



FAIR POLITICAL PRACTICES COMMISSION

November 12, 1997

Mary-Beth Moylan
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Sacramento, California 95814-4602

**Re: Your Request for Advice
Our File No. A-97-472**

Dear Ms. Moylan:

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

QUESTIONS

1. Does the postage differential, an in-kind contribution, referred to below count against a political party committees' contribution limit in Section 85304?
2. If the California Democratic Party (CDP) produces and sends out a mailer in support of multiple candidates at the behest of those candidates, how does the CDP determine the amount contributed to each candidate?

CONCLUSIONS

1. Yes. The cost differential would be an in-kind contribution that counts as a contribution subject to the 25 percent limit of Section 85304.
2. See Analysis below.

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

FACTS

The California Democratic Party ("CDP") is a political committee within the meaning of Section 85205 and is subject to the limitations on contributions from political parties to candidates that are contained in Section 85304. Expenditures made to communicate with voters in support of Democratic candidates count against the total contributions that the CDP can make to those candidates pursuant to Section 85304. For purposes of this advice request, you state that we may assume the CDP will make these expenditures "at the behest" of the affected candidates.

In the past, CDP has engaged in advocacy through the mail in support of candidates. Frequently, such advocacy relates to relevant political issues and highlights several candidates who agree with the CDP's position on the topic at issue. The CDP seeks to continue to engage in this activity and desires to send mail advancing its views and supporting candidates who share that view.

Under federal law, the CDP is permitted a nonprofit postage rate. Thus the postage cost of an isolated mailing by the CDP is less than the postage cost for the same volume of mail if sent by a candidate. Presently the CDP reports this differential in postage as an in-kind contribution to the candidate. Under Proposition 208, Section 85304, you believe there is a question as to whether this postage differential "contribution" should count against the CDP's contribution limits to candidates who may appear on the CDP mail. You believe that the postage differential on pieces of mail sponsored and sent by the CDP should not count against the contribution limits. You believe such an interpretation is consistent with Section 85304 which speaks in terms of "expenditures made." Here the CDP has made no expenditures when it takes advantage of its nonprofit postage rate.

Additionally, you note that we have previously expressed an opinion that the cost of a single mailer that features or supports more than one candidate should be reported as an in-kind contribution to each candidate based on the fair market value of the mailer to that candidate (*Bates Advice Letter*, No. I-92-319). You read the *Bates Advice Letter* as stating that political parties sending a mailer in support of multiple candidates in overlapping districts cannot prorate the expenditures based on the number of candidates benefited. You believe it is unclear under Proposition 208 whether the full cost of the mailer should count against the contribution limits imposed on the CDP, or whether the cost should be distributed among all candidates supported by the single piece of mail based on a reasonable space allocation method. The CDP believes that an attribution of the entire cost as a contribution to each candidate referred to would be unduly restricting on the CDP's ability to communicate and is not required by Proposition 208.

ANALYSIS

Question 1 - Postage Differential

The CDP sends mailers at the behest² of the candidate(s) featured in the mailer while utilizing the CDP's nonprofit postage rate. Section 82015 provides that the term "contribution" means an expenditure made at the behest of a candidate unless full and adequate consideration is received for making the expenditure. The standard for valuing nonmonetary contributions to candidates or to committees is explicit. "Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value ..." (Section 82025.5.) The Commission has interpreted this to mean the amount that would have to be paid by the candidate or committee to acquire similar goods or services on the open market. (*White Advice Letter*, No. A-77-08-018.) Therefore, the CDP should report the differential between what it would cost a candidate to send the mailer and what it costs the CDP as an in-kind contribution to the candidate as well as the rest of the cost of the mailer. This is consistent with the Commission staff's advice on the subject. (*Roudebush Advice Letter*, No. A-96-071.)

Section 85304, added by Proposition 208, provides:

"No more than 25 percent of the recommended expenditure limits specified in this act at the time of adoption by the voters, subject to cost of living adjustments as specified in Section 83124, shall be accepted in cumulative contributions for any election from all political party committees by any election from all political party committees by any candidate or the controlled committee of such candidate."

You ask whether the postage differential referred to above, an in-kind contribution, counts against the cumulative limit of Section 85304. Section 85304 explicitly places a limit on "cumulative *contributions* for any election from all political party committees" to candidates (emphasis added). Therefore, the in-kind contribution that is the postage differential does count against the political party committees' limit in Section 85304.³

² This letter addresses only those expenditures made in support of candidates the political party has endorsed or nominated or where the candidate has otherwise behested an expenditure pursuant to Regulation 18225.7.

³ While it is true that the first half of Section 85304 refers to "expenditures," that portion of Section 85304 only describes how to compute the amount that may be accepted in *contributions* to a candidate by political party committees.

Question #2 - Mailers in Support of Multiple Candidates

The CDP wishes to send out mailers in support of multiple candidates that are made at the behest of the supported candidates. You also would like to know what contributions will result from these mailings. Again, the Commission's standard for valuing nonmonetary contributions to candidates, as explained above, is at issue.

The question becomes what would the candidate have had to pay to do this mailing without the political party's assistance.⁴ We suggest the following method for determining the value of the nonmonetary contribution received by a candidate featured in a mailing by a political party:

- (1) Divide the total cost of producing the mailer by the number produced.
- (2) Multiply that figure by the number of mailers sent figuring in the amount of postage that is an in-kind contribution.
- (3) Finally, divide that figure by the number of candidates that are featured in the mailing *if* those candidates receive substantially equal treatment in the mailing.

For instance, for Assembly candidate A, if the CDP produced 100,000 mailers at a total cost of \$25,000, divide \$25,000 by 100,000 for a total of \$0.25. Then, multiply \$0.25 by the number of mailings sent in Assembly candidate A's district, say 50,000, for a total of \$12,500. Then add the amount of postage for each mailing that is an in-kind contribution to each candidate, e.g., \$0.32,⁵ (a subtotal of \$4,000) equaling \$16,500. Finally, finish the calculation per step three. Illustratively, if Senatorial candidate B running in the same district and Gubernatorial candidate C were featured in a similar manner in the 50,000 mailings that featured Assembly candidate A, divide by three, for a grand total of \$5,500.⁶

⁴ There is no reason that we should assume that the candidate, on his or her own, could not coordinate with other candidates to produce a mailing in which all are featured.

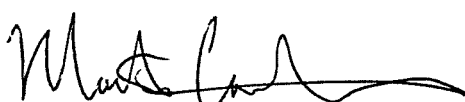
⁵ This amount, \$0.32, could be replaced by a bulk rate available to the candidate plus the cost of the bulk rate permit. (*Roudebush* Advice Letter, *supra*.)

⁶ To the extent that this letter modifies the *Bates* Advice Letter, No. I-92-319, that letter is rescinded.

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

Sincerely,

Steven G. Churchwell
General Counsel

By: 
Marte Castaños
Staff Counsel, Legal Division

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