



## FAIR POLITICAL PRACTICES COMMISSION

December 19, 1997

Laurence Zakson  
Reich, Adell, Crost & Cvitan  
501 Shatto Place, Suite 100  
Los Angeles, CA 90020-1792

**Re: Your Request for Advice  
Our File No. I-97-563**

Dear Mr. Zakson:

This letter is a response to your request for advice on behalf of Laborers International Union of North America, Local Union No. 300, AFL-CIO (Laborers Local 300) and its sponsored committee, Laborers' Local 300 Small Contributor Committee regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your inquiry is general in nature, we will treat your letter as a request for informal assistance pursuant to Regulation 18329(c).<sup>2</sup>

### QUESTION

A candidate for Governor wishes to put on a fundraiser with his campaign's own resources, and he contacts Laborers Local 300 to act as host. If the Laborers Local 300 Small Contributor Committee sends out invitations to people on its mailing list that it believes would be interested in attending (approximately 100 people), what would be considered an in-kind contribution to the candidate?

### CONCLUSION

The fair market value of the mailing, including printing and postage, would be an in-kind contribution if it is made at the behest of the candidate. The value of the mailing list is not considered an in-kind contribution to the candidate as long as it used exclusively by Laborers Local 300 Small Contributor Committee. However, if Laborers Local 300 Small Contributor Committee provides the mailing list to the candidate, an in-kind contribution would result.

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

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## ANALYSIS

Section 82015 defines a contribution as an expenditure made at the behest of a candidate unless full and adequate consideration is received for making the expenditure. Regulation 18215(b)(3) states that the term "contribution" includes any goods or services received by or behested by a candidate. An expenditure is presumed to be made at the behest of a candidate if it is based on information about the candidate's campaign needs or plans provided to the expending person by the candidate, committee or agents thereof. (Regulation 18225.7.)

During my telephone conversation with Jim Knoepp, a law clerk with your firm, we discussed two exceptions to the definition of contribution which exist for communications sent by a committee or organization to persons utilizing its own mailing list. The first exception is found in Regulation 18215(c)(9) which states that the term "contribution" does not include:

"A payment by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This exception applies only to the costs regularly incurred in publication and distribution. Any additional costs incurred are contributions, including, but not limited to, expanded circulation; substantial alterations in size, style, or format; or a change in publication schedule, such as a special edition."

Mr. Knoepp confirmed that the mailing was not a regularly published newsletter or periodical. Therefore, the mailing sent by Laborers' Local 300 Small Contributor Committee would not fall under this exception.

The other exception is contained in Section 85312, Communications Within an Organization, that became effective January 1, 1997, as a result of the passage of Proposition 208. This section states in relevant part:

"The costs of internal communications to members, employees, or shareholders of an organization, other than a political party, for the purpose of supporting or opposing a candidate or candidates for elective office . . . shall not be considered a contribution or independent expenditure under the provisions of this act, provided such payments are not for the costs of campaign materials or activities used in connection with broadcasting, newspaper, billboard, or similar type of general public communication."

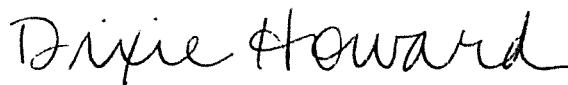
Mr. Knoepp and I discussed possible situations where the internal communication exception would not apply, such as provision of a campaign piece by the candidate containing express advocacy that would be mailed to an organization's membership. However, Mr. Knoepp stated that the mailing is not being sent to only members, employees, or shareholders of the organization. The Commission has previously advised that a mailing is an "internal communication" if the mailing is sent only to an organization's members. If the mailing were to include addresses other than the organization's members, it would not qualify as an "internal communication." (*Woosley* Advice Letter, No. A-97-107, copy enclosed.) Therefore, the internal communication exception would not apply to this mailing and Laborers' Local 300 Small Contributor Committee would be making an in-kind contribution to the candidate.

The value of an in-kind contribution is the fair market value of the item or service donated. The fair market value is whatever it would cost the candidate to obtain the same or similar goods or services on the open market. (*Miller* Advice Letter, I-96-243.) Generally, the fair market value of a mailing includes the cost of printing and postage. Laborers' Local 300 Small Contributor Committee's mailing list would not need to be included in the fair market value of the mailing and would not be considered an in-kind contribution. However, the Commission has previously advised that provision of a mailing list to a candidate the organization endorses would be considered an in-kind contribution. The amount of the contribution is the fair market value of the list, which is determined by reference to the cost of a similar list obtained from a mailing house. (*Woosley* Advice Letter, *supra*.)

If you have questions concerning this letter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Dixie Howard  
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Technical Assistance Division