



FAIR POLITICAL PRACTICES COMMISSION

November 4, 1997

Jill Lederer
Committee Volunteer
100 Rancho Road, #25
Thousand Oaks, California 91362

**Re: Your Request for Advice
Our File No. A-97-516**

Dear Ms. Lederer:

This letter is in response to your request for advice on behalf of City Councilmember Andy Fox regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

May a city councilmember invite an appointee to attend a golf tournament held for the purpose of raising funds for the official's officeholder account and for a community charitable foundation?

CONCLUSION

The city councilmember may invite the appointee to attend the golf tournament since: (1) the charitable community foundation is not a candidate controlled committee and, (2) section 85705 does not prohibit governmental appointees from making contributions to officeholder accounts.

FACTS

You are a volunteer for City Councilmember Andy Fox who holds a golf tournament each year. Proceeds from the golf tournament will go toward the city councilmember's officeholder account and a 501(c)(3) charitable foundation. The tee sponsorships, which do not exceed \$250 each, will be deposited into the councilmember's officeholder account. The amount raised from the tee sponsorships will not exceed \$10,000. All other sponsorships, entry fees, and

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

income from the tournament are deposited into a 501(c)(3) charitable foundation from which grants are applied for and approved by a board of directors. In a telephone conversation on October 3, 1997, you stated that the charitable foundation is not a candidate controlled committee.

ANALYSIS

Proposition 208 imposes a restriction on raising campaign contributions during certain time periods. (Section 85305.) This restriction is referred to as the "blackout" period or the "off-year ban" and varies depending on the office for which the candidate is running. During the off-year ban, elected officers may establish officeholder accounts for expenses related to assisting, serving or communicating with constituents or for expenses related to carrying out the officer's official duties. (Section 85313.) Elected officers may raise money during the off-year ban to establish and maintain the officeholder account. Aggregate contributions to the officeholder account may not exceed \$10,000 per calendar year. (Section 85313(a).) Thus, once an elected officer raises \$10,000 into his or her officeholder account, the officer may not raise additional funds into the account until the next calendar year. In addition, an elected officer may not accept a contribution to the officeholder account totaling more than \$250 per calendar year from any one person. (Section 85313(a).)

You are a volunteer for a city councilmember who will be holding a golf tournament for the purpose of raising funds for an officeholder account and a charitable community foundation. The charitable community foundation is not a candidate controlled committee.² We have recently advised that the Act does not prohibit an officeholder from holding a joint fundraiser with a nonprofit organization for the purpose of raising funds for an officeholder account where the nonprofit and the officeholder receive separate checks. (*Brown Advice Letter*, No. A-97-367, copy enclosed.) You would like to know whether an appointee to a city committee may attend this fundraising event.

Section 85705 imposes the following prohibition:

"No person appointed to a public board or commission or as Trustee of the California State University or Regent of the University of California during tenure in office shall donate to, or solicit or accept any campaign contribution 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."

² If a candidate solicits funds for a nonprofit association the Act's contribution limitations and restrictions apply if the association is a candidate controlled committee. Regulation 18217 (copy enclosed) sets forth the appropriate standard for determining whether a nonprofit organization is a candidate controlled committee.

Section 85705 bans contributions from persons appointed to a “public board or commission” to the officeholders who appointed them. Your request refers to an appointee to a city committee. You have not provided any facts regarding the committee. We have interpreted section 85705 to apply to persons who are appointed to advisory committees that are empowered to make governmental decisions. (*Lyions* Advice Letter, No. A-97-203.) To determine whether an advisory committee has the authority to make governmental decisions, we have applied, by analogy, criteria found in regulation 18700(a)(1) which applies to the conflict-of-interest provisions of the Act. Under this approach, an advisory committee is considered a public board or commission for purposes of section 85705 whenever:

- “(A) It may make a final government decision;
- (B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or
- (C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”

Accordingly, if the appointee to whom your request refers is a member of a public board or commission as described above, section 85705 will apply.

Assuming section 85705 applies to the appointee to the city committee, you would like to know whether the appointee may attend the golf tournament. The proceeds of the golf tournament will go to the city councilmember’s officeholder account and to a charitable community foundation.

Charitable Community Foundation

Section 85705 prohibits governmental appointees from making campaign contributions to any committee controlled by any official who appointed them. In a telephone conversation, you stated that the charitable community foundation is not a candidate controlled committee. Therefore, section 85705 does not prohibit the appointee from contributing to the charitable community foundation.

Officeholder Account

Your request raises the issue of whether section 85705 applies to contributions to officeholder accounts. Section 85705 imposes a prohibition on “campaign contributions.” Section 85313 (b) states, “Contributions to an officeholder account shall not be considered campaign contributions.” We interpret these provisions to mean that section 85705 does not apply to contributions to officeholder accounts.

Accordingly, the city councilmember may invite the appointee to attend the golf tournament since the charitable community foundation is not a candidate controlled committee and section 85705 does not prohibit governmental appointees from making contributions to officeholder accounts.

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 cursive script that reads "Julia Butcher".

By: Julia Butcher
Graduate Legal Assistant, Legal Division

SGC:JB:tls

Enclosures