



FAIR POLITICAL PRACTICES COMMISSION

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April 20, 2004

Lance H. Olson
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Re: Your Request for Advice
Our File No. A-04-045

Dear Mr. Olson:

This letter is in response to your request on behalf of the California Democratic Party for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Does section 84503 apply to the California Democratic Party ("CDP") when it makes coordinated expenditures with a primarily formed ballot measure committee for advertisements supporting or opposing a ballot measure?
2. If section 84503 applies, for purposes of determining the highest and second highest \$50,000 or more donor, may CDP look only to those donors whose contributions were deposited into the bank account from which the advertisement expenditures were made?
3. If section 84503 applies, what time frame should CDP use for determining the highest and second highest donors of \$50,000 or more?
4. If section 84503 applies, what does the term "chronological sequence" mean?
5. Does section 84506 apply to CDP when it makes independent expenditures for advertisements supporting or opposing a ballot measure?

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

6. If section 84506 applies; for purposes of determining the highest and second highest \$50,000 or more donor, may CDP look only to those donors whose contributions were deposited into the bank account from which the advertisement expenditures were made?

CONCLUSIONS

1. Yes.
2. No.
3. The CDP must use the time frame defining "cumulative contributions," which refers to the first day the statement of organization is filed.
4. For purposes of section 84503, "chronological sequence" means the two most recent contributors of identical amounts.
5. Yes.
6. No.

FACTS

The California Democratic Party ("CDP"), a general purpose committee, has registered with the Secretary of State. From this committee the CDP makes expenditures in support of and opposition to both state and local candidates and ballot measures. CDP has recently taken positions in opposition or support of various state ballot measures which appeared on the March primary election ballot. CDP expects it will similarly take such positions with respect to state ballot measures that are likely to qualify for the November general election ballot. CDP intends to publicize its positions with respect to its endorsements. The publication will likely include mass mailings or other "advertisements" as that term is used in Government Code § 85401. In some circumstances CDP intends to coordinate its advertisements with primarily formed ballot measure committees established to support or oppose those measures on which CDP has taken a position. In other circumstances, CDP will make independent expenditures in support or opposition of measures.

CDP has received in the past and is likely to receive in the future campaign contributions of \$50,000 or more. CDP maintains various campaign bank accounts into which contributions are deposited. For example, CDP maintains an account into which annual contributions of \$26,600 or less are deposited for the purpose of supporting state candidates ("candidate support account"). CDP also maintains various bank accounts which are regulated by the Federal Election Commission ("federal accounts"). Additionally, CDP maintains several other bank accounts governed by the Political Reform Act into which contributions in excess of \$26,600 are deposited. These latter accounts are used to fund various CDP programs and operations.

ANALYSIS

Government Code sections 84501 - 84510², added to the Act by Proposition 208, pertain to the disclosure of major funding sources for campaign advertising. Generally speaking, the statutes comprise two distinct sets of advertising disclosure rules. One set covers disclosure in political advertisements related to ballot measures. (§§ 84501-84504.) The second set addresses political advertising that is an independent expenditure paid for by a committee, whether the advertisement relates to a candidate or a ballot measure. (§ 84506.) Persons and committees are prohibited from creating or using committees that result in the avoidance of the disclosure of a committee's "major funding source." (§ 84505.) These sections present a complex statutory scheme, resulting in a "layering" of requirements.

Sections 84503, 84504, and 84506 require certain disclosures in advertisements. The first two statutes require a disclosure statement in ballot measure advertising. The third, section 84506, includes both ballot measure advertising and candidate advertising in its disclosure requirements. Different information is required in the disclosure statements, depending on which section applies.

Section 84503 requires a disclosure statement identifying any person whose cumulative contributions are \$50,000 or more. Subdivision (b) of that statute instructs that if there are more than two such donors, the committee is required to disclose only the highest and second highest donors. Again, this statute only applies to ballot measure advertising.

Another section to require a disclosure statement is 84506. This is the first section that seeks to govern both ballot measure advertising and candidate advertising. The common thread here is that this applies to broadcast or mass mailing advertisements, advocating the election or defeat of any candidate or ballot measure, funded by *independent expenditures*. This section adds yet another requirement to some advertising disclosures. "If the expenditure for a broadcast or mass mailing advertisement...is an independent expenditure, the committee...shall include on the advertisement the names of the two persons making the largest contributions to the committee making the independent expenditure. If an acronym is used to specify any committee names required by this section, the names of any sponsoring organization of the committee shall be printed on print advertisements or spoken in broadcast advertisements."

1. Does section 84503 apply to the California Democratic Party ("CDP") when it makes coordinated expenditures with a primarily formed ballot measure committee for advertisements supporting or opposing a ballot measure?

Section 84503 states "any advertisement" regarding a ballot measure must contain the requisite disclosure. Read alone, one may logically conclude that its intended scope is precisely that – to any advertisement by any committee. In adopting regulations

² All statutory references are to the Government Code, unless indicated otherwise.

interpreting the advertising statutes, the Commission considered in 2002 whether the language quoted above could be subject to a narrowing interpretation such that the scope only includes committees primarily formed to support or oppose ballot measures. In construing the plain language, the Commission determined that its requirements apply to any advertisement by any committee. As a result, section 84503 applies to CDP expenditures made in connection with advertisements supporting or opposing a ballot measure. Coordination with a primarily formed ballot measure committee does not affect the requirements of section 84503 on the CDP.

