



FAIR POLITICAL PRACTICES COMMISSION

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February 10, 1999

Rebecca Ávila
Executive Director
City Ethics Commission
201 North Los Angeles Street
Los Angeles Mall, Suite 2
Los Angeles, California 90012

**Re: Your Request for Advice
Our File No. I-99-006**

Dear Ms. Ávila:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ You have requested a legal interpretation of section 84300. Since you have not provided any facts, we are treating your request as one for informal assistance.²

Please be advised that the Commission does not give advice regarding past conduct. (Regulation 18329(b)(8)(A).) *Therefore, nothing in this letter should be construed to evaluate any conduct that has already taken place.*

QUESTION

Under section 84300(c), may a contributor, who does not have a bank account, purchase a \$100 money order or cashier's check from a bank payable to an intermediary, who in turn writes a check on his or her bank account to a candidate's controlled committee in the following circumstances: 1) the cashier's check or money order would contain the name of the contributor;

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

2) the intermediary's check would contain the name of the contributor; and 3) the intermediary would provide a written communication to the candidate that included all of the information required by section 84302?

CONCLUSION

No. All monetary contributions of \$100 or more must be in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor. If the contribution is transmitted through an intermediary, the contribution must be in the form of a written instrument containing the name of the donor and the payee and drawn from the account of the donor. However, an intermediary may deposit the contribution and provide another written instrument, which contains the name of the contributor and the payee and which is drawn from the account of the intermediary.

ANALYSIS

In 1974, the voters of California enacted a comprehensive campaign finance law, the Political Reform Act of 1974. Among other things, the Act ended the practice of contributors using large anonymous contributions to influence the political process. Specifically, the Act requires candidates to disclose the true source of contributions of \$100 or more. (Section 84211.) To facilitate this obligation, the Act prohibits contributors from making anonymous contributions of \$100 or more. (Section 84304.) The Act also prohibits contributors from making cash contributions of \$100 or more. (Section 84300(a).) These provisions of the Act ensure that the true source of large contributions are reported to the public.

Prior to 1996, the Act permitted a contributor to make a contribution using a money order or cashier's checks, provided that the written instrument contained the names of the contributor and the recipient of the contribution. (Former Section 84300(c), amended by Stats. 1996, ch. 898.) However, those responsible for enforcing the Act discovered that money orders and cashier's checks were frequently used as vehicles for laundering money into campaigns. (See, e.g., *Cedar Valley Holding Company* (1995) FPPC No. 94/022 [a 57-count money laundering case in which cashier's checks were used to mask the true source of campaign contributions], copy enclosed.) Such instruments could be easily purchased without the need for personal identification and could include the name of anyone other than the person who purchased it as the contributor. Surrogate contributors, often employees of the real contributor, would allow the use of their name on the money order or cashier's check to give a false and illegal impression that they made the contribution. (See Press Release from the Fair Political Practices Commission, *FPPC Chair Applauds State Senate Action Against Money Laundering*, May 31, 1996, copy enclosed.) In some cases, the employees of a contributor were unaware that their names would be used in this manner.

In 1996, the Legislature passed Senate Bill 1841, a Commission sponsored bill, to remedy the loophole in the Act. (Stats. 1996, ch. 898.) Senate Bill 1841 amended Section 84300(c), which now provides:

“No contribution of one hundred dollars (\$100) or more other than an in-kind contribution shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or the intermediary, as defined in section 84302.”

You would like to know whether this language permits a contributor to make a contribution using a money order or cashier's check payable to an intermediary, where the intermediary writes a check to the intended committee and the person who purchased the money order or cashier's check would be identified as the true source of the contribution.

“The goal of statutory construction is to ascertain and effectuate the intent of the Legislature.” (*Pacific Gas & Electric Co. v. County of Stanislaus* (1997) 16 Cal.4th 1143, 1152.) Generally, the language of a statute is the most reliable indication of legislative intent. (*Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, 724.) However, when the language of the statute is ambiguous, a court will consider both the legislative history of the statute and the wider historical circumstances of its enactment to determine the legislative intent. (*Watts v. Crawford* (1995) 10 Cal.4th 743, 753.)

As introduced, Senate Bill 1841 included the following language:

“(c) No contribution of one hundred dollars (\$100) or more other than an in-kind contribution shall be made unless by written instrument containing the name of the payee. *No contribution of one hundred (\$100) or more shall be made in the form of a cashiers check or money order.*”

This language was later amended to read:

“(c) No contribution of one hundred dollars (\$100) or more other than an in-kind contribution shall be made unless ~~by~~ *in the form of* a written instrument containing the name of the ... *payee and drawn from the account of the donor.*”

During the legislative process, the Senate determined that the above language had the unintended effect of criminalizing intermediaries:

“Currently, an intermediary can take a check from a contributor, deposit it in their own account, and then write the campaign a new check from their account. Contributions like this must disclose the name of the true donor as well as the individual acting as an intermediary. This bill, in its current form, requires that any written instrument be drawn on the account of the donor. Checks from intermediaries are drawn on their account and not the account of the donor (although both names are disclosed).” (Senate Committee on Elections and Reapportionment, Analysis of Senate Bill 1841, April 17, 1996 (copy enclosed); see Section 84302.)

After the committee hearing, the language of Section 84300(c) in Senate Bill 1841 was amended to reflect its present form adding a reference to the term “intermediary.” Pursuant to legislative history discussed above, the language “drawn from the account of the donor or intermediary” was intended to allow a contributor to write a check of \$100 or more directly from his or her account to the intended recipient, or to the account of an intermediary, who would deposit the check and write another check to the intended recipient. Nothing in the legislative history indicates that the amendment was intended to allow the contributor to give a money order or cashier’s check to the intermediary. In fact, the specific purpose of the legislation was to prohibit the use of money orders and cashier’s checks in the making of contributions. (See Letter of Support for SB 1841 to Governor Pete Wilson from the Fair Political Practices Commission, September 10, 1996, copy enclosed.) It would be inconsistent with the purpose of the legislation to allow a contributor to use a cashier’s check or money order through an intermediary, when the contributor is prohibited from doing so directly.

In light of the legislative history of section 84300(c) and the historical context in which this statute was amended, we do not construe the provision to permit a contributor, who makes a monetary contribution of \$100 or more via an intermediary, to use a money order or cashier’s check under any circumstances.

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Staff Counsel, Legal Division

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Enclosures