



## FAIR POLITICAL PRACTICES COMMISSION

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November 28, 2001

Allen Erenbaum  
Mayer, Brown & Platt  
350 South Grand Avenue-25<sup>th</sup> Floor  
Los Angeles, CA 90071-1503

**Re: Your Request for Informal Assistance  
Our File No. I-01-242**

Dear Mr. Erenbaum:

This letter is in response to your request for advice regarding provisions of the Political Reform Act (the "Act"),<sup>1</sup> on behalf of persons now in the process of forming a general purpose committee. Since you do not identify either the committee or the public official you discuss, and can describe only in general terms the activities of the proposed honorary chair, we provide you with informal assistance.<sup>2</sup>

### QUESTION

Would a soon-to-be-formed general purpose committee become a "controlled committee" under the Act if an elected city official were to serve as its honorary chair?

### CONCLUSION

The answer depends on the influence wielded by the honorary chair on the committee's decisionmaking processes. The honorary chairman's duties, as you describe them, would not automatically require classification of the committee as "controlled."

### FACTS

You represent an organization expected to become a "general purpose committee" in the near future. This Committee will solicit funds, make contributions to (as well as

<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).)

independent expenditures on behalf of) state and local candidates, and it will endorse such candidates.

The proposed bylaws of the Committee provide that it would be governed by a board of directors with seven voting members. The bylaws prohibit an elected official, a candidate for elected office, or the representative of either, from serving as a voting member of the board.

The bylaws would permit the election of an honorary chairman, who would not be a voting member of the board of directors, and would have no role in deciding which candidates or committees the Committee would support by way of endorsement or contribution. The Committee may ask a city elected official to become its honorary chair. The Committee, however, does not wish to become a "controlled committee" as defined by the Act.

The Committee would like to include the honorary chairman's name on its letterhead, and anticipates that the chairman would provide the Committee access to his contributor list, solicit funds in writing and over the telephone, be featured on invitations to fundraising events, speak at such events, and distribute Committee funds in person or by mail, even though he would have no role in deciding who would receive the funds.

### ANALYSIS

"Controlled committee" is defined at § 82016, as follows:

"(a) 'Controlled committee' means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(b) Notwithstanding subdivision (a), a political party committee, as defined in Section 85205, is not a controlled committee."

An elected official in a city or other local jurisdiction is a "candidate" under the Act (§ 82007), and the answer to your question therefore depends on whether activities envisioned for the honorary chairman would amount to "control" or "a significant influence on the actions or decisions of the committee" by the elected official under consideration for the position.

We have advised in the past that a candidate is presumed to exert a significant influence on a committee whenever the candidate is a voting member of a committee's

leadership body. (*Ferguson* Advice Letter, No. A-86-044.) The Commission interprets the definition of "controlled committee" broadly, in furtherance of the Act's fundamental purposes. Thus, even when a candidate abstains from decisionmaking on matters directly relating to the candidate's campaign, a committee is "controlled" by the candidate if he or she is authorized to vote on other matters. (*Trimbur* Advice Letter, No. A-00-067.)


On the other hand, we have also noted that when a candidate is an "honorary" member of a committee's governing body, one who may appear on the committee's letterhead, but who does not vote, make decisions about committee funds, or otherwise influence the actions of the committee, the candidate is not considered to "control" or exert a "significant influence" on the committee. (*Madden* Advice Letter, No. A-85-197; *Trimbur* Advice Letter, *supra*.)

In this case, you anticipate that the honorary chair would *not* be a voting member of the board, but would further the Committee's endeavors in other ways. From your description, it appears that the honorary chairman would be expected to lend his name and "goodwill" to the Committee, and provide valuable fundraising assistance. As you describe it, the role of the honorary chairman would be confined to influencing other persons to support the Committee.

Nothing in your account of the Committee's plans suggests that the honorary chairman would have a role in directing the Committee's activities, or influencing the Committee's decisionmaking body. So long as this is the case, the Committee would not be a "controlled committee" within the meaning of § 82016. Our advice at this point is necessarily general. If the Committee proceeds with its plan and there is any doubt concerning the chairman's actual influence on the actions or decisions of the Committee, or regarding the legal significance of specific activities, we suggest that you contact us with the particulars so that we can offer you more specific advice.

Sincerely,

Luisa Menchaca  
General Counsel



By: Lawrence T. Woodlock  
Senior Counsel, Legal Division

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