



FAIR POLITICAL PRACTICES COMMISSION

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May 29, 2002

Dan Lee
Treasurer for Councilmember Rob Schroder
1433 Mellissa Circle
Antioch, California 94509

**Re: Your Request for Advice
Our File No. A-02-116**

Dear Mr. Lee:

This letter is in response to your request for advice on behalf of Councilmember Rob Schroder regarding the campaign provisions of the Political Reform Act ("Act").¹

QUESTIONS

1. Must Councilmember Schroder report contributions received and expenditures made to mail out a questionnaire even though no ballot measure is being advocated by the questionnaire?
2. Will it make a difference if Councilmember Schroder mails questionnaires only to the 2,600 constituents who responded to a previous questionnaire sent out by the council member?
3. If Councilmember Schroder stops production on the mail piece and gives someone else the notes, drafts, and outlines for the purpose of sending a similar questionnaire, will Councilmember Schroder incur any reporting obligations?

CONCLUSIONS

¹ Government Code sections 81000-91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, sections 18009-18997. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

1. Councilmember Schroder must report all contributions received and expenditures made for political purposes including those made for the purpose of mailing out the questionnaire.
2. This conclusion will not change even if Councilmember Schroder restricts the mailing to the 2,600 constituents who responded to a previous questionnaire sent out by Councilmember Schroder.
3. If another individual or entity mails the questionnaire at Councilmember Schroder's behest, Councilmember Schroder will incur reporting obligations if the entity makes a payment of \$5,000 or more in a calendar year to send the mailing.

FACTS

You are treasurer for Martinez City Councilmember Rob Schroder, a current City of Martinez council member who is running for the position of mayor on the November 2002 ballot. Councilmember Schroder wishes to send out a cover letter and questionnaire regarding the Martinez Downtown and Waterfront Revitalization project and asking whether voters:

- Generally support or oppose revitalizing the downtown and waterfront area;
- Would be more or less likely to support revitalization knowing that up to 300 new homes a year, for ten years, might be built in the area now used for industrial storage;
- Would be more or less likely to support revitalization knowing that development fees would pay for the building of a new downtown elementary school as well as additional parks, recreational areas, additional open space, and more marshland protection;
- Generally support or oppose favoring union employers for business permits and city purchases;
- Would be more or less likely to support favoring union employers knowing that very few local businesses would be able to bid for city contracts or building contracts?

The questionnaire will be sent to only those who responded to a previous questionnaire sent by Councilmember Schroder, to a "high propensity" voter list, or to a combination of the two. On your current working draft, the only mention of Councilmember Schroder's official status as a council member is on the return address.

Councilmember Schroder intends to publish the questionnaire results in the local newspaper and also post them on a web site currently being put together. There is no intention of using the web site to promote Councilmember Schroder's candidacy for mayor nor is there any ballot position being advocated.

ANALYSIS

A primary purpose of the Act is to ensure that receipts and expenditures in election campaigns be fully and truthfully disclosed so that voters may be fully informed and improper practices may be inhibited. (Section 81002(a).) In furtherance of this goal, the Act requires a committee² to file periodic campaign statements disclosing its received contributions and expenditures. (Sections 84200 - 84225.)

What Is a "Contribution"?

Section 82015(a) defines the term "contribution" as "a payment³, 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." Regulation 18215(a) likewise establishes (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" and further clarifies that a payment is made for political purposes if it is "received by or made at the behest of...[a] candidate." (Regulation 18215(a)(2)(A).) The term "candidate" is defined in section 82007, as follows:

"Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. 'Candidate' also includes any officeholder who is the subject of a recall election. *An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214.* 'Candidate' does not include any person within the meaning of Section 301(b) of the Federal Election Campaign

² "Committee" means any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year; makes independent expenditures totaling \$1,000 or more in a calendar year; or makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees. (Section 82013.)

³ Section 82044 defines a "payment" as a "payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible."

Act of 1971.” (Emphasis added.)