2. If section 84503 applies, for purposes of determining the highest and second highest \$50,000 or more donor, may CDP look only to those donors whose contributions were deposited into the bank account from which the advertisement expenditures were made?

The language of section 84503 refers to identification of “any person whose cumulative contributions are fifty thousand dollars” or more. The recipient of these contributions referred to in the statute can only be considered the “committee,” since that is the entity making the disclosure. (See § 84503, subd. (b).) Nowhere in the statute is any provision made for allowing a committee to segregate funds within its own accounting or banking system to lessen the measure of contributions to the committee. It may be said to be axiomatic that the purpose of the advertising disclosure statutes is to disclose the largest contributors to a given committee making the expenditure for the advertisements. In light of this fact, the purpose as well as the language of section 84503 does not allow CDP to look only to certain internal accounts for purposes of determining the disclosures required by section 84503.

3. If section 84503 applies, what time frame should CDP use for determining the highest and second highest donors of \$50,000 or more?

Section 84503 states that only those with “cumulative contributions” of \$50,000 or more need be disclosed in ballot measure advertisements. Section 84502, however, defines “cumulative contributions” as beginning the first day the committee’s statement of organization is filed under section 84101. Some recipient committees, such as CDP, have been in existence for many years. As your letter suggests, a literal application of the statute could result in the disclosure of large contributions made many years ago for reasons unrelated to the current advertisement for the current ballot measure. While the Commission is aware of the potential shortcomings created by the scheme’s language, the Commission in 2002 found no permissible basis for limiting the “look back” period as is done expressly in section 84506. Instead, section 84502 requires the CDP apply the term “cumulative contributions” as stated and look back to the “first day the committee’s statement of organization” is filed under section 84101 and ending “within seven days of the time the advertisement is sent to the printer or broadcast station.” (§ 84502.)

4. If section 84503 applies, what does the term “chronological sequence” mean?

Your fourth question identifies the use in section 84503 of the term, “chronological sequence.” Subdivision (b) of section 84503 requires disclosure of the

top two donors of \$50,000 or more. In the event two or more of the highest donors have contributed identical amounts, one must disclose the top two contributors in “chronological sequence.” That term could mean the two oldest contributions or two newest contributions to the committee. More recent contributions are more likely to be affiliated with a given ballot measure than older contributions. Therefore, we conclude that the purposes of the statute are best served by requiring disclosure of the two most recent contributors of identical amounts.

5. Does section 84506 apply to CDP when it makes independent expenditures for advertisements supporting or opposing a ballot measure?

Section 84506 is the first section that seeks to govern *both* ballot measure advertising and candidate advertising. The common thread in section 84506 is that this applies to broadcast or mass mailing advertisements, advocating the election or defeat of any candidate or ballot measure, funded by *independent expenditures*. This section adds yet another requirement to some advertising disclosures. “If the expenditure for a broadcast or mass mailing advertisement...is an independent expenditure, the committee...shall include on the advertisement the names of the two persons making the largest contributions to the committee making the independent expenditure. If an acronym is used to specify any committee names required by this section, the names of any sponsoring organization of the committee shall be printed on print advertisements or spoken in broadcast advertisements.”

Similar to section 84503 in Question 1, above, nothing in the language of section 84506 gives rise to the limiting construction you propose in your letter. The record in adopting regulations implementing the advertising disclosure statutes indicates that while the Commission is sympathetic to concerns about the shortcomings of the statutes, the Commission is without authority in certain circumstances to fashion a remedy through the regulatory process. In light of the clear language of the statute and lack of a foundation upon which to interpret the language in a narrowing fashion, section 84506 must be read broadly to apply to independent expenditures regardless of whether they are funded by primarily formed committees or not. As a result, the expenditures by CDP are subject to section 84506.

6. If section 84506 applies, for purposes of determining the highest and second highest \$50,000 or more donor, may CDP look only to those donors whose contributions were deposited into the bank account from which the advertisement expenditures were made?

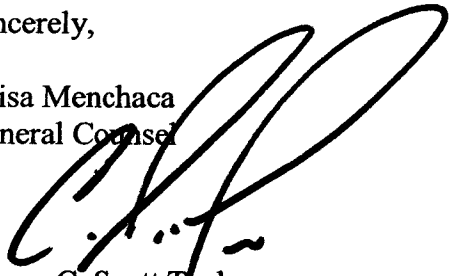
Much the same rationale as guides the interpretation of section 84503 in Question 2 guides the interpretation of section 84506 with respect to your question. The language of section 84506 refers to identification of “the names of the two persons making the largest contributions *to the committee* making the independent expenditure.” In the instant matter, the recipient of the contributions referred to in the statute is the CDP.³

³ While the Commission determined in 2002 that section 84504 could be limited to primarily formed ballot measure committees, the Commission did not extend that analysis to sections 84503 and 84506.

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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