



FAIR POLITICAL PRACTICES COMMISSION

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September 14, 1998

John P. McDonald
Campaign Manager/Treasurer
Committee to Elect Barbara McDonald-Judge
3915 Mission Avenue #7620
Oceanside, CA 92054-7801

Re: Your Request for Advice
Our File No. I-98-206

Dear Mr. McDonald:

This letter is a response to your request for advice regarding the campaign disclosure provisions of the Political Reform Act (the "Act").¹ Although your question pertains to your reporting obligations, we are treating your request as one for informal assistance because it contains questions regarding past conduct.² (Regulation 18329(b)(8)(A).)

QUESTION

1. When reporting on the Form 490 for your wife's campaign, are you required to itemize individuals who purchased tickets to a concert from which your campaign received some of the proceeds, even though the concert was not promoted as a fundraiser for your wife's candidacy?
2. How should you report the proceeds from the concert that were contributed to the campaign from Mr. Joe Walsh, the entertainer, through The Belly-Up, the venue at which the concert was held?
3. How should you report the receipt of concert tickets from The Belly-Up for which you did not pay?
4. How should you report the resale of concert tickets?

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 formal written advice. (Regulation 18329(c)(3).)

CONCLUSION

1. Since the concert was not promoted as a political fundraiser, you would not be required to itemize *individual* ticket purchasers on your campaign finance statement, except for individuals who did know the purpose of the concert and purchased \$100 or more in tickets.
2. If all the proceeds came from Mr. Walsh through The Belly-Up, Mr. Walsh should be itemized on Schedule A of the Form 490 with Belly-Up being listed as an intermediary for Mr. Walsh's contribution.
3. The Belly-Up must be itemized on Schedule C along with the amount of the tickets your campaign received but for which it did not pay. The expenditure for the tickets your campaign did purchase should be listed on Schedule E.
4. If you resold any individual ticket, the amount paid to your committee would be considered a monetary contribution, reportable on Schedule A. If any one person provided you with \$100 or more, that person must be *itemized* on Schedule A.

In addition, please note that whenever your committee receives a contribution of \$5,000 or more from a single source in a calendar year, you are required to notify that source that they may have reporting obligations under the Political Reform Act. (See the analysis section of this letter for the appropriate notification language.)

FACTS

You are the treasurer for your wife's campaign for judge. In an effort to raise money for her campaign, an entertainer, Joe Walsh, was solicited to put on a concert from which a portion of the proceeds would be contributed to the campaign. For their own internal control, both representatives of Joe Walsh, the entertainer, and The Belly-Up, the venue at which the event was held, organized the event; it was not publicized as a fundraiser for your wife's campaign.

The Belly-Up provided the campaign with six complimentary tickets. In addition, the campaign purchased 20 additional tickets for resale to campaign supporters. Although your wife was in attendance, she was not a speaker.

After the concert was held, your campaign received a check from The Belly-Up for \$10,000, which represented a contribution from Mr. Walsh.

ANALYSIS

The Act defines a contribution, in relevant part, as

“A payment ..., unless it is clear from the surrounding circumstances that it is *not made for political purposes*.” (Section 82015(a).) [Emphasis added.]

Since most of the ticket purchasers were unaware at the time they made their purchase that a portion of the proceeds of the concert would be used to make a contribution to a candidate, the amount they paid was not a contribution. However, those individuals who purchased tickets directly from the campaign did know at the time of purchase that the concert was a fundraiser for the candidate. Therefore, the money derived from the sale of those tickets are considered contributions.

Section 84211 requires all contributions to the campaign committee to be reported. Contributions from a single source of \$100 or more during a calendar year must be itemized on the campaign report. (Section 84211(c).) Therefore, any person who paid \$100 or more for the tickets and knew the concert was a fundraiser for the candidate, must be itemized with their name, address, occupation, and employer. In addition, Section 84211(h) requires itemization of persons who have received \$100 or more from the committee. Therefore, the purchase of the twenty tickets from The Belly-Up must be itemized as an expenditure.

Regulation 18432.5(a)(1) states that a person is an intermediary for a contribution if:

“The recipient of the contribution would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution.”

Since the “true source” of the \$10,000 received by the committee was Joe Walsh, but the check was drawn on the bank account of The Belly-Up, The Belly-Up is considered an intermediary for the \$10,000 contribution. Regulation 18432.5(c) requires that the intermediary be identified by the committee in addition to the contributor; since The Belly-Up is a business, the committee must provide the name and address of the business when reporting it as an intermediary. (Regulation 18432.5(b).)

Section 82044 defines the term payment as used in Section 82015 as “anything ... of value, whether tangible or intangible.” Since the six tickets provided to your campaign did have a value, they are considered contributions and must be reported as non-monetary contributions. Assuming the six tickets together had a fair market value of \$100 or more, The Belly-Up must be itemized as making a non-monetary contribution.

In those cases where individuals purchased tickets from your committee, the full amount they paid must be reported as a contribution. In addition, if these receipts total \$100 or more from a single source, the committee must itemize the source. (Section 84211(f).)

The committee is required to notify all contributors of \$5,000 or more during a calendar year that the contributor may be required to file campaign reports as a major donor. (Regulation 18427.1) The notice must contain the following language or substantially similar language:

“If your contributions (including fundraiser tickets, loans and payments for goods or services) to any state and local candidates or committees total \$10,000 or more in a calendar year, you are required by the Political Reform Act of 1974 to file campaign statements. For more information, contact your city or county clerk or call the Fair Political Practices Commission at (916) 322-5660.” (Regulation 18427.1(b).)

Since Mr. Walsh contributed \$10,000 or more, you are required to notify him that he will be required to file a campaign statement.

If you have additional questions, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "Kevin S. Braaten-Moen". The signature is written in a cursive style with a long horizontal stroke at the end.

By: Kevin S. Braaten-Moen
Political Reform Consultant