



## FAIR POLITICAL PRACTICES COMMISSION

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February 1, 2002

Scott M. Lay  
2409 Halsey Circle  
Davis, CA 95616

**Re: Your Request for Informal Assistance  
Our File No. I-01-045**

Dear Mr. Lay:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your request does not concern a specific decision or action, we are treating your request as one for informal assistance.<sup>2</sup> (Reg. 18329, subd. (b)(8)(C), copy enclosed.)

### QUESTIONS

1. Are there limits on a registered lobbyist serving as an elected (or appointed) leader of a political party, if the party contributes either directly or indirectly, and monetarily or non-monetarily, to a candidate for an office for which the lobbyist is registered to lobby?
2. Does the prohibition under section 85702 apply to non-monetary contributions?

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

<sup>2</sup> Pursuant to Regulation 18329(c)(3), informal assistance does not confer immunity.

## CONCLUSIONS

1. The Political Reform Act does not prohibit any person from serving as an elected (or appointed) leader of a political party. However, a lobbyist may not make contributions to elected state officers or candidates for elected state office under specified circumstances. The scope of the prohibition of section 85702 with respect to non-personal funds over which a lobbyist has control currently is a matter up for consideration by the Commission. Accordingly, we cannot provide specific advice as to whether the prohibition applies in the general situation you describe.

3. Yes. Section 85702 prohibits non-monetary contributions.

## FACTS

You are a registered lobbyist for the Community College League of California, a 501(c)(3) organization that is a voluntary association of local community college trustees, chief executive officers and associated groups. In this capacity, you regularly lobby the state Legislature, the Governor's administration, and other entities, and you are a covered person under the Political Reform Act.

On January 22, 2001, you were elected to a two-year term as Chair of the Yolo County Democratic Central Committee, a county committee organized under the Elections Code as an arm of the California Democratic Party. The committee seeks to, among other things, develop, endorse and support the election of candidates who win Democratic primaries to state office. Because your term as Chair extends through the 2002 general election, you will likely be providing a leadership role in these functions.

In the recent past, the Chair of the Central Committee has raised funds and coordinated campaign efforts benefiting state candidates throughout Yolo County. In addition, the Central Committee has provided both monetary and non-monetary contributions to candidates for state office. The Central Committee will likely take similar actions in the campaign leading to the November 5, 2002 election.

## ANALYSIS

**Question #1:** *Are there limits on a registered lobbyist serving as an elected (or appointed) leader of a political party, if the party contributes either directly or indirectly, and monetarily or non-monetarily, to a candidate for an office for which the lobbyist is registered to lobby?*

The Political Reform Act does not prohibit a lobbyist from serving as an elected (or appointed) leader of a political party. However, a lobbyist may not make contributions to elected state officers or candidates for elected state office under specified circumstances. Because your question does not identify specific conduct, we cannot provide you specific advice regarding all of the possible "limitations" that may impact a

registered lobbyist in the scenario you pose above. We can, however, summarize the law and provide you general guidance on this issue.

Section 85702 prohibits a lobbyist from making contributions to elected state officers or candidates for elected state office if the lobbyist is registered to lobby the agency for which the candidate is seeking election or the officeholder's agency. Section 85704 further prohibits a person, including a lobbyist, from making a contribution to a committee on the condition or with the agreement that it will be contributed to a particular candidate, unless the transaction is fully disclosed pursuant to section 84302. (§ 85704.) Section 84302 generally provides that no person may make a contribution on behalf of another without disclosing to the recipient of the contribution who the actual source of the contribution is. While a final regulation has not yet been adopted and while the Commission has not made any final determinations with respect to the regulation, the Commission has expressed a desire to adopt a regulation that embodies a narrow interpretation of the statute. Therefore, generally, a registered lobbyist may not contribute his or her personal funds in a manner that is prohibited by these sections.

Staff has also advised that section 85702 does not prohibit contributions from a lobbying firm, where the firm has established a committee of three non-lobbyists, each of whom is a principal in the firm, to make all contribution decisions for the firm, with recommendations and input from lobbyists in the firm. (*Churchwell* Advice Letter, No. A-01-115, copy enclosed.) In the *Churchwell* letter it was noted that the decision-making structure employed by the lobbyist firm placed final decisions about contributions in the hands of non-lobbyists.

With respect to the lobbyist contribution prohibition of section 85702, that statute currently is under the Commission's consideration on its regulatory calendar. The Commission considered the subject in a broad discussion of the statute last September. It is contemplated the regulation will address whether the ban applies to non-personal funds over which the lobbyist has direction and control. The Commission currently has scheduled for its March meeting adoption of a regulation addressing these issues. We encourage you to follow that item on the Commission's website, [www.fppc.ca.gov](http://www.fppc.ca.gov), where the staff memorandum on the issue will be posted prior to the March 14th meeting.

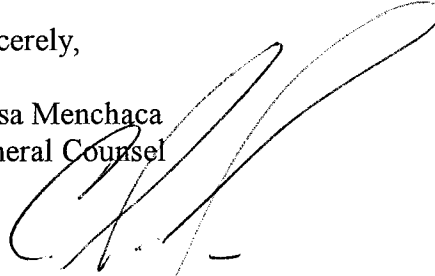
**Question 2:** *Does the prohibition under Government Code section 85702 apply to non-monetary contributions?*

Yes. Section 85702 prohibits "contributions" by lobbyists. That term is defined in the Act to include "any transfer of anything of value..." (§ 82015, subd. (d).) Accordingly, section 85702 prohibits non-monetary as well as monetary contributions.

If you have any other questions regarding this matter, please contact me at (916) 322-5660. If the Commission adopts a regulation in March, we will notify you.

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink, appearing to read 'C. Scott Tocher', is written over the typed name and title of the sender.

By: C. Scott Tocher  
Counsel, Legal Division

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