



FAIR POLITICAL PRACTICES COMMISSION

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May 21, 1998

Vigo G. Nielsen
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
591 Redwood Highway, #4000
Mill Valley, California 94941

**Re: Your Request for Advice
Our File No. A-98-112**

Dear Mr. Nielsen:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts as they have been presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPCC Ops. 71.)

QUESTION

Would the term "officer" in Section 84211(t) include your law firm, Nielsen, Merksamer, Parrinello, Mueller & Naylor ("Nielsen, Merksamer"), which acts as a professional treasurer for ballot measure committees?

CONCLUSION

Yes. Nielsen, Merksamer would be considered an "officer" under Section 84211(t).

FACTS

Nielsen, Merksamer serves as a professional treasurer to ballot measure committees providing campaign reporting compliance. Prior to the enactment of Section 84211(t), Nielsen, Merksamer advised managers and others, who had the authority to choose and pay vendors for the committee, to inform the committee of any personal or financial involvements relating to any vendor. Nielsen, Merksamer's practice since the enactment of Section 84211(t) has been to

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

disclose these kinds of relationships on Schedule E. You believe that Section 84211(t) does not apply to require the disclosure of Nielsen, Merksamer relationships since, in its capacity as a professional treasurer, Nielsen, Merksamer does not have sole discretion to authorize expenditures to any entity² and, thus, is not a “true” officer of the committee as that term is used in Section 84211(t).

ANALYSIS

Section 84211(t) of the Act provides:

“If a committee primarily formed for the qualification or support of, or opposition to, an initiative or ballot measure is required to report an expenditure to a business entity pursuant to subdivision (j), and a candidate or person controlling the committee, **an officer** or employee of the committee, or a spouse of any of these individuals is an officer, partner, consultant, or employee of the business entity, the committee's campaign statement shall also contain, in addition to the information required by subdivision (j), that person's name, the relationship of that person to the committee, and a description of that person's ownership interest or position with the business entity.” (Emphasis added.)

You would like our opinion concerning whether a **professional** treasurer for a ballot measure committee falls within the scope of the word “officer” as that term is used in subdivision (t). As discussed below, we believe that the Act intended that the treasurer of each ballot measure committee be considered an “officer” of the committee. This is true, even though we realize that this interpretation may play down the realities how many committees currently are structured.

As you point out, Section 84102(c) is instructive: “[t]he statement of organization ... shall include ... [t]he full name, street address and telephone number, if any, of **the treasurer and other principal officers.**” (Emphasis added.) We think Section 84102(c) is convincing evidence that the {voters/Legislature} considered the “Form 410” treasurer (e.g., Nielsen, Merksamer) to be an “officer” for purposes of Section 84211(t). We would only examine the issue further if this plain meaning produces an absurd result. You believe that it does, because a professional treasurer, such as Nielsen, Merksamer, is not a officer of a committee in the traditional, corporate sense. In fact, a committee could well have an appointed or elected board with a president, vice-president, secretary, and treasurer, and still list Nielsen, Merksamer (or one or its attorneys or paralegals) as “treasurer” on its Statement of Organization.

² In its position as a professional treasurer, Nielsen, Merksamer provides committees with “disbursement request forms” that require the respective committee’s approval of each and every expenditure made by the committee, including the fees paid to Nielsen, Merksamer for its services as the committee’s professional treasurer.

Nevertheless, we believe that limiting Section 84211(t) to the traditional corporate designations results in an incomplete interpretation. Moreover, such an interpretation is not borne out by California corporate law. Under California corporate law, an officer of a corporation is one who occupies a position of trust or authority in regular and continuing employment with the corporation. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 48 fn.12 [citing *Lynip v. Alturas School Dist.* (1915) 29 Cal.App. 158].) You state that Nielsen, Merksamer acts as a professional treasurer for many ballot measure committees to ensure committee compliance with the Act. Compliance with the Act under Section 84100 means that every committee (including ballot measure committees) must have a treasurer and no expenditure may be made without the authorization of the treasurer.³ Even if a committee has on a separate “nonprofessional” treasurer, compliance with the Act necessarily means that the person at Nielsen, Merksamer **must** provide authorization (either directly or through an agent) for expenditures of the committee even if that authorization is not exclusive. We conclude that Nielsen, Merksamer’s participation in the expenditure authorization process equates to “occupying a position of trust or authority” with the committee; this is especially true since you indicate that your firm also serves as committee accountants and attorneys.

Finally, we do not agree that Section 84211(t) has the narrow meaning you ascribe to it (e.g., that disclosure is necessary only for those persons who have authority to spend committee funds). Section 84211(t) explicitly applies to employees of the committee and spouses of officers, employees and others. Clearly, spouses of committee personnel would not have legal authority to spend committee funds and, as a general rule, neither would each and every committee employee. These observations support a view that those, such as professional treasurers, who often have possession of the committee checkbook and handle all financial transactions for the committee, should disclose the information required by Section 84211(t).

Nowhere in Section 84100, 84102 or 84211 is the distinction made between a “professional” and “nonprofessional” treasurer, and we believe no distinction (for purposes of Section 84211(t)) should be made.⁴ Since a treasurer is an officer of the committee under Section 84102(c), and because Nielsen, Merksamer’s duties as a professional treasurer place it in a position of trust and authority *vis a vis* the committee, we conclude that Nielsen, Merksamer (in

³ Section 84100 of the Act provides:

“Every committee shall have a treasurer. No expenditure shall be made by or on behalf of a committee without the authorization of the treasurer or that of his or her designated agents. No contribution or expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer.”

⁴ After all, Section 84211(t) is really just a disclosure requirement. A liberal interpretation of the Act is mandated under Section 81003 and, therefore, where provisions of the Act may be construed to require more, than less, disclosure, purposes of the Act are furthered.

its capacity as a professional treasurer for ballot measure committees) is an officer as that term is used in Section 84211(t). Accordingly, all disclosure mandated under Section 84211(t) will be required for Nielsen, Merksamer personnel who serve as treasurers for ballot measure committees.⁵

Please note that our interpretation rests in great part on Section 84102, which admittedly may contain an archaic view of committee treasurers. However, we believe that only an amendment of Section 84211(t) can provide you with relief.⁶

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lisa L. Ditora
Staff Counsel, Legal Division

SGC:LLD:tls

⁵ Even though you state that Nielsen, Merksamer is the professional treasurer for the committees, clearly, an individual performs the actual services. Based on this fact, and our interpretation of Section 84211(t) to apply to relationships possessed by individuals to the business entity, we conclude that disclosure should relate to Nielsen, Merksamer personnel.

⁶ For example, you point out that the Nielsen, Merksamer employee or partner who is a treasurer does not have the authority to pay anyone, including your bill to the PAC. Section 84211(t) could be amended to read: "an officer or employee of the committee **with the authority to make or approve expenditures of committee funds.**" (See, e.g., Section 89512.5(b).) We do not know whether the commission would support such an amendment.