



FAIR POLITICAL PRACTICES COMMISSION

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November 12, 1998

Carl Freeman
Gardena Police Officers' Association Political Action Committee
P.O. Box 2552
Gardena, California 90247

**Re: Your Request for Advice
Our File No. I-98-247**

Dear Mr. Freeman:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Since you have not provided any facts, we are treating your request as one for informal assistance.² (Regulation 18329(b)(2)(B), copy enclosed.)

QUESTIONS

1. May the Gardena Police Officers' Association Political Action Committee ("GPOAPAC") distribute flyers supplied by a candidate?
2. May GPOAPAC attach its cover flyer over the candidate's flyer for distribution to the public?

CONCLUSION

1 and 2. The Act does not prohibit GPOAPAC from distributing flyers supplied by a candidate. The Act also does not prohibit GPOAPAC from attaching a cover flyer to the candidate's flyer for distribution to the public.

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

ANALYSIS

The Act does not prohibit GPOAPAC from distributing flyers supplied by a candidate nor does the Act prohibit the committee from attaching a cover flyer to the candidate's flyer for distribution to the public. However, your inquiries raise three questions under the Act. First, if the committee pays for the costs of distributing the flyers, will that payment be characterized as a "contribution" to the candidate or as an "independent expenditure"? Second, what sender identification requirements are applicable? Finally, will the committee be considered a "controlled committee"?

Contribution or Independent Expenditure

A contribution is any payment made for political purposes without full and adequate consideration received in return. (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).) If a committee makes an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and the payment is not made to, or at the behest of, the affected candidate, the committee is making an independent expenditure. (Section 82031.)

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).)

Your first question is whether GPOAPAC may distribute flyers supplied by a candidate. While the Act does not prohibit this activity, payments made by the committee to distribute the flyers would constitute contributions to the candidate if the candidate does not provide full and adequate consideration in return.

Your second question is whether GPOAPAC may distribute the candidate's flyer with GPOAPAC's flyer attached to it. Again, the Act does not prohibit this activity. However, we are unable to determine from your facts whether payments made to design and distribute the committee's flyer would result in a contribution to the candidate. For example, you have not indicated whether the candidate approves of GPOAPAC's flyer.

Sender Identification Requirements

Section 84305 requires candidates and committees that mail more than 200 substantially similar political advertisements within a calendar month to include the sender's name, street address, and city on the outside of each piece of mail. (Section 82041.5.) Specifically, section 84305 provides:

“(a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State.

(b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail.

(c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by subdivision (a).”

For purposes of section 84305, the “sender” refers to the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing and posting of the mailing. (Regulation 18435.) Therefore, we have advised that where a third party pays for a mailing at a candidate's behest, the payor, not the candidate, is the sender. (*Sher* Advice Letter, No. A-96-036; *Eaton* Advice Letter, No. I-92-573.) You have not provided any information that would enable us to determine whether the candidate or GPOAPAC is the “sender” of the flyers supplied by the candidate. Thus, we are unable to provide specific guidance regarding the application of the sender identification requirements.

Controlled Committee

A "controlled committee" means a committee that is controlled by a candidate or acts jointly with a candidate in connection with the making of expenditures. (Section 82016.) A candidate controls a committee if he or she has a significant influence on the actions or decisions of the committee. (Id.) We have advised that a candidate exerts significant influence on the actions of a committee if the candidate develops or implements campaign strategy for the committee. (*Madden* Advice Letter, No. A-85-197.) You have not provided any facts that would indicate whether GPOAPAC is a controlled committee. However, we can advise that sending one mass mailing supplied by a candidate does not, by itself, result in GPOAPAC being considered a controlled committee.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Staff Counsel, Legal Division

SGC:JB:jlw