



FAIR POLITICAL PRACTICES COMMISSION

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June 2, 2000

Nicole Bergeron
Executive Director
The Democratic Forum of Silicon Valley
Post Office Box 2974
Redwood City, California 94064

**Re: Your Request for Advice
Our File No. I-00-089**

Dear Ms. Bergeron:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTION

Under state law, can individuals contribute to a campaign via an Internet web site, using a check or credit card system, where the Internet company that operates a web site, receives the contributions, and then makes a lump sum payment to the campaign for the amount of all of the individual contributions received, and what recordkeeping would be required?

CONCLUSION

Yes, contributors may make contributions to campaigns via the Internet using a check or credit card, where the Internet company that operates the web site receives the contributions and makes a lump sum payment to the campaign of all individual contributions received. The Internet company must provide the campaign with records sufficient to satisfy the requirements of the Act, as described below.

FACTS

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations. Because you are requesting general advice about campaign reporting, we are treating your request as one for informal advice, indicated by the file number prefix "I." Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

You are the executive director of an unincorporated club that votes to make individual contributions to political candidates. Checks are written directly to the campaigns from the individuals. If your group collects checks, it is only to bundle and deliver the contributions. The group as an entity neither deposits nor writes contributions to candidates. The group's members write these checks in the following races: Congress,² Assembly, Senate, Mayor of San Jose and select county supervisor seats.

For example, your group votes to make contributions to the Annie for Assembly campaign. Members go to your web site. There they click on a link to an Internet company to make a contribution to Annie for Assembly. The Internet company asks for their address, occupation, name and contribution amount. The individual enters \$250 and gives the Internet company her credit card information. One hundred individual members complete this process. The Internet company then sends a \$25,000 check to Annie for Assembly. The Internet company would charge a service fee to be paid either by your group,³ the individual contributors and/or the campaign.

You question whether the above described process conforms to state law. A variation would include having the Internet company receive some individual checks and some credit card payments. The Internet company would then write the \$25,000 check. You also want to know what recordkeeping would be required to legally conduct this type of arrangement.

ANALYSIS

1. Internet Fundraising. Section 82015 of the Act defines "contribution" as follows:

"(a) 'Contribution' means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

² Because you state that your members will contribute through the Internet company to Congressional as well as state candidates, we note that the Federal Election Commission has approved fundraising through the Internet and has issued several advisory opinions on the subject that you may want to review, including FEC Advisory Opinion No. 1999-36 (Sandler); FEC Advisory Opinion No. 1999-22 (Richardson); and FEC Advisory Opinion No. 1995-9 (Dorsey).

³ Your group itself will qualify as a political committee and be required to file periodic campaign reports if it receives contributions totaling \$1,000 or more in a calendar year or makes independent expenditures totaling \$1,000 or more in a calendar year. (Section 82013(a) and (b).)

(b)(1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office.

* * *

While the Act requires disclosure and recordkeeping with respect to contributions, it does not prescribe the manner in which contributions may be made. (Section 84200 *et seq*; Section 84101.) Under the Act, candidates and committees may raise contributions over the Internet, as long as the Act's disclosure and recordkeeping requirements are met. (*Lavin* Advice Letter, No. A-99-201, copy enclosed.)

Section 84300 prohibits the making or receipt of contributions of \$100 or more in cash, and requires that these contributions be made "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." (Section 84300(c).) Checks or credit card receipts and documentation meet the requirements of this statute.

We have previously advised that contributions may be made by credit card, by means of a tele-network using the telephone company as a collection agent, and through the use of a 900-number telephone line, provided that the procedures for solicitation and reporting of contributions comply with provisions of the Act. (*Buck-Walsh* Advice Letter, No. I-90-239; *Zerbe* Advice Letter, No. I-95-146.)

2. Disclosure. The Act requires committees to file periodic reports disclosing contributions received and expenditures made for the purpose of supporting or opposing state and local candidates and ballot measures.⁴ Section 84211 requires that for each person who contributes a cumulative amount of \$100 or more, a committee must disclose the following information:

⁴ The term "committee" is defined in Section 82013; "contribution" and "expenditure" are defined in sections 82015 and 82025, respectively. "Contribution" and "expenditure" are further defined in regulations 18215 and 12225, respectively.

1. The date of the contribution;
2. The name and address of the contributor;
3. If the contributor is an individual, the name of his or her employer or, if self-employed, the name of his or her business;
4. If the contributor is a committee, the identification number assigned to the committee by the Secretary of State;
5. The amount received from the contributor during the period covered by the report; and
6. The cumulative amount received from the contributor since January 1 of the current calendar year.

