



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

October 3, 2002

C. April Boling, CPA
7185 Navajo Road, Suite L
San Diego, CA 92119

**Re: Your Request for Advice
Our File No. A-02-118**

Dear Ms. Boling:

This letter is in response to your request for advice on behalf of the San Diego Police Officers Association ("SDPOA") regarding the disclosure provisions of the Political Reform Act (the "Act").¹ Because the Commission does not provide confirmation of telephone advice, we provide you the following formal advice based on the facts provided to us.

QUESTIONS

1. Is it permissible for contributions from members of SDPOA to be commingled with the general funds of SDPOA if they are collected by means of payroll deduction?
2. Is the SDPOA required to transfer contributions received from payroll deductions in its general fund account to a separate checking account under regulation 18421.1(d)?
3. Is it permissible for expenditures to be made from SDPOA's general fund account?
4. When is a payment made by payroll deduction a contribution to SDPOA?

CONCLUSIONS

1. SDPOA may receive contributions into its general fund even if the funds are earmarked for political purposes or will be used for political purposes. However,

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

SDPOA is required to keep specific records and file appropriate reports of its campaign activities in accordance with sections 84200 et seq.

2. SDPOA is not required to transfer contributions to a separate account.
3. SDPOA is permitted to make expenditures from its general fund and may use member dues to make contributions on an "as needed" basis.
4. SDPOA receives a member's contribution when it makes an expenditure (i.e., the date of the outgoing expenditure is the date of the incoming member contribution), provided the member has not earmarked the contribution.

FACTS

You are the treasurer for the SDPOA and other non-union entities subject to the disclosure provisions of the Act. SDPOA receives funds through payroll deductions and sponsors a committee with a portion of these funds. For each pay period, \$2.25 of a member's dues are allocated to this committee. In an effort to comply with provisions of the Act, SDPOA has been transferring these funds that have been collected by payroll deduction to a separate checking account within 60 days of receiving them. After reviewing the Commission's rules and regulations and disclosure reports submitted by other similar associations, you now believe that SDPOA is not required by the Act to transfer funds received by payroll deduction to a separate account. Further, SDPOA is exploring the discontinuance of this monthly collection of funds allocated to the committee and instead, using SDPOA funds for committee activities on an "as-needed" basis.

ANALYSIS

The campaign disclosure provisions of the Act require candidates and committees to file periodic reports disclosing contributions received and expenditures made. (Section 84100, et seq.) A committee includes any person² or combination of persons who receives contributions totaling \$1,000 or more in a calendar year. (Section 82013(a).)

"A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor." (Regulation 18215(a).) A payment is made for political purposes if it is "[f]or the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure." (Regulation 18215(a)(1).) Additionally, a payment is for political purposes where it is received by or made at the behest of "[a]n organization formed or existing primarily for political purposes,

² "Person" means "an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert." (Section 82047.)

including, but not limited to, a political action committee ["PAC"] established by any membership organization, labor union or corporation. (Regulation 18215(a)(2)(D).)

A multi-purpose organization is an entity which receives funds in the form of membership dues or similar payments and uses a portion of its receipts in connection with campaign activities (e.g., unions, trade associations, and other membership organizations). (*Gilliam* Advice Letter, No. G-94-293.) This type of organization is required to disclose only that portion which is solicited or used for political purposes. (*Gilliam, supra.*) No separate bank account is required. (*Gilliam, supra.*) As such, a multi-purpose organization which is a membership organization is permitted to make expenditures from its general fund and may make contributions on an "as needed" basis. Under these circumstances, the multi-purpose organization would receive the member's contribution when the organization makes the expenditure, provided the funds have not been earmarked as a contribution by the member.

You have specifically inquired about the application of section 84307 which provides:

"No contribution shall be commingled with the personal funds of the recipient or any other person."

As you pointed out, the definition of "person" under the Act includes not only an individual but also a proprietorship, corporation, or association among other types of entities. (Section 82047.) This is true. However, the rule of section 84307 applies to the "personal funds" of a person. In previous advice letters, this statute has been interpreted by the Commission to mean that contributions may not be commingled with the personal funds of the candidate receiving them. (*Jenkins* Advice Letter, No. A-99-253; *Richter* Advice Letter, No. I-93-355; *Mastrantonio* Advice Letter, No. I-91-561; *Honigsfeld* Advice Letter, No. A-90-406; *White* Advice Letter, No. A-87-040; *Crocker* Advice Letter, I-86-321.) Section 84307 has only been applied to keep individuals from putting campaign contributions into their personal accounts. We do not view the general fund of a union to be the "personal funds" of the union. For this reason, section 84307 would not prohibit an entity such as a union from receiving contributions into its general fund even if the funds are earmarked for political purposes or will be used for political purposes. However, the entity is required to keep specific records (see regulation 18401, enclosed) and file appropriate reports of its campaign activities in accordance with sections 84200, et seq.

