



FAIR POLITICAL PRACTICES COMMISSION

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May 10, 2002

The Honorable Dario Frommer
Assembly California Legislature
State Capitol
Post Office Box 942849
Sacramento, California 94249-0001

Re: Your Request for Advice
Our File No. A-02-117

Dear Assemblymember Frommer:

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

QUESTION

Will payments made or solicited by the cosponsors of the "Burbank...Behind the Scenes" community block party you described below constitute campaign contributions or gifts to you?

CONCLUSION

Under the facts you have described, the community block party will be held principally for the governmental purpose of serving your constituents and no election-related activities will take place at the event. The event is being cosponsored by other organizations and neither your campaign nor your officeholder account will receive any payments as a result of the event. Based on these facts, the payments to be made in connection with the community block party fall under the amendments to the definition

¹ Government Code §§ 81000 - 91014. Commission regulations appear at title 2, §§ 18109 - 18995, of the California Code of Regulations.



of "contribution" made in 1997 for cosponsored events. Thus, the payments will not constitute a contribution or gift to you.

FACTS

You wish to be involved in a community event in Burbank California entitled "Burbank...Behind the Scenes Community Block Party." The purpose of the event is to showcase the service and community organizations and businesses that make Burbank such a great place to be. The event is a nonprofit event and will feature free food, music, entertainment from local schools and organizations, free giveaways, face painting for kids, free kid-print, a food drive, blood drive and adopt-a-pet.

The event will be publicized by posters placed throughout schools and businesses, street banners, television commercial spots, and invitations sent to the homes of Burbank residents (33,000). In a telephone conversation with your office on May 9, we were informed that the posters would refer to the Assemblymember once, and he would invite the community to attend the event. The mailer and banner contain substantially the same information.

A variety of private and public entities, including the State Assembly, will cosponsor the event and will participate with booths at the event. Numerous businesses have also donated door prizes. No donor has provided either funds, goods or services in excess of \$5,000 in value. The event will be held at public locations (a park and school property).

ANALYSIS

A. Applicable Law

The Act defines a contribution as a payment,² except to the extent that full and adequate consideration is received, unless it is clear from the circumstances that it is not made for political purposes. (§ 82015.) The definition of "contribution" was amended in 1997 with respect to events cosponsored by legislators, and governmental and nonprofit organizations or private organizations.

As amended, § 82015(b)(2) states that a payment is made for "political purposes" if it is received by or made at the behest of a candidate *unless* the criteria in either

² "Payment means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (§ 82044.)

subparagraph (A) or (B) below are satisfied:

“(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate’s candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution” (§ 82015(b)(2).) (Emphasis added.)

Election-Related Activities. A payment is made for purposes related to a candidate’s candidacy for elective office if all or a portion of the payment is used for election-related activities. (Section 82015(b)(2)(C).) “Election-related activities” include, but are not limited to the following:

“(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate’s candidacy for elective office, the candidate’s election campaign, or the candidate’s or his or her opponent’s qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.

(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

- (vi) Preparing campaign budgets.
- (vii) Preparing campaign finance disclosure statements.
- (viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.” (§ 82015(b)(2)(C)(i)-(viii).)

Reporting. Though they are not considered contributions, a new reporting rule applies to payments from entities that are made principally for legislative, governmental, or charitable purposes, and are not related to an individual’s candidacy for elective office. The payments must be reported as follows:

“[P]ayments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer’s agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: 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. Once the five thousand dollars (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.” (§ 82015 (b)(2)(B)(iii).)

Further, regulation 18215 (copy enclosed) contains certain regulatory exemptions to the definition of "contribution," including an exception for communications that do not contain express advocacy in subdivision (c)(4):

"A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:

- (i) Does not contain express advocacy;
- (ii) Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and
- (iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent." (Reg. 18215(c)(4)(i)-(iii).)

B. Publicity

In a telephone conversation with your district office on May 8, 2002, we were informed that the publications costs were funded by the Assembly and approved by the Assembly's internal procedures. You noted that three methods were used, posters, a street banner, and direct mail. The content of the materials will be substantially the same: "Assemblymember Dario Frommer invites you to...", followed by a description of the event. The materials paid for by legislative funds will not constitute a contribution as long as they meet the requirements of regulation 18215(c)(4). Regulation 18215(c)(4) provides that communications are not contributions if they do not contain express advocacy, do not make reference to the candidate's candidacy for elective office, and do not solicit contributions.

C. Payments for Space

The event will be held on public property. Your office informed us that there were nominal costs which the Assemblymember will pay from public funds. In any case, since according to § 82015(b)(2)(B)(ii), if the entities who gave the Assemblymember access to the property are government agencies or § 501(c)(3) nonprofit organizations, then payments by those entities made at your request for the block party will not be considered a contribution to you.

D. Payments for Food and Beverages

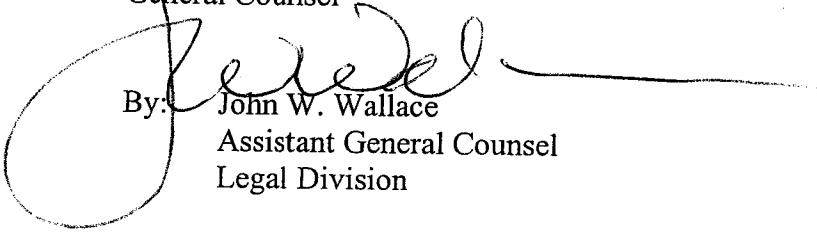
According to § 82015(b)(2)(B)(ii), if the entities with whom your office is cosponsoring the block party are government agencies or § 501(c)(3) nonprofit organizations, then payments by those entities made at your request for the block party will not be considered a contribution to you. In addition, under § 82015(b)(2)(B)(iii), payments made by any entity (including corporations, businesses, and nonprofit organizations other than 501(c)(3)'s) at your request will not be considered a contribution or a gift if the payments are made principally for legislative, governmental, or charitable purposes, such as a cosponsored event, and not for personal purposes.

In conclusion, the payments the Assemblymember has requested in connection with the community block party will not be contributions or gifts³ to the assemblymember because they are principally for a legislative, governmental, or charitable purpose. Further, so long as payments from any source do not equal or exceed \$5,000 (in the aggregate from the same source in a calendar year) then the Assemblymember will not need to report the payments with the State Assembly as provided in § 82015(b)(2)(B)(iii), set forth above.

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

Sincerely,

Luisa Menchaca
General Counsel

By:  John W. Wallace
Assistant General Counsel
Legal Division

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Enclosure
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³ The value of any food or beverages that the assemblymember or any official attending the community block party consume is considered a gift, reportable if more than \$50 in 12 months is received from a single source. (§ 82028, 87207, and 89503; regulations 18940.2, 18941.1.) A payment for food and beverages for personal consumption would always confer a principally personal benefit pursuant to § 82015(b)(2)(B)(i).