



FAIR POLITICAL PRACTICES COMMISSION

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September 18, 2002

Scott M. Lay
2409 Halsey Circle
Davis, CA 95616

**Re: Your Request for Advice
Our File No. A-02-214**

Dear Mr. Lay:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ The questions you pose and the analysis underpinning our conclusions are set forth below following a recitation of the facts you provide. Given the general nature of some of your questions, however, we are rendering informal advice with respect to certain conduct as indicated in the discussion.

FACTS

You have been a registered lobbyist for the Community College League of California ("the League") for seven years. The League is a non-profit voluntary association of local community college trustees, chief executive officers and associated groups. You regularly lobby the state Legislature, the Governor's administration, and other entities on behalf of the League. You are a covered person under the Political Reform Act and understand that Government Code section 85702 prohibits you from making contributions to those state officials, candidates for elective state office or their committees that you lobby.

Besides being a registered lobbyist, you have also served on the Yolo County Democratic Central Committee ("Central Committee") for seven years. The Central Committee is a county committee organized under Elections Code section 7200 et seq. as an arm of the California Democratic Party. Members are elected to the Central Committee every two years during the primary election. On January 22, 2001, you were elected to a two-year term as chair of the Central Committee. In your capacity as chair, you preside over the monthly Central Committee meetings, serve as the committee's

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

representative on the executive board of the California Democratic Party, and serve as the party's conduit between Yolo County candidates for local, state and federal offices. The Central Committee seeks to, among other things, develop, endorse and support the election of candidates who win Democratic primaries to state office. Decisions of the Central Committee are made by majority vote although you often create the agenda and bring items to the Central Committee for input, discussion and a vote. Because your term as chair extends through the 2002 general election, you expect to be providing a leadership role in these functions, among others.

Like other members of the Central Committee, you pay biennial dues (\$24 every two years), plan, support and attend event and make both in-kind and cash contributions to allow the Central Committee to carry out the functions pursuant to its mission. The total cash and in-kind contributions made by you to the Central Committee in calendar year 2001 were less than ten percent of the Committee's total receipts. The Central Committee manages one account from which all members' dues, contributions and fundraising proceeds are placed.

In recent past, the chair of the Central Committee has raised funds and coordinated campaign efforts benefiting state candidates throughout Yolo County. In addition, the Central Committee has provided both monetary and non-monetary contributions to candidates for state office. The Central Committee will likely take similar actions in the campaign leading to the November 5, 2002 election.

The Central Committee routinely engages in activities to encourage people to vote. These activities may include registering voters, providing voter education and information and conducting "Get out the vote" activities that may or may not reach a reportable threshold. These activities are not intended to directly benefit any specific candidate or officeholder, such as a legislator, to whom an individual lobbyist may not contribute. However, such activities may have an indirect effect of increasing name recognition of legislative candidates and getting more people to the polls to vote for Democratic candidates.

The committee also makes decisions about general campaign plans. These plans may allocate a certain amount of money to be directed towards activities in cities in Yolo County, such as West Sacramento, Davis or Woodland. The individual clubs in Woodland, West Sacramento and Davis would then decide how to use that money. If those funds from the Central Committee were used to benefit a candidate for elective state office that you would lobby, you question whether you will have participated in a decision to make a contribution.

At the campaign planning stage, an initial question that arises is how much money the Central Committee wishes to devote to the legislative races this year without determining how much the committee will contribute to specific candidates. You state this is on the one hand essentially a budget decision - examining how much money the committee has, how much it should keep in reserve and how much it anticipates receiving through fund-raising activities. It may also, however, be a tactical decision as well as the

committee evaluates the merits of the candidate and the candidate's likelihood of success in the upcoming election.

ANALYSIS

1. Does the term "committee" in Regulation 18572, subdivision (a)(3), include the Yolo County Democratic Central Committee?

Section 85702 states:

"An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer."

Regulation 18572 implements section 85702. Subdivision (a)(3) of the regulation provides that a lobbyist makes a contribution prohibited by section 85702 when:

"(3) the contribution is made from funds of a committee comprised in part of personal funds or resources of a lobbyist and the lobbyist participates in the decision to make the contribution."

Although not defined in regulation 18572, the term "committee" is defined by the Act as follows:

"§ 82013. Committee.

'Committee' means any person or combination of persons who directly or indirectly does any of the following:

- (a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.
- (b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- (c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees."

We presume, given the facts you present, that the Yolo County Democratic Central Committee qualifies as a "committee" under at least subdivisions (a) or (c), above. Accordingly, the Central Committee is a "committee" under the Act for purposes of section 85702 and regulation 18572.²

² Section 85205 defines political party committees and includes a county central committee. Section 85205 does not alter this conclusion.

2. How are non-monetary contributions made by a lobbyist to a committee treated under regulation 18572, subdivision (a)(3)?

Under regulation 18215, a "contribution" is any payment "made for political purposes for which full and adequate consideration is not made to the donor." (Reg. 18215, subd. (a).) A payment is for "political purposes" if, generally, it is for 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...." (Reg. 18215, subd. (a)(1).) A contribution includes any "goods or services" received by a committee "at no charge or at a discount from the fair market value...." (Reg. 18215, subd. (b)(3).)

