



FAIR POLITICAL PRACTICES COMMISSION

December 1, 1997

Oscar C. Gonzalez
635 E. Evans Street
San Bernadino, California 92404

**Re: Your Request for Advice
Our File No. A-97-511**

Dear Mr. Gonzalez:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please note that this advice is limited to the Act and does not provide advice on other restrictions and prohibitions in federal or state law.

FACTS

On July 6, 1993, you were appointed to a six-year fixed term on the City of San Bernardino's Civil Service Board by the current mayor, Tom Minor. The members of the Civil Service Board are all appointed by the mayor and approved by the council. Your appointment to the board was approved by the council on July 6, 1993, and your term expires July 6, 1999.

Currently there are six candidates running for mayor. Mayor Minor is not seeking re-election.

QUESTIONS AND CONCLUSIONS

1. Can you make a contribution to a candidate for mayor or city council for the City of San Bernardino?

Section 85705 provides that "no person *appointed* to a public board ... during tenure in office shall donate to, or solicit or accept any campaign contributions for, any committee controlled by *the person who made the appointment* to that office or any other entity with the intent that the recipient of the donation be any committee controlled by such person who made the appointment." (Emphasis added.) Thus, Section 85705 prohibits governmental appointees from contributing to the officeholders who appointed them.

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

The contribution prohibition in Section 85705 applies only to appointees who are members of a board or similar body authorized to make governmental decisions. (*Bovée* Advice Letter, No. I-97-027; *Guinan* Advice Letter, No. I-97-305.) You do not dispute that members of the San Bernardino Civil Service Commission make governmental decisions. Therefore, our inquiry will focus on determining your “appointing person” for purposes of Section 85705.

The Act defines the term “person” broadly to mean “an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.” (Section 82047.) Under this definition, “the person who made the appointment” in Section 85705 could be, under the facts of your question, either the San Bernardino mayor or city council.

We advised in the *Lyions* Advice Letter that when a mayor appoints an individual subject to the concurrence or ratification of the city council, only the mayor is the “person who made the appointment.” (*Lyions* Advice Letter, No. A-97-203; *Abdelnour* Advice Letter, No. A-97-164.) However, we advised in the *Kotch* Advice Letter that when there is local statutory direction predetermining “the appointing person” it will control. (*Kotch* Advice Letter, No. A-97-496.) Section 246 of the San Bernardino city charter states “... the Mayor with the consent and approval of the Council, shall appoint ... members of the Civil Service Board for a term of six years ...” Under Section 246 of the San Bernardino city charter, the mayor will “appoint” a candidate to be on the Civil Service Commission and the city council will “confirm or ratify” the appointment.² Therefore, based upon the express words in Section 246 of the San Bernardino city charter, the mayor is the “person making the appointment” and Section 85705 will only prohibit you from making contributions to the mayor who actually made your appointment (Mayor Minor).³ (*Holland* Advice Letter, No. A-97-120a.)

2. *May you endorse a candidate for mayor or city council for the City of San Bernardino?*

An endorsement does not fit within the definition of contribution. (See *Shaw* Advice Letter, No. I-97-125; Sections 82015, 82044; Regulation 18215.) However, if an endorser makes expenditures to publicize the fact of his or her endorsement, it is possible that a contribution to the endorsed candidate may result. (*Polanco* Advice Letter, No. I-97-236.) For example in the *Edmonds* Advice Letter, No. A-97-137, we advised that to publicize an endorsement is a contribution to the endorsee, unless it is absolutely clear that the expenditure was not made at the

² In the *Archibald* Advice Letter, No. A-97-528, we advised that the Sacramento City Council is the appointing person for the Civil Service Board. However, under *Archibald*, we also advised that the mayor would be an “appointing person” for purposes of Section 85705 if he or she participated as a voting member of the City Council in decisions regarding the Civil Service Board.

³ Please note that this analysis also applies to in-kind contributions. Therefore, you are also prohibited from making in-kind contributions to Mayor Minor.

behest of the candidate. (Section 82015; Regulation 18215.) Whether a contribution results must be determined on a case-by-case basis. (*Polanco* Advice Letter, *supra*.)

3. *To what extent does Section 85705 prohibit you from participating in campaign activities?*

As previously discussed, the prohibitions in Section 85705 only apply between appointees and their respective appointors. For your purposes this means that the prohibitions in Section 85705 only apply between you and Mayor Minor. Therefore, you may fully participate in the campaign activities of other candidates.

Based on the facts you have presented, Mayor Minor does not plan to run for re-election. Thus, your campaign activities may not be restricted. However, if Mayor Minor did run for re-election the following advice may apply.

In the *Vasquez-Connolly* Advice Letter, No. A-97-181, we advised that members of a public commission appointed by the city council may not serve as treasurers for member of the city council if the appointees will be making, accepting, or soliciting contributions on behalf of the city councilmembers. The letter concluded that accepting a contribution includes opening and processing contribution checks.

In the *Dunn* Advice Letter, No. A-97-389, we advised that an appointee could perform volunteer services for a candidate that did not involve soliciting or accepting contributions. Among the activities that we advised that an appointee could do in a campaign was (1) open mail in the campaign office that may (or may not) include contributions; (2) answer telephones in the campaign office where contributions may (or may not) be discussed; (3) be involved in sign, poster, television or radio advertising campaigns that do not directly ask for contributions.

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

Sincerely,

Steven G. Churchwell
General Counsel

By: 
Douglas White
Graduate Assistant, Legal Division

SGC:DW:tls
Enclosures