



FAIR POLITICAL PRACTICES COMMISSION

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December 3, 2001

Tony Miller, Treasurer
March Fong Eu for
Secretary of State
2410 K Street, Suite C
Sacramento, CA 95816

**Re: Your Request for Advice
Our File No. A-01-263**

Dear Mr. Miller:

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

QUESTIONS

1. When a painting is given to a person by the committee you represent, upon receipt of a payment from that person equaling the fair market value of the painting, should the payment be reported as a "miscellaneous increase to cash" on Schedule "T" rather than as a "contribution" on Schedule "A"?
2. Does the payment described above trigger notice requirements under § 84105, or the electronic reporting obligation of § 85309(c), as added by Statutes of 2001, chapter 241?

CONCLUSIONS

To the extent that a payment to the committee is made in exchange for a painting whose fair market value is equal to the amount of the payment, there is no "contribution" within the meaning of the Act, and the payment should be reported on Schedule "T" rather than on Schedule "A." Payments which are not "contributions" as defined under the Act do not trigger reporting obligations of §§ 84105 or 85309(c).

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

FACTS

You are the treasurer of March Fong Eu for Secretary of State (the "Committee"). The Committee has received non-monetary contributions in the form of paintings from March Fong Eu, the candidate who controls the Committee. These paintings have been duly reported on the appropriate campaign statements as non-monetary contributions valued at their fair market value.² The Committee has initiated a fundraising program entitled "Make a Contribution, Receive a Gift." Under the terms of this program, any person who makes a payment to the Committee is given a painting of his or her choice, so long as the payment equals the fair market value of the painting.

ANALYSIS

The answer to your first question turns on whether the payments you describe are "contributions" within the meaning of the Act. Section 82015(a) defines the term "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. (*Emphasis added.*)

Regulation 18215(a) likewise provides (in pertinent part) that "[a] contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor." Your account of the facts underlying your request for advice makes it clear that you refer to "payments" which, at least for purposes of analysis, we may presume to be made for political purposes. These payments must therefore be classified as "contributions" under § 82015(a) "except to the extent that full and adequate consideration is received." The term "full and adequate consideration" means "fair market value" throughout the Act. (§ 82025.5; *Smith* Advice Letter, No. A-98-117.)

The Committee proposes to give a "gift" to each person who "contributes" an amount equal to the fair market value of one of the paintings donated to the committee by the candidate.³ However described, this fundraising program is premised on an exchange between Committee and "contributor." To the extent that a "contributor" receives from the Committee a work of art whose fair market value is equal to the amount paid to the

² A non-monetary contribution is treated as an expenditure by the recipient on the date of receipt, and the fair market value of such a "contribution" could count towards a candidate's expenditure ceilings under §§ 85400 *et seq.* (See Regulation 18540(c), enclosed.) However, pursuant to uncodified § 83 of Proposition 34 (as amended), these expenditure ceilings are not applicable to candidates for statewide office on the November, 2002 statewide ballot.

³ The terminology employed in promoting this program, "Make a Contribution, Receive a Gift," does not dictate the outcome of the present analysis. The task before us is to determine whether payments made in exchange for an artwork of equal value are "contributions" *as defined by the Act.*

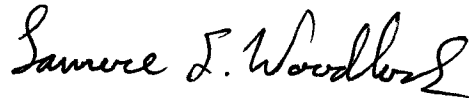
Committee, the payment to the Committee is not a "contribution" as the term is defined by § 82015(a). Thus if a painting whose fair market value is \$5,000 is given in return for a payment of \$5,000, the payment is not a "contribution" to the Committee. It would be reported as a miscellaneous increase to cash on Schedule I of the Committee's Form 460. If the same painting were given in exchange for a payment of \$6,000, there would be a miscellaneous increase to cash in the amount of \$5,000, and a contribution in the amount of \$1,000.

Payments which are not "contributions" under the Act do not trigger the notice obligations imposed by § 84105, nor do they trigger the online disclosure requirements of § 85309(c). Both statutes apply only upon receipt of "contributions" of \$5,000 or more.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

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