



## FAIR POLITICAL PRACTICES COMMISSION

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November 15, 2001

James Bopp, Jr.  
Bopp, Coleson & Bostrom  
One South 6<sup>th</sup> Street  
Terre Haute, Indiana 47807-3510

**Re: Your Request for Advice  
Our File No. I-01-158**

Dear Mr. Bopp:

This letter is in response to your request for advice on behalf of California ProLife Council, Inc., regarding provisions of the Political Reform Act (the "Act").<sup>1</sup> Since you do not seek advice regarding a specific communication, we provide you only informal assistance.<sup>2</sup> This letter should not be construed as advice on conduct that may already have taken place. Finally, our response is based on the facts as presented. The Commission does not act as a finder of fact in its advice giving capacity. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTIONS

1. If California ProLife Council, Inc ("CPLC") receives a payment from more than one source totaling \$5,001, earmarked for a communication that will clearly identify a candidate for elective state office while not expressly advocating the election or defeat of that candidate, would CPLC be required under § 85310 to disclose the name, address, occupation, employer, and the contribution information required under the statute, for *each person* whose contribution made up this payment, if the communication is disseminated, broadcast or otherwise published within 45 days of an election?
2. Is a Voter Guide published by CPLC "made at the behest" of candidates, within the meaning of § 85310(c), if it is based on candidate responses to CPLC's cover letter and survey regarding the candidates' positions on issues, and oral follow-up contacts?

<sup>1</sup> Government Code §§ 81000 – 91014. Commission regulations appear at Title 2, §§ 18109-18997, of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Regulation 18329(c).)

## CONCLUSIONS

1. Your first question touches on an ambiguity in § 85310(b). At its October 2001 meeting, the Commission determined that subdivision (b) is properly construed to require disclosure only of information relating to a single person whose payments towards the communication total \$5,000 or more.

2. Expenditures on a Voter Guide are not made "at the behest" of candidates who respond to a survey probing their positions on issues of concern to CPLC, so long as the survey is limited to determining candidate positions. Follow-up communications with candidates to clarify their stand on issues important to CPLC will not change this result, if these communications are limited to verifying the candidates' positions.

## FACTS

In your request for advice you report that CPLC is a non-profit, non-partisan, non-sectarian, pro-life grassroots organization. Its mission is to educate the community on abortion, euthanasia and infanticide; to identify and organize the pro-life population of California; and to restore respect for human life into public policy. To further these purposes, CPLC spends money on various types of communications to the general public in which it discusses these issues. The money for these communications comes from CPLC's general treasury.

More specifically, you indicate that in each state election, including primary and general elections, CPLC spends thousands of dollars of its general treasury funds in distributing to the general public communications, such as Voter Guides, which clearly identify a candidate or candidates for elective state office, but which do not expressly advocate the election or defeat of a candidate or candidates.<sup>3</sup> These communications are published or distributed within 45 days of an election. CPLC intends to produce and distribute similar communications in upcoming elections.

CPLC intends during upcoming election cycles to solicit contributions to support its communications, and it anticipates that it will receive contributions of less than \$5,000 from many persons, which will be combined with similar contributions from other persons to fund communications, such as Voter Guides, costing \$5,000 or more.

Finally, you note that in preparing its Voter Guides, CPLC routinely sends a cover letter and survey form to each candidate, inquiring into the candidate's positions on pro-life issues. CPLC also initiates discussions with candidates to determine their positions when they do not respond to the survey, and for further clarification of survey responses.

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<sup>3</sup> Ongoing litigation between the FPPC and CPLC suggests that the parties do not agree on what is, and is not, "express advocacy." For purposes of this letter, the characterizations in your request for advice are taken at face value.

## ANALYSIS

*Question One*

Proposition 34 repealed § 85310, as added by Proposition 208 in 1996, and enacted a new § 85310, entitled "Issue Advocacy Disclosure." Subdivision (b)(1) of § 85310 now reads as follows:

"(b)(1) Except as provided in paragraph (2), if any person has received *a payment* or a promise of a payment *from other persons* totaling five thousand dollars (\$5,000) or more for the purpose of making a communication described in subdivision (a), the person receiving *the payments* shall disclose on the report the name, address, occupation and employer, and date and amount received *from the person.*"  
(Emphasis added)

Your first question, assuming that CPLC receives a payment of \$5,001 from a number of smaller contributors, is whether CPLC must disclose the information required under § 85310(b)(1) for *each* person who contributed a small amount toward the sum earmarked for the communication you posit.

