. The statute does not limit the CRP’s ability to solicit funds creatively. However, a solicitation may not cross the line into a condition or an agreement on how the contribution will be spent.⁴

² The Act’s definition of “person” is very broad and includes political parties. (Section 82047.)

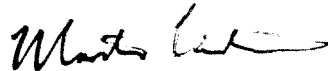
³ Section 89512.5 does limit how a recipient committee may spend the contribution. In pertinent part, Section 89512.5 states that “any expenditure by a committee not subject to the trust imposed by subdivision (b) of Section 89510 shall be reasonably related to a political, legislative, or governmental purpose *of that committee*.” (Emphasis added.) This statute would, for example, prohibit the CRP from making expenditures for Democratic party building.

⁴ Please note that we are not requiring or suggesting that a disclaimer be included in any solicitation, or that the Commission wishes to review solicitations on a case-by-case basis.

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 stylized flourish at the end.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:jlw