



FAIR POLITICAL PRACTICES COMMISSION

January 2, 1998

Mr. Richard Smith
Campaign Chairman
4261 Jacobus Drive
Garden Valley, California 95633

**Re: Your Request for Advice
Our File No. I-97-573**

Dear Mr. Smith:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Because you have not disclosed the identity of the person or persons for whom you seek this advice, we are treating this as a request for informal advice, as required under Regulation 18329.²

QUESTIONS

1. Are individuals, appointed by an incumbent supervisor, who sit on boards and committees that are only advisory in nature and would require a majority vote of the board of supervisors to act upon their advice prohibited from making contributions to the person(s) who appointed them under Government Code Section 85705?
2. Would individuals, appointed by another supervisor, other than the candidate, but approved by a majority of the supervisors, including the candidate, be prohibited from making contributions to the person(s) who appointed them under Government Code Section 85705?

CONCLUSIONS

1. Government Code Section 85705 applies to individuals who sit on boards and committees if the boards and committees have decision-making authority.

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

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

2. If the entire board of supervisors are required to make the appointment and if the boards and committees have decision-making authority, as defined in Regulation 18700(a)(1). Section 85705 would apply to the individuals who sit on the boards and committees.

FACTS

Your candidate is one of five county supervisors who is running for re-election to the same office. Your candidate has a controlled committee. You are seeking advice regarding Section 85705 and how that section affects your candidate.

ANALYSIS

The contribution prohibitions in Government Code section 85705 will apply to any government appointee who holds a position with the authority to make governmental decisions. (*Lyions Advice Letter, No. A-97-203.*)

Section 85705, which was added to the Act by Proposition 208, provides as follows:

“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.”

To determine whether an appointee is a member of a board or similar body authorized to make governmental decisions, we look to Regulation 18700(a)(1), which furnishes reasonable, objective criteria:

“A board or commission possesses decision making authority whenever:

- (A) It may make a final governmental 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.* (Emphasis added.)

Thus, if any appointed board, commission, committee or similar body, whether created by statute, ordinance or city council resolution, has "decision-making authority" as defined in Regulation 18700(a)(1), appointments to that body are governed by section 85705. (*Guinan* Advice Letter, No. I-97-305.) For purposes of analysis of Section 85705, it is important to analyze whether the boards and committees are truly only advisory in nature. If any of the criteria of Regulation 18700(a)(1) are satisfied, Section 85705 would apply to the appointees who sit on the boards and committees.

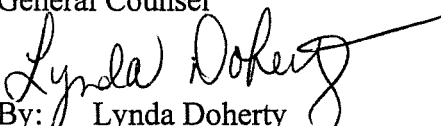
Each member of the boards and committees is selected and *nominated* by an individual member of the board of supervisors, but a majority vote of the entire board is necessary to make the appointment. "Person" as defined in the Act means not only an individual but also "any organization or group of persons acting in concert." (Section 82047.) Therefore, the "person who made the appointment," as referred to in Section 85705, is the entire board of supervisors since a member of the board of supervisors nominates a potential board or committee member and a majority vote of the board of supervisors is necessary to make the appointment. Thus, if the board or committee has decision-making authority, as defined in Regulation 18700(a)(1), no person appointed to these boards and committees may donate to, solicit or accept any campaign contributions for any committee controlled by any member of the board of supervisors. (*Vasquez-Connolly, supra*, and *Abdelnour* Advice Letter, No. A-97-164, *Petzold* Advice Letter, No. I-97-212, copies enclosed.)

We have reached the opposite conclusion in situations where the mayor appoints an individual to a public board or commission and the appointment is subject to ratification by the city council. We have concluded that the mayor is the only person who made the appointment and to whom the prohibition in Section 85705 applies. (*Abdelnour* Advice Letter, *supra*, *Lyions supra*, copies enclosed.) Since, under your facts, it appears that nominations are made by more than one supervisor and then a majority vote is required by the entire board of supervisors, the nominating supervisor is not making the appointment.

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

Sincerely,

Steven G. Churchwell
General Counsel


By: Lynda Doherty
Consultant, Legal Division

SGC:LD:jlw
Enclosures