



FAIR POLITICAL PRACTICES COMMISSION

December 5, 1997

Wayne E. Fisher
California Democratic Party
40th Assembly District Chair
4851 Hazeltine Avenue, Apt. 101
Sherman Oaks, California 91423

**Re: Your Request for Advice
Our File No. A-97-488**

Dear Mr. Fisher:

This letter is in response to your request for advice on behalf of Assemblymember Robert Hertzberg and the 40th Assembly District Committee of the California Democratic Party regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

May Assemblymember Hertzberg solicit funds for the 40th assembly district's general purpose campaign committee? If yes, what contribution limits and time restrictions, if any, must the committee comply with pursuant to the Act?

CONCLUSION

Yes. Under the Act, Assemblymember Hertzberg may solicit funds for the 40th assembly district's general purpose campaign committee. The committee is limited to contributions of \$500 per person per calendar year, and Assemblymember Hertzberg may solicit funds for the committee at any time.

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

FACTS

You represent the 40th assembly district as chair for the California Democratic Party. You are also seeking advice on behalf of Assemblymember Robert Hertzberg ("Assemblymember"). You are planning to put together a "precinct outreach project." You provided that the precinct outreach project would involve efforts to organize the precincts in the 40th assembly district by identifying precinct captains to facilitate democratic voter education, and get-out-the-vote efforts. You would like the advice of the FPPC's legal staff regarding whether the Assemblymember may solicit funds for the precinct outreach project. The Assemblymember would solicit funds for the precinct outreach program primarily through direct phone calls. You provided that the 40th assembly district committee ("committee") is a general purpose campaign committee.²

ANALYSIS

Generally, the Act does not restrict the solicitation of funds by elected officials or candidates on behalf of political parties or the solicitation or arranging of contributions by lobbyists to political parties. (*Raper Advice Letter*, No. I-97-036.)

The Act defines a "contribution" as any payment,³ forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. (Section 82015.)

Regulation 18215, implementing Section 82015, states in pertinent part:

"(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) *Received by or made at the behest of the following or any agent thereof:*

- (A) A candidate;
- (B) A controlled committee;

² The Commission does not act as the finder of fact in providing advice. (*In re Oglesby*, (1975) 1 FPPC Ops. 71.) We are relying on the facts that you have provided us.

³ The term "payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money property, services or anything else of value, whether tangible or intangible. (Section 82044.)

(C) *An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or*

(D) *An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union, or corporation.*" (Emphasis added.)

Section 85303 was adopted pursuant to Proposition 208 which provides:

"(a) No person shall give in the aggregate to political party committees of the same political party, and no such party committees combined shall accept from any person, a contribution or contributions totaling more than five thousand dollars (\$5,000) per calendar year; except a candidate may distribute any surplus, residual, or unexpended campaign funds to a political party committee."

Section 85205 defines the term political party committee as "the *state central committee or county central committee* of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code." (Section 85205, emphasis added.) Thus, a person's cumulative contributions to the state central committee and county central committees of the same political party are limited to \$5,000 per calendar year. (Sections 85303 and 85205; *Bornstein* Advice Letter, No. A-97-101.)

The limits of Section 85303 (\$5,000 per calendar year) and Section 85310 (\$25,000 aggregate two-year limit on contributions to all state candidates) apply to all contributions made to a political party committee regardless of how the contributions are later utilized by the party. (*Sutton* Advice Letter, A-97-168.) The limits apply to payments including payments for voter registration and get-out-the-vote drives. (*Sutton* Advice Letter, *supra*.)

In contrast, under the Act as amended by Proposition 208, contributions to and expenditures made by *assembly district committees* are *not* automatically aggregated with contributions to or expenditures by the state central committee or any other political entity. (*Bornstein* Advice Letter, *supra*.) While contributions to the state central committee and county central committees of the same political party are limited to \$5,000 per calendar year, the applicable limit on contributions from persons to assembly district committees and local political clubs is the \$500 per person per calendar year limit for political committees in general. (Section 85301(d); *Bornstein* Advice Letter, *supra*.) The limits imposed by Section 85301(d) are not applicable to contributions made to candidate-controlled committees, political party committees, and independent expenditure committees. (Section 85301(d).)


The committee which the Assemblymember would solicit funds for is a general purpose campaign committee. Pursuant to Regulation 18215, the funds will be received by an official committee of a political party and will also be made at the behest⁴ of the Assemblymember. Accordingly, any funds directed toward the committee will be considered contributions. Contributions to the committee are subject to limitations of \$500 per person per calendar year.⁵ Additionally, since the committee is a general purpose committee, it does not fall under one of the exceptions provided in Section 85301(d). The fact that the Assemblymember is soliciting funds for a specific purpose, a "precinct outreach project" does not affect the analysis.

The Assemblymember may solicit funds for the committee subject to the limitations provided by Section 85301(d). Additionally, the time restraints on soliciting funds pursuant to Section 85305 are not applicable. We note that candidates, including Assemblymember Hertzberg, are subject to the contribution limitations of Section 85301, subdivisions (a) - (c). To the extent that a contribution to the Assemblymember would result, the applicable contribution limits of Section 85301, the blackout provisions of 85305, and other limitations of Proposition 208 would apply to the Assemblymember.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Alisa Fong
Graduate Assistant, Legal Division

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⁴ "Made at the behest of" means made under the control or at the direction of, in cooperation, consultation coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. (Regulation 18225.7(a).)

⁵ A limited exception may apply to some expenditures made at the behest of the Assemblymember. The term contribution does not include an expenditure made at the behest of a candidate in connection with a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, if the expenditure does not constitute express advocacy. (Regulation 18215(c)(2).) For example, monetary contributions to the committee at the behest of Assemblyman Hertzberg would not fall within this exception.