In subdivision (b)(1) the Legislature, which drafted Proposition 34, described in the first half of the sentence a payment giving rise to a reporting obligation imposed in the second half of the sentence. But the sentence as written describes "a payment... from other persons," suggesting multiple contributors underwriting a single payment, while the reporting obligation falls on the recipient of "the payments... received from the person," apparently contemplating the opposite circumstance, multiple payments from a single person.

The statutory language could therefore be read to support either of two answers to your first question. Section 85310(b)(1) might be interpreted to require disclosure of information relating to contributors regardless of the size of individual contributions, so long as the "payment" towards which those persons contributed amounts to \$5,000 or more. Or the statute may be viewed as requiring *only* disclosure of information relating to a single person whose payment(s) total \$5,000 or more.

At its October 2001 meeting, the Commission determined that the statute was properly construed to require only disclosure of information relating to a single person whose payment(s) total \$5,000 or more. The Commission's rationale is succinctly summarized in a staff memorandum presented to the Commission. (Memorandum of September 27, 2001, by C. Scott Tocher, copy included.)

*Question Two*

Your second question asks whether CPLC's Voter Guides, as described in your request for advice, are made "at the behest of" candidates responding to inquiries made by CPLC in the course of its research. Expenditures connected with publication of the Voter Guides might be contributions to some candidates referenced therein, instead of independent expenditures by CPLC, if the expenditures were made "at the behest of" the candidates. This question has been asked a number of times in the past, and is answered by the provisions of regulation 18225.7(b) and (c), which state that:

- "(b) An expenditure is presumed to be made at the behest of a candidate or committee if it is:
- (1) Based on information about the candidate's or committee's campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or
  - (2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.
- (c) An expenditure is not made at the behest of a candidate or committee merely when:
- (1) A person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or the candidate's agents concerning the expenditure; or
  - (2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agents."

This 1995 regulation codified prior advice summarized in the *Davis Advice Letter*, No. I-90-173 (copy enclosed), as follows:

"When a candidate merely meets with a committee's representatives to discuss issues important to members of the organization which sponsors the committee, even with the knowledge that the committee may support him, but there is no discussion of how or when expenditures for the support (or opposition to the candidate's opponent) will take place, the candidate has neither controlled or directed the expenditure, nor has he consulted or coordinated with the committee concerning the expenditure.

Arguably, the candidate has cooperated with the committee in the sense that he has made himself available to be interviewed. Again, however, there must be a more

direct connection between the candidate's interacting with the committee and the expenditure itself before the expenditure has been made at his behest. Attending the interview and discussing issues only does not establish this connection.

Consequently, when a committee makes an expenditure supporting the candidate (or opposing the candidate's opponent) following such a meeting, the expenditure is an independent expenditure and not a contribution.

Finally, if the organization or its committee later informs the candidate of its decision to make the expenditure, but does not communicate with or receive information from the candidate as to how and when the expenditure will be made, the expenditure remains an independent expenditure." (Footnotes omitted; see also *Freeman* Advice Letter, No. I-98-247; *Shaw* Advice Letter, No. A-97-066, copies enclosed.)

To summarize regulation 18225.7 and prior advice, expenditures on a subsequent Voter Guide will not be characterized as made "at the behest" of candidates who respond to a survey probing their positions on issues of concern to CPLC, so long as the survey is limited to determining candidate positions. Additional communications with candidates to clarify their stand on issues important to CPLC will not change this result, assuming again that these communications are limited to establishing the candidates' positions.

Your question refers specifically to § 85310(c), a provision added by Proposition 34, which provides that:

"(c) Any payment received by a person who makes a communication described in subdivision (a) is subject to the limits specified in subdivision (b) of Section 85303 if the communication is made at the behest of the clearly identified candidate."

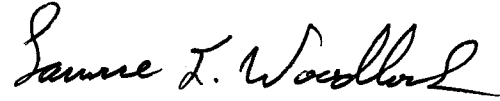
Section 85310(c) does not purport to modify the established meaning of the term "at the behest of," which is employed in this provision without elaboration of any kind, requiring the reader to look elsewhere in the Act for guidance on its meaning. Nothing in Proposition 34 suggests that regulation 18225.7 need be amended, or prior advice rescinded.

If you wish to have more specific advice on particular communications, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By:



Lawrence T. Woodlock  
Senior Commission Counsel

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Attachment: Memorandum of September 27, 2001 by C. Scott Tocher