



## FAIR POLITICAL PRACTICES COMMISSION

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March 2, 2004

Chris Modica, Treasurer  
California Tax Fighter's Coalition  
2361 Ventura Avenue  
Ventura, CA 93001

**Re: Your Request for Advice  
Our File No. A-04-022**

Dear Mr. Modica:

This letter is in response to your request on behalf of the California Tax Fighter's Coalition regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

May the California Tax Fighter's Coalition ("Coalition") receive contributions in excess of \$5,300 in a calendar year from various sources, including the father of a state candidate whom the committee plans to support, if the Coalition only makes independent expenditures in support of or opposition to state candidates, and contributions to ballot measures and local candidates, provided there are no local laws prohibiting such action?

### CONCLUSION

The Act does not limit the amount of contributions a recipient committee may receive from a single source to make independent expenditures, or to make contributions to ballot measure committees and local candidates unless a contributor acts as an agent of the state candidate which is supported by the committee.

### FACTS

The California Tax Fighter's Coalition intends to form a state general purpose recipient committee. You anticipate receiving contributions exceeding \$5,300 in a calendar year from a variety of sources in order to make independent expenditures for

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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.

mailings that would support or oppose a number of candidates for the state Legislature. Your committee will not make contributions to state candidates. The committee may, however, make contributions to candidates for county or city elective office, provided that such contributions are not in violation of any relevant local campaign finance laws. Your committee intends to solicit funds from a variety of sources, including the father of one of the candidates you intend to support.

### ANALYSIS

Section 82015 defines a contribution, in relevant part, as:

“...a payment, 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.

(b)(1) A payment made at the behest of a committee ... is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.”

Regulation 18215(a) defines the phrase “made for political purposes.” It states, in part, that:

“A payment is made for political purposes if it is:

- (1) 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; or
- (2) Received by or made at the behest of the following or any agent thereof:
  - (A) A candidate;
  - (B) A controlled committee;”

Regulation 18225.7(a) defines the phrase “made at the behest of.” It states, in part, that “made at the behest of” means:

“...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. Such arrangement must occur prior to the making of a communication described in Government Code Section 82031.” (A copy of the entire regulation is enclosed.)

Thus, payments received by the committee for political purposes, and payments made by the committee at the behest of a candidate or committee, or an agent of either, are contributions. An independent expenditure, however, is different in that it is:

“... made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is *not made to or at the behest* of the affected candidate or committee.” (Section 82031.)(Emphasis added.)

In addition, section 85500(b) provides additional clarification on when an expenditure is a contribution, and not an independent expenditure, to a candidate on whose behalf, or for whose benefit, the expenditure is made. Under section 85500(b), an expenditure is a contribution under the following circumstances:

- “(1) The expenditure is made with the cooperation of, or in consultation with, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.
- (2) The expenditure is made in concert with, or at the request or suggestion of, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.
- (3) The expenditure is made under any arrangement, coordination, or direction with respect to the candidate or the candidate’s agent and the person making the expenditure.”

Section 85303 restricts contributions a committee may receive “for the purpose of making contributions to candidates for elective state office.” There is no such restriction in the Act if a committee uses the contributions it receives to make independent expenditures only, or to make contributions to other candidates.<sup>2</sup> Likewise, there is no provision in the Act that would restrict a member of the family of a candidate for state elective office who is subsequently supported by a committee, from making contributions to it. However, if the family member of the candidate acts as an agent of the candidate or the candidate’s committee, as described in section 85500(b), the payments made by a committee in support of the candidate will be considered contributions and not

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<sup>2</sup> Please note section 85310(c) provides that “[a]ny payment received by a person who makes a communication” that identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, and that is disseminated, broadcast, or otherwise published within 45 days of an election, is subject to the limits in section 85303(b) “if the communication is made at the behest of the clearly identified candidate.” Currently, that contribution limit is \$26,600 per calendar year.

independent expenditures. Consequently, if the committee making the payment has received contributions of more than \$5,300 from a single source in a calendar year, the committee is prohibited from making a contribution to support the candidate for elective state office.

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

Sincerely,

Luisa Menchaca  
General Counsel



By: Kevin S. Moen, PhD  
Technical Assistance Division

Enclosure

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