



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807  
(916) 322-5660 • Fax (916) 322-0886

April 18, 2002

Peter A. Bagatelos, Esq.  
St. Francis Circle Professional Center  
380 West Portal Avenue, Suite F  
San Francisco, CA 94127

**Re: Your Request for Informal Assistance  
Our File No. I-02-038**

Dear Mr. Bagatelos:

This letter is in response to your request for advice on the duties and obligations of your clients under the provisions of the Political Reform Act (the "Act").<sup>1</sup> Since your question is general in nature, we are treating your request as one for informal assistance pursuant to regulation 18329(c).<sup>2</sup>

### QUESTION

Are payments of administrative costs associated with operating a slate mailer organization (an "SMO"), including payments to accountants and attorneys, reportable by the SMO as "receipts" when the payments are made by the owner of the SMO?

### CONCLUSION

The payments you describe, when made by owners and promoters of an SMO whose only business is production and distribution of slate mailers, are "receipts" within the meaning of § 84219(a), reportable as such under § 84219. When an SMO engages in business activities unrelated to slate mail, payments for administrative and overhead costs not attributable to slate mail will not be reportable as "receipts" under § 84219.

---

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 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. (§ 83114; regulation 18329(c)(3), copy enclosed.)

## FACTS

You are an attorney who represents and advises slate mailer organizations on their obligations under the Act. A slate mailer organization ("SMO") is often a for-profit business entity. The owners or promoters of an SMO usually provide initial startup funding for the business, and may also furnish operating funds from time to time to allow the SMO to advance towards its goal of selling advertising space at a profit. SMOs often retain accountants and bookkeepers to prepare their tax returns, other persons to prepare the SMO disclosure reports (Form 401) required under the Act, and attorneys like you to provide SMOs with legal advice, including compliance with the Act.

You have previously told us of other expenses that SMOs frequently incur before campaigns are solicited to purchase space in a slate mailer. You explained that salaries must be paid, graphic artists must be hired, layouts must be conceptualized and drafted, solicitations must be prepared and distributed, telephone charges paid, and other expenses advanced as well, before sales revenues become available. In such instances, the owners and promoters of SMOs often advance their own funds to pay the operational costs of preparing, producing, promoting, and ultimately distributing the slate mailer.<sup>3</sup>

## ANALYSIS

Slate Mailer Organizations are defined at § 82048.4, and their obligations to file campaign statements and semi-annual reports are outlined at §§ 84218 and 84219. You have previously asked whether an SMO receives a "contribution" as defined at § 82015, when the owner or promoters pay start-up expenses for the SMO, or later provide operating funds until the SMO begins to receive income from its paying customers. (*Bagatelos* Advice Letter, *supra*.) We replied that "payments made by the owners of a business entity for start-up and operational expenses, for which they intend to receive full and adequate consideration in the form of profits from the production of slate mailers, would not be deemed 'contributions' under the Act." (*Id.*) Your present inquiry is a natural follow-up to the prior question. If these payments are not "contributions," are they reportable at all?<sup>4</sup>

Section 84219 requires that an SMO report its "receipts." In subdivision (a), the statute provides (in pertinent part) that: "For purposes of this section only, 'receipts' means payments received by a slate mailer organization for production and distribution of slate mailers." While providing that payments reportable as "receipts" must be payments "for production and distribution of slate mailers," the statute does not qualify or limit the persons whose payments to or on behalf of an SMO may be "receipts" under § 84219.

---

<sup>3</sup> You described these business realities in your November 1, 1995 request for advice, which resulted in the *Bagatelos* Advice Letter, No. I-95-364.

<sup>4</sup> In the *Lowell* Advice Letter, No. A-92-219, we advised that payments like those you describe here – when made by persons other than the owners or promoters of an SMO – were reportable "contributions." The result in the subsequent *Bagatelos* Advice Letter was different because owners and promoters of an SMO expect to receive full and adequate consideration in the form of profits from the production of slate mail.

The administrative, start-up and operational costs which you have described, when funded by SMO owners and promoters, are payments amounting to early advances "for production and distribution of slate mailers," when the payments are made to or on behalf of an entity whose only business is the production and distribution of slate mailers. Such advances are reportable "receipts" within the meaning of § 84219(a). The fact that they are reimbursable from later sales revenue does not alter this characterization.

Your account of the facts suggests that the business model underlying your inquiry is an SMO whose *only* business is the production and distribution of slate mail. Payments made to fund the operations of such businesses can only be characterized as "receipts" within the meaning of § 84219(a). The matter becomes more complex, however, when an entity qualifies as an SMO, but is *also* engaged in activities not related to the production or distribution of slate mail.

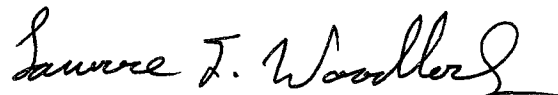
For a business of this kind, payments that directly fund the production and distribution of slate mail, such as payments covering costs of design, layout, printing or postage, as well as compliance costs like payments associated with preparing and filing reports under § 84219, are fully reportable as "receipts." But other payments might not be directly allocable to the production and distribution of slate mail, including advances for general administrative costs, such as payments to accountants, bookkeepers, and tax preparers, or for ongoing overhead expenses not directly attributable to the production and distribution of slate mail.

A business whose operations include activities not related to slate mail must employ a reasonable accounting method to allocate a portion of payments for general administrative costs or overhead to operations unrelated to slate mail, allocating the remaining portion of these payments to the production and distribution of slate mail. Amounts assigned to slate mail activities in this fashion would be reported as "receipts" under § 84219, along with payments for activities directly associated with the production and distribution of slate mail. This allocation procedure is similar to that used by committees in reporting express advocacy expenditures under regulation 18225(b)(3)(A).

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

Enclosure  
LTW:jg  
I:\AdviceLtrs\02-038