You note that from time to time you help the committee fund-raise by providing the committee with certain office supplies, decorating supplies and a website you value at \$20 per month. Since these items and services are provided from personal funds or resources, and because none of the exceptions of regulation 18215 apply, these non-monetary contributions are considered "contributions" within the context of regulation 18572.

3. Are decisions that pertain to activity which is an "exception" to the term "contribution" treated as decisions to make a contribution?

No. This question pertains to activities you characterize as "get out the vote" activities that include registering voters, providing voter education and information and other such conduct. The activities do not benefit any specific candidate or officeholder.

Under regulation 18215, subdivision (c)(1), a contribution *does not include*:

"(1) An expenditure made at the behest of a candidate in connection with a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, if the expenditure does not constitute express advocacy."

Though you do not describe specific conduct, the activities you describe generally appear to fall within the exception quoted above and therefore would not be characterized as "contributions." Therefore, decisions regarding such activity would not constitute a decision to make a contribution.

4. Does a refund of contributions made by a lobbyist permit a lobbyist to vote on decisions to make contributions to that candidate under regulation 18572?

Yes, provided the refund is made before the process for decisionmaking begins.

Neither section 85702, the lobbyist contribution ban, nor the regulation interpreting it, regulation 18572, contain express language contemplating the return of contributions by an organization to a lobbyist.

The use of funds held by a committee, in this instance, is governed by sections 89511 and 89512.5. Assuming the committee is able to comply with section 89512.5, the next question is whether the effect of returning the contribution prior to the commencement of the candidate support process "cleanses" the committee of the lobbyist's funds, such that the lobbyist may participate in making decisions regarding the use of the committee's funds without running afoul of section 85702 and regulation 18572. The plain meaning of regulation 18572 leads to the conclusion that a complete return of the contributions you have made to the committee will allow you to make decisions regarding contributions the committee will make in the future. If the Central Committee no longer possesses funds provided by you, then a contribution made by the Central Committee to a legislative candidate no longer would be made "from funds of a committee comprised in part of personal funds or resources of a lobbyist." (Reg. 18572, subd. (a)(3).) Assuming the Central Committee is able to account for your contributions and returns that amount to you, you will be able to make decisions regarding contributions by the Central Committee.³

Informal Advice:⁴

Is a decision to support a broad-based campaign plan a decision to make a contribution?

To this question, you describe two scenarios, one in which the committee makes allotments of funds to individual clubs in certain cities, the use of which is up to the respective clubs, and a second scenario in which budgetary decisions regarding overall legislative race spending will be made. Because the inquiry into decisions such as these are understandably very fact specific, we can provide only informal guidance in the general areas you describe. We encourage you, should questions remain, to contact us again in the future when specific decisions are before you and advice may be given with the benefit of a clearer factual picture.

Generally speaking, however, we believe that funds that are given to respective city organizations with the party structure without indicating to whom and on whose behalf the funds are to be expended would not constitute a contribution, and therefore the decision by the Central Committee to make that allocation would not be a "decision to make a contribution." Where, however, the funds are earmarked for use in a specific

³ You do not ask, and we do not render an opinion on the question, whether and what effect contributions made by a lobbyist *in the future* will have on decisions by the committee to make contributions after the committee has already cleansed itself of the lobbyist's contributions once. This question raises policy considerations that should be addressed by the Commission. If you seek assistance regarding this question, you should request an opinion. (§ 83114, subd. (a).)

⁴ Informal assistance does not provide the immunity conferred by an opinion or formal written advice. (§ 83114; Reg. 18329, subd. (c)(3).)

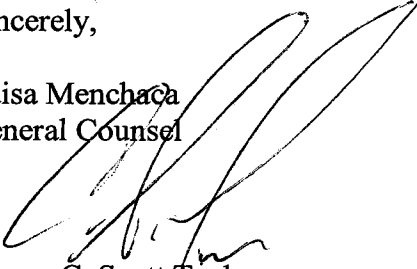
race, we believe the Central Committee has made a decision to make a contribution to the candidate in that race on whose behalf the Democratic Party is campaigning. This is especially true where, as you state in your request, the decision on whether and how much to allocate to a race is based on an evaluation of the merits of a given candidate and the likelihood of success of that candidate in the election. In these cases, it seems highly likely that the Central Committee has made a decision to make a contribution.

We caution once again, however, that the specific occasions of a given decision may yield a different conclusion. The key is the connection between the decisions to allocate resources and the use of those resources by any given candidate. The closer that nexus, the more likely it is that you have made a decision to make a contribution. Conversely, the more attenuated the connection the less likely you will be considered to have made a decision to make a contribution. In situations, for instance, where there is only one Democratic candidate for a given race and the Central Committee is deciding how much money to devote to that particular race, the Central Committee is in essence deciding, how much to contribute to that candidate.

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

Sincerely,

Luisa Menchaca
General Counsel



By: C. Scott Tocher
Counsel, Legal Division

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