In addition to being a multi-purpose organization, a union may also qualify as a sponsor under the Act's reporting rules. Regulation 18419 sets forth procedures for reporting in circumstances where contributions are received through a sponsor³ (e.g., a

³ "Sponsor" of a committee means any person, except a candidate, proponent, or other individual to whom any of the following applies: (A) The committee receives 80 percent or more of its contributions either from the person or from the person's members, officers, employees or shareholders; (B) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers or employees; (C) The person provides, alone or in combination with other organizations, all or nearly all of the administrative services for the committee; or (D) The person sets, alone or in combination with other

union) by a sponsored committee (e.g., the union's PAC)⁴. With respect to member contributions which are channeled through the sponsor, the individual member is the contributor.⁵ (Regulation 18419(c)(2).) In addition, the committee must report as an intermediary the sponsor if the sponsor "directly or indirectly provides the committee with \$100 or more in member contributions regardless of whether any member for whom the sponsor [or intermediate unit] acts contributed \$100 or more" on its campaign disclosure statements. (Regulation 18419(c)(3).) Proposition 34 did not amend the Act's rules on intermediaries. (*Holmer* Advice Letter, No. A-01-060.)

In general, "[a] monetary contribution is 'received' on the date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made." (Regulation 18421.1(c).) However, there is an alternate rule for earmarked contributions received via payroll deductions or membership dues provided in regulation 18421.1(d). For reporting purposes, a monetary contribution collected by means of payroll deductions or membership dues by a sponsor which is a membership organization for its sponsored committee is "received" by the committee on the earlier of the following:

- "(1) The date that the committee obtains actual possession or control of the contribution;
- (2) Within 60 days after the receipt of the payment by the committee's sponsor." (Regulation 18421.1(d).)

This regulation is only applicable to committees that receive contributions specifically earmarked as contributions and applies for purposes of determining when a committee is required to disclose the receipt of the funds, and does not apply to a multi-purpose organization that uses its general funds for political purposes on an "as needed" basis. (See *Shaw* Advice Letter, No. A-97-066 and *Carroll* Advice Letter, No. I-96-270.)

Consequently, under its current way of allocating funds to its committee, SDPOA should report its earmarked contributions from each member (\$2.25 per pay period) to the committee in accordance with regulation 18421.1(d), but it need not transfer these funds to a separate account. If SDPOA instead uses an allocation method where an expenditure is made on an "as needed" basis, SDPOA would report a member's contribution for that expenditure as being received on the same date as the expenditure is made. The amount

organizations, the policies for soliciting contributions or making expenditures of committee funds." (Regulation 18419(a)(2)(A-D).)

⁴ "Sponsored committee" mean a committee, other than a controlled committee, which has one or more sponsors." (Regulation 18419(a)(1).)

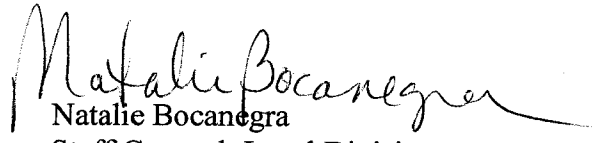
⁵ A payment is earmarked for political purposes "when, at the time of making the payment, the donor knows or has reason to know that the [payment, or] funds with which the payment will be commingled, will be used to make contributions or expenditures." (Reg. 18215(b)(1).) Factors relevant for determining whether a donor has reason to know that his or her payment will be used for political purposes can include the established practice of the organization collecting the payment, and any representations made by the organization when the payment is made. (*Holmer, supra*; see, e.g., *McCray* Advice Letter, No. A-89-334.) In the case of a sponsored committee, like a local union PAC, the source of a member contribution received by the sponsored committee is the member and not the sponsor or intermediate unit that channeled the contribution. (*Holmer, supra*.)

to be reported from each member would be a prorated amount of the total amount of the expenditure made since SDPOA has an established practice of using member dues for political purposes. (See footnote 5.)

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

Sincerely,

Luisa Menchaca
General Counsel

By: 
Natalie Bocanegra
Staff Counsel, Legal Division

Enclosure

NPB:jg

I:\AdviceLtrs\02-118