



FAIR POLITICAL PRACTICES COMMISSION

December 8, 1997

Carl Freeman
Treasurer
Gardena Police Officer's Association
Post Office Box 2552
Gardena, California 90247

Re: Your Request for Advice
Our File No. A-97-526

Dear Mr. Freeman:

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

QUESTIONS

1. What are the contribution limits for the Gardena Police Officer's Association if it is planning to become active in a recall effort?
2. If you receive funds specifically for the recall efforts but do not spend them all, may you use the remainder for the next general election?
3. May you share information that you paid for with a recall committee and other committees?
4. May you coordinate efforts of your committee with other committees during the petition drive and the recall election?

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

CONCLUSIONS

1. The GPOA's contribution limit is \$500. However, the GPOA could form a new committee that may, if certain criteria are met, receive funds in unlimited amounts.
2. If you receive funds specifically for the recall efforts but do not spend them all, you may use those funds for the next general election, but only as allowed under Sections 89510 - 89522.
3. You may share information, but you may be making an in-kind contribution to another candidate. All contributions, including in-kind contributions, are reportable and may be subject to limits depending on the recipient of the contribution.
4. Yes. You may coordinate your activities with other committees. Please see Analysis below.

FACTS

You are the treasurer of the Gardena Police Officer's Association ("GPOA"). GPOA is a non-candidate controlled committee primarily formed to support or oppose candidates and measures in municipal elections. The City of Gardena may recall two councilmembers. You anticipate that the GPOA will be involved with the recall process. The two areas you may be involved in are the circulation of the petition for recall and the recall election. The recall may be conducted by other committees, including, possibly, a candidate controlled committee.

ANALYSIS

Contribution Limits.

Section 85301(d) imposes a \$500 contribution limit per calendar year to committees that make contributions to any candidate. The GPOA contributes to candidates. Therefore, the GPOA may only accept contributions in the amount of \$500 per calendar year. Contributions to committees that do not make contributions to candidates or independent expenditures in the support of or opposition to candidates are not limited under the Act. (Sections 85301(d) and 85500(b).) For instance, contributions to committees that only make contributions to ballot measures are not limited. Currently, recall elections are considered ballot measures under the Act.² (*Roberti* Advice Letter, No. A-89-358; *Cohen* Advice Letter, No. I-96-364.)

² The Commission may consider changing this advice in the near future.

The GPOA could form another committee that would only contribute to ballot measure committees. This new committee could potentially receive unlimited contributions. However, a hurdle must be met before the new committee could receive unlimited contributions. Section 85311 states that any contribution made by a committee “financed, maintained, established, or controlled” by any other person³ shall be considered to be made by a single person. If Section 85311 applies, all contributions made by the GPOA would be considered to have been made by the new committee and Section 85301(d) would apply limiting contributions to the existing and new committee to an aggregate total of \$500.

However, Regulation 18531.1 interpreting Section 85311, exempts ballot measure committees from Section 85311 *if* the ballot measure committee meets the requirements of Regulation 18531.1 (copy enclosed), specifically subdivision (h). Subdivision (h) provides:

“(h) Neither Government Code section 85311 nor this regulation shall result in the affiliation of any ballot measure committee or ‘issues PAC’ that:

- (1) Is a recipient committee as defined in Government Code section 82013(a);
- (2) Does not make contributions to, or independent expenditures in support of or opposition to, candidates; and
- (3) Qualifies for tax-exempt status under section 501(c) of the Internal Revenue Code.”

If the GPOA formed a ballot measure committee that satisfied Regulation 18531.1(h) and raised money in unlimited amounts, the new committee would not have a contribution limit but it also could not transfer those funds back to the GPOA. Rather, the new committee could only make a contribution to the GPOA in the amount permitted by Section 85301(d), \$500.

In the event that you form a ballot measure committee that satisfied Regulation 18531.1(h), you may be able to spend the funds on the next general election, but only as allowed under Sections 89510 - 89522.

In-kind Contributions.

A contribution is a payment for political purposes for which full and adequate consideration is not received. (Section 82015.) The term “payment” includes “services or anything of value, whether tangible or intangible.” (Section 82044.) The standard for valuing

³ “Person means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or groups of persons acting in concert.” (Section 82047.)

non-monetary contributions is set forth in Section 82025.5, which states:

“Fair market value means the estimated fair market value of goods, services, facilities or anything of value other than money. 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, and a description of the goods, services, facilities, or other thing of value shall be appended to the report or statement. ‘Full and adequate consideration’ as used in this title means fair market value.”

You have not stated what exactly you are considering donating to another committee. Therefore, we cannot comment with certainty. However, the GPOA is likely making an in-kind contribution when it shares information that it paid for in the previous election. For instance, the Commission has found that the donation of mailing lists to another candidate or committee is an in-kind contribution. (*Dennis* Advice Letter, No. A-93-141; *Olson* Advice Letter, No. A-89-600.)

Coordination.

There is nothing in the Act that prohibits one committee from coordinating its activities and/or expenditures with another committee. However, some areas of the Act may implicate the ability of committees to act jointly. In order to give guidance on this issue, more information is needed regarding what type of coordination is being contemplated and with whom.

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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