



FAIR POLITICAL PRACTICES COMMISSION

November 3, 1997

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

**Re: Your Request for Advice
Our File No. A-97-487**

Dear Mr. Sutton:

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

QUESTIONS

May the California Republican Party ("CRP"):

- (1) Send a letter soliciting contributions, which will indicate that electing a Republican governor will be the CRP's top priority?
- (2) Hold an event known as "Republican Assembly Victory 1998" to raise funds for targeted state assembly races?

In each case, you will indicate that any checks earmarked for a particular candidate will be returned. You will also state that the CRP retains discretion over all funds it receives.

CONCLUSIONS

Yes. The two fundraising activities you describe would not violate Section 85703, which prohibits the earmarking of contributions made to political committees.

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

FACTS

The CRP raises and spends money to support various Republican candidates running in California. The CRP would like to send a letter soliciting contributions which indicates that electing a Republican governor will be the CRP's top priority during the 1998 campaign season. The letter would contain a disclaimer that the CRP retains discretion over the use of all funds it receives. In addition, you state that all checks received by the CRP that are earmarked for the gubernatorial or any other particular candidate will be returned to the contributor.

The CRP would also like to hold a fundraising event to raise funds from persons interested in helping the Republican Party regain a majority of the seats in the State Assembly. The event would be called "Republican Assembly Victory 1998" and would feature speeches by several current Republican leaders in the Assembly. The invitation would contain the disclaimer that the CRP retains the discretion over all funds raised by the event, and any checks received in connection with the event that are earmarked for a particular candidate would be returned.

ANALYSIS

Section 85703, added by Proposition 208, 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.”

In the *Sutton* Advice Letter, No. A-97-333, Commission staff concluded that the CRP may not accept a contribution under the condition that the CRP spend the contribution to support any *class or category* of candidates or any specific candidate. At the same time, we noted that Section 85703 does not limit the CRP’s ability to solicit funds creatively, as long as the solicitation does not cross the line into a condition or an agreement on how the contribution will be spent.

In response to the *Sutton* letter, you would like to know where the line between earmarking and creative solicitation is drawn. During our meeting with you and representatives of the California Democratic Party on September 10, 1997, you gave us specific examples of how our previous advice letter to you (A-97-333) was causing fundraising problems for the parties. That letter stated:

“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 last clause (“you may not ...”) is, upon reflection, too sweeping a statement and is hereby modified as stated below.

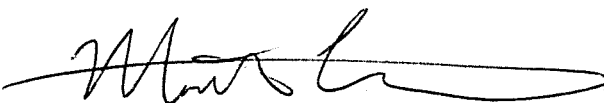
The first sentence of Section 85703 prohibits acceptance of a contribution on the condition or with the agreement that it will be contributed to “any particular candidate.” Note that this prohibition can affect the *solicitation* of contributions as well as unilateral *earmarking* by the donor. Thus, a political party may neither solicit contributions for Senator Smith, nor may it accept a check earmarked for her.² On the other hand, a party committee obviously may solicit and accept funds for “Republican candidates running in California.” As usual, drawing a proper line between those two extremes is difficult (e.g., a check earmarked for “Senator Smith and Governor Jones” probably would violate the section, while a party solicitation asking for help for Latino candidates vying for open seats in targeted districts of the Legislature probably would not). We prefer to deal with specific situations as they arise. Your request represents a good start in bringing the line into sharper focus. You have indicated that the CRP will return contributions earmarked for a particular candidate and will include a disclaimer that it retains sole discretion over the funds it receives. Under the second sentence of Section 85703, the CRP must go further and *in fact* decide how to expend all contributions that it receives.

If the CRP returns contributions earmarked for any particular candidate or that place a condition on use of the funds that would interfere with the CRP’s discretion, the CRP will be in compliance with Section 85703 in engaging in these two fundraising activities.

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

SGC:MC:tls

² Note that Section 85703's prohibition applies to acceptance with an unlawful condition; actual use of the money is irrelevant.