



## FAIR POLITICAL PRACTICES COMMISSION

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February 24, 1998

Poppy DeMarco Dennis  
Executive Director  
Community Coalition Network  
991 Lomas Santa Fe Drive, #421  
Solana Beach, California 92075

**Re: Your Request for Advice  
Our File No. A-98-029**

Dear Ms. DeMarco Dennis:

This letter is in response to your request for advice on behalf of the Community Coalition Network ("CCN") regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Does the Act treat payments made to distribute candidate evaluations as reportable nonmonetary contributions to the candidates in the publication?
2. Does the Act treat endorsements as nonmonetary contributions to the candidates being endorsed?
3. Does the Act treat payments made to publicize endorsements as nonmonetary contributions to the candidates being endorsed?

### CONCLUSIONS

1. Payments made in connection with the candidates' evaluations will not be considered contributions if the payments are not made at the behest of any candidate.
2. An endorsement is not a contribution.

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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.

3. The publication of an endorsement is a contribution unless it is absolutely clear that the expenditure for the publication is not at the behest of a candidate. If the publication is not at the behest of a candidate, it may be considered a reportable independent expenditure.

### FACTS

Founded in 1991, CCN is a 501(c)(4) organization that supports public education and informed leadership on school boards. CCN has several hundred dues paying members and an outreach list of more than one thousand people. The organization has an advisory board with 25 members and an executive committee with five or six members.

CCN researches the voting records and the positions of school board candidates in about 40 school districts in San Diego County. The organization publishes the information through direct mail in a mailing referred to as candidate evaluations. You have provided a copy of the mailing for our review. The organization receives some of its information from questionnaires that were completed by the candidates. CCN does not advocate for or coordinate with any particular candidate. However, in some instances, members of the advisory board may be closely associated (i.e., volunteer or campaign worker) with a particular candidate. Members of the advisory committee who are closely associated with a particular candidate do not serve on the executive committee. The executive committee makes the final decisions regarding the candidates' evaluations.

### ANALYSIS

#### Question 1

A contribution is any payment made for political purposes for which full and adequate consideration is not received. (Section 82015(a); Regulation 18215(a).) A payment is made for political purposes if it is received by or made at the behest of a candidate. (Section 82015(b)(2); Regulation 18215(a)(2).) A payment is made at the behest of a candidate if it is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request of or suggestion of, or with the express, prior consent of the candidate. (Regulation 18225.7(a), copy enclosed.)

A payment is presumed to be made at the behest of a candidate if it is: 1) based on information about the candidate's campaign needs or plans provided to the expending person by the candidate; or 2) made by or through an agent of the candidate in the course of his or her involvement in the current campaign. (Regulation 18225.7(b).)

A payment is not made at the behest of a candidate merely when: 1) a person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent payment, that person has not communicated with the candidate concerning the expenditure; or 2) the expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate. (Regulation 18225.7(c).)

Accordingly, the candidates' evaluations mailed to the voters by CCN are not contributions to the candidates mentioned in the mailing unless the payments for the mailing are made at the behest of the candidates. You indicate in your request for advice that CCN sends questionnaires to candidates. This activity by itself does not constitute "behesting" as long as CCN does not subsequently communicate with the candidates concerning the candidates' evaluations.

You also indicate that some members of the advisory committee may be volunteers or campaign workers for candidates. If such a member makes payments on behalf of CCN, these payments may be considered to be made at the behest of the candidate for whom the member serves. However, you indicate that the executive committee makes the final decisions regarding the candidates' evaluations. In addition, you also indicate that members of the advisory committee who work for candidates do not sit on the executive committee. Therefore, it appears that the payments made in connection with the candidates' evaluations are not made at the behest of any candidate and are, therefore, not contributions.

### **Questions 2 and 3**

An endorsement does not fit within the definition of contribution. (Sections 82015, 82044; Regulation 18215; *Shaw* Advice Letter, No. I-97-125.) 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 publicizing an endorsement will result in a contribution to the endorsee, unless it is absolutely clear that the expenditure was not made at the behest of the candidate. (Section 82015; Regulation 18215(a).)

### **Independent Expenditures**

Payments made by CCN in connection with a communication to voters may be considered "independent expenditures." If a person or group of persons makes independent expenditures of \$1,000 or more, the person or group qualifies as a committee under the Act and must file campaign statements disclosing the expenditures the committee has made. (Sections 82013(b), 84200, 84211.)

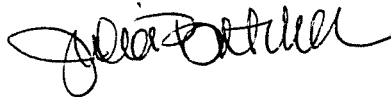
An "independent expenditure" is defined as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or taken as a whole unambiguously urges a particular result in an election but which is *not made at the behest* of the affected candidate. (Section 82031.)

Thus, if CCN sends a communication to voters expressly advocating the election or defeat of a particular candidate, and the communication is not made at the behest of any candidate, it will be considered an independent expenditure. If such expenditures equal \$1,000 or more, CCN will qualify as a committee under the Act and must file campaign statements.

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 black ink, appearing to read "Julia Butcher", written in a cursive style.

By: Julia Butcher  
Staff Counsel, Legal Division

SGC:JB:tls