Whether in his status as a current council member or as a candidate for mayor, Councilmember Schroder is considered to be a candidate under this definition, any payment he receives is deemed to be for a political purpose and, thus, would be a contribution, unless it is clear from the surrounding circumstances that the payment is not for political purposes. The payment in question would be received by Councilmember Schroder in connection with his status as an officeholder and could tangentially affect his name recognition as a candidate for mayor. Moreover, the questionnaire will be sent to a “high propensity” voter list and/or people who responded to an earlier questionnaire. Therefore, we cannot say that the payment is not for political purposes.⁴ Accordingly, we conclude that a payment received by Councilmember Schroder for this purpose would be a contribution. Contributions to a candidate, under section 85201(c), must be deposited in the candidate’s bank account and reported pursuant to sections 84200 – 84217.

What Is an “Expenditure”?

Section 82025 defines expenditure as a “a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.” Regulation 18225(a) further explores what constitutes an expenditure as being “any monetary or nonmonetary payment made for political purposes. A payment is made for political purposes if it is . . . made by a candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder.” (Regulation 18225(a)(2)(A).) As we determined above, Councilmember Schroder is a candidate and payments he receives to produce and mail the questionnaire are for a political purpose. Based on the same logic, expenditures Councilmember Schroder makes to produce and mail the questionnaire would be for a political purpose and would likewise be expenditures. Therefore, payments made by Councilmember Schroder in connection with mailing the questionnaire are presumed to be expenditures. Expenditures made by a candidate must be reported pursuant to sections 84200 – 84217.

You have asked what difference might exist in reporting if either the questionnaires are mailed only to those who responded to the last questionnaires mailed by Councilmember Schroder, or if a third party handles the mailing. In answer to the first question, the Act contains no exemptions excluding payments for follow-up mailers from being either contributions or expenditures. Regarding the second question, section 82015(b)(2)(B)(iii) states that a payment made at the behest⁵ of Councilmember Schroder and made principally for legislative, governmental, or charitable purposes will not be

⁴ Your facts are also distinguishable, for example, from a situation where a water district commissioned a poll without a council member’s knowledge and the official did not participate in the conduct of the poll. (Galstan Advice Letter No. I-92-120.)

⁵ Regulation 18225.7 explains that a payment or expenditure is “made at the behest of” a candidate when it is “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.”

considered a contribution, assuming the purpose is not "election related" (see section 82015(b)(2)(C)). If, however, during a calendar year, such payments equal or exceed \$5,000 in the aggregate from the same source, then Councilmember Schroder must report these payments within 30 days. Please note that the \$5,000 reporting requirement relates to payments directly made by a third party to vendors or persons other than Councilmember Schroder or his agents in connection with this mailing. Payments made directly to Councilmember Schroder or his agents will be campaign contributions as discussed above. By contrast, moneys paid under the \$5,000 reporting requirement are not campaign contributions and would not be reported on Councilmember Schroder's campaign reports. Instead, these payments must be reported to the City of Martinez and shall contain the "name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made." (Section 82015(b)(2)(B)(iii).)

In summary, payments received or made by Councilmember Schroder for the purpose of mailing and preparing the questionnaire meet the test of being made for a political purpose and must be reported as contributions or expenditures. Additionally, Councilmember Schroder must report, as described above, any payments made at his behest by another individual or entity for the mailing if the payments exceed \$5,000 from that source during a calendar year. Finally, you mentioned in your letter the possibility of not including Councilmember Schroder's name in the return address of the mailing. Please be aware that section 84305 states, in part, that "no candidate or committee shall send a mass mailing⁶ unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail...."

If you have any other questions regarding this matter, you may contact me toll-free at 866/275-3772.

Sincerely,

Luisa Menchaca
General Counsel


By: Adrienne Korchmaros
Political Reform Consultant

⁶ A "mass mailing" means over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an *unsolicited* request, letter or other inquiry." (Section 82041.5.) (Emphasis added.)