In addition, section 84211(d) requires committees to disclose the total amount of contributions received from persons who have given a cumulative amount of less than \$100.

2. Recordkeeping. To backup these disclosure requirements, the Section 84101 of the Act contains recordkeeping requirements:

“It shall be the duty of each candidate, treasurer and elected officer to maintain such detailed accounts, records, bills and receipts that are necessary to prepare campaign statements and to comply with the provisions of this chapter. The detailed accounts, records, bills and receipts that are maintained shall be retained by the filer for a period specified by the commission”

Regulation 18401 (copy enclosed) sets forth the records that committees must maintain for contributions.

a. Contributions under \$25. Candidates, treasurers and elected officers must keep a list of the dates and daily totals of contributions received under \$25. The original source documentation for these contributions consists of bank statements, check registers, bank or passbooks, and any other records reflecting a continuous computation of campaign account balances. (Regulation 18401(a)(1).)

b. Contributions of \$25 or more but less than \$100. In addition to the daily totals required for contributions under \$25, for contributions of \$25 or more but less than \$100, candidates, treasurers and elected officers must keep records of the date of each contribution, the amount, and the full name and street address of the contributor. The records must also contain the cumulative amount received from the contributor and specify whether the contribution is monetary or nonmonetary.

The original source documentation for these contributions includes bank statements check registers and passbooks, discussed above, and copies of contributor checks, cashier's checks,

money orders, wire transfers, deposit or duplicate deposit slips, and any other documents reflecting all items deposited and all deposits made to any campaign account. Source documentation includes contributor cards, letters of transmittal and notices received from contributors.

c. Contributions of \$100 or more. For these contributions, candidates, treasurers and elected officers must maintain all the information required for contributions above \$25, but less than \$100, and in addition, must include the occupation and employer of any contributor (or if the contributor is self-employed, the name of the principal place of business of the contributor).

The original source documentation shall consist of all items listed above for smaller contributions, and in addition, all communications sent by the committee to obtain the occupation and employer information.

d. Contributions through an intermediary or agent. Section 84302 requires that anyone acting as an intermediary or agent of another in making a contribution of \$100 or more disclose his or her own name, street address, occupation and employer information, and also disclose the same information as to the contributor. Information concerning both the intermediary and the contributor must be disclosed on the committee's campaign statement.

Section 84302 provides:

“No person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person. The recipient of the contribution shall include in his campaign statement the full name and street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor.”

Further defining the term intermediary, regulation 18432.5 provides in part:

“(a) For purposes of Government Code Section 84302, a person, as defined in Government Code Section 82047, is an intermediary for a contribution if any of the following applies:

(1) 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.

(2) The person is an intermediary pursuant to Regulation 18419 [sponsored committees].”

* * *

In this situation, contributors may write checks or make credit card payments to the Internet company. By receiving checks or credit card payments from contributors on behalf of various committees, depositing the payments, and then writing a single donation check to the committees, the Internet company is acting as an intermediary under the Act. (See *Wechsler* Advice Letter, No. I-96-173.) On the committees' campaign reports, the contributions should be reported as from the itemized contributors, with the Internet company as an intermediary.

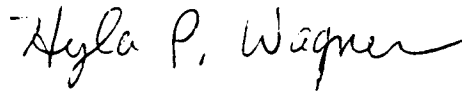
e. Credit card transactions and service fee. For credit card transactions, the entire amount charged to each contributor's credit card is the amount of the contribution; the recipient campaign committee would not subtract any fees retained by the credit card company. For reporting purposes, the date the contribution is received is the date the credit card transaction is authorized by the contributor, not the date the committee actually receives the monetary contribution. In addition, the committee must ensure that the required information on each contributor, including the date of the contribution, is collected in a timely fashion by the Internet company and forwarded to the committee. (*Buck-Walsh* Advice Letter, No. I-90-239.) The Internet company should provide committees with the original or copies of checks written to the Internet company by contributors, documentation of the credit card transactions, and a printout of the contribution form that the Internet company requests contributors to fill out, containing the required information.

The service fee charged or retained by the Internet company is considered an expenditure by the committee receiving the contribution. Therefore, any amounts charged or withheld by the Internet company must be reported by the committee as expenditures at the time the fees are deducted. (*Zerbe* Advice Letter, No. I-95-146.)

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

Sincerely,

Luisa Menchaca
Assistant General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

Enclosures

LM:HPW:klw