



## FAIR POLITICAL PRACTICES COMMISSION

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September 2, 2003

James C. Harrison  
Remcho, Johansen & Purcell  
201 Delores Avenue  
San Leandro, CA 94577

**Re: Your Request for Advice  
Our File No. A-03-201**

Dear Mr. Harrison:

This letter is in response to your request for advice on behalf of the Democratic Governors' Association ("DGA") regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

May the Democratic Governors' Association make a contribution from its state general purpose committee to Californians Against the Costly Recall of the Governor ("CACR") if the general purpose committee has received contributions in excess of \$5,300 per calendar year per contributor?

### CONCLUSION

Yes. Because CACR is a ballot measure committee, contributions made to CACR are contributions used for purposes other than making contributions to candidates for elective state office."<sup>2</sup>

### FACTS

You represent CACR, a committee established by Governor Davis to oppose the recall. The Democratic Governors' Association – California Candidate Contribution Committee – is a state general purpose committee sponsored by the Democratic

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<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> All statutory references are to the Government Code, unless stated otherwise.

Governors' Association. The DGA would like to make a contribution from its state general purpose committee to Californians Against the Costly Recall of the Governor.

In your letter, you argue that the DGA should be permitted to raise unlimited funds for the purpose of making contributions to the Governor's anti-recall ballot measure committee.

### ANALYSIS

In your letter, you state that the DGA is a "state general purpose committee." A state general purpose committee is "a committee to support or oppose candidates or measures voted on in a state election, or in more than one county." (§ 82027.5, subd. (b).)

If a committee makes contributions to candidates for elective state office, then contributions received by DGA are limited to \$5,300 per calendar year per contributor. (§ 85303, subd. (a); Reg. 18545, subd. (a)(7).) Section 85303, however, generally states that a person may make unlimited contributions to a committee, such as DGA, *so long as* the contributions "are used for purposes other than making contributions to candidates for elective state office." (§ 85303, subd.(c).)

The answer to whether the exception of subdivision (c) of section 85303 applies, then, turns on whether a contribution received by DGA and contributed to CACR is a contribution "used for purposes other than making contributions to candidates for elective state office." (§ 85303, subd. (c).)

As stipulated in your letter, Governor Davis is a "candidate" by definition in the Act. (§ 82007 ("Candidate means... any officeholder who is the subject of a recall election."))

Examining CACR, we see that CACR might accurately be described as a committee controlled by the candidate. Section 82016 provides as follows:

"(a) 'Controlled committee' means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(b) Notwithstanding subdivision (a), a political party committee, as defined in Section 85205, is not a controlled committee."

The Commission has interpreted the definition of "controlled committee" broadly to include any significant participation by a candidate, his or her agent, or representatives of any other committee he or she controls in the actions of a committee. To determine

whether a candidate controls a committee, we look at the degree of the candidate's involvement in the committee's activities. The involvement of a candidate includes the involvement of his or her campaign committee and his or her agents. (*Davis Advice Letter*, No. I-90-173.)

Section 82016 describes two ways in which a committee is considered a controlled committee. First, the candidate and the committee may act jointly in making expenditures. Second, if the candidate (or his or her agents) has a significant influence on the actions or decisions of the committee, the candidate will be considered to control it.

Nevertheless, section 85315 permits the target of a recall drive and, if the drive is successful, the recall election, to form a committee to oppose the drive and election. (§ 85315, subd. (a).) The statute further provides that such a committee may be established "without regard to the campaign contributions limits set forth in this chapter." (*Id.*) Sections 85303 and 85315 are part of the campaign contribution limit scheme created by Article 3 of Chapter 5 of the Act. As a result, it appears that section 85315 provides that regardless of a target official's status as a candidate under section 82007, a committee established to oppose a recall election is not subject to limits. In this very limited circumstance, then, section 85315 does not subject such a recall committee to rules that otherwise might be applicable to state candidate committees.<sup>3</sup>

Moreover, under the Act, a recall falls within the definition of a "measure." Section 82043 of the Act defines "measure" as follows:

"'Measure' means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot."

Accordingly, the FPPC has usually analyzed recall elections following the rules applicable to ballot measures, rather than those applicable to candidate elections. (See, e.g., Staff Memo to Comm'n, 2/24/03, in re Recall Election Fact Sheet.) Earlier this year, staff advised the Commission that:

"Because recalls fall somewhere in-between a ballot measure and a candidate election, a statutory scheme could arguably classify them either way. [Fn. omitted.] Section 82043 of the Act, however, includes recalls within the definition of 'measure,' and the FPPC's interpretation necessarily proceeds under that framework. Accordingly, the FPPC has consistently advised that the contribution

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<sup>3</sup> In and of itself, we do not mean to suggest that section 85315 provides authority for exempting committees *other* than the target officer's recall committee from contribution limits which might otherwise apply by virtue of Chapter 5, Article 3. The discussion of section 85315 above pertains only to the notion that the Act treats the target officer's committee as something different in the special and unique circumstances of a recall election. (See, e.g., *Miller Advice Letter*, No. A-01-168.)

Accordingly, the FPPC has consistently advised that the contribution limits of the Act do not apply to proponents or opponents of a recall measure." (*Id.*)

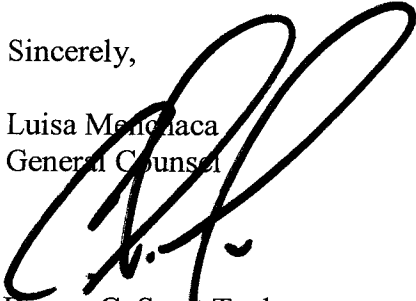
In addition, the Commission has advised that a candidate may control a ballot measure committee and that contributions to such candidate-controlled ballot measure committees are not subject to limits that otherwise might apply to a candidate's committees. (*Kopp* Advice Letters, Nos. A-97-390 and A-97-390a; *Olson* Advice Letter, No. A-89-363; *Leidigh* Advice Letter, No. A-89-170.) Also, when the Commission adopted regulation 18531.5, interpreting recall election requirements, the Commission required a committee (primarily formed to support or oppose the recall, including a targeted candidate's committee opposing a recall) to file quarterly campaign statements pursuant to section 84202.3, the reporting statute applicable to ballot measure committees. (See *Comment* to Reg. 18531.5.)

Taken as a whole, then, the Act treats recall committees established under section 85315 as something different than traditional candidate committees, in that contributions to such committees at times are not subject to the usual limitations applicable to candidates. By virtue, then, of the Act's characterization of a recall measure as a ballot measure question (section 82043), section 85315's exemption of a target officer's recall committee from the limits of Article 3, Chapter 5, and the historic treatment of ballot measure committees discussed above, we conclude that a contribution to CACR, *for the limited purposes of section 85303, subdivision (c)*, is not a "contribution[] to [a] candidate[] for elective state office." As a result, DGA is not making contributions to candidates for elective state office within the meaning of section 85303 when it makes contributions to CACR. We note, however, that contributions to DGA in excess of the \$5,300 contribution limit must be kept in a separate account pursuant to subdivision (e) of regulation 18531, enclosed.

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

Sincerely,

Luisa Mendonca  
General Counsel

  
By: C. Scott Tocher  
Counsel, Legal Division

Enclosure

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