



## FAIR POLITICAL PRACTICES COMMISSION

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July 23, 2004

Steven G. Churchwell  
Livingston & Mattesich  
1201 K Street, Suite 1100  
Sacramento, CA 95814-3938

**Re: Your Request for Advice  
Our File No. A-04-113**

Dear Mr. Churchwell:

This letter is in response to your request on behalf of Californians Against Government Run Healthcare ("CAGR") for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Are a trade association and its sponsored "Issues PAC" considered separate donors for purposes of the "top two" advertising disclosure requirement of section 84503?
2. If two contributors have given the second highest amount to the committee, and the amount is \$50,000 or more, does one disclose in the advertisements the names of the more recent contributor or the more ancient?

### CONCLUSIONS

1. Yes.
2. For purposes of section 84503, "chronological sequence" means the two most recent contributors of identical amounts.

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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.

## FACTS

Californians Against Government Run Healthcare is a proponent-controlled ballot measure committee that placed a referendum regarding SB 2 (Burton) on the November 2004 statewide ballot. The committee plans to begin a major advertising effort in a few weeks. CAGRH has many donors who have contributed \$50,000 or more. To date, the top donor is the California Restaurant Association, with the second largest donor being the California Restaurant Association Issues PAC.

The current name of the committee is:

“Californians Against Government Run Healthcare, a Committee Against Proposition \_\_\_\_\_, with major funding by restaurants and retailers, including the California Restaurant Association and the California Restaurant Association Issues PAC.”

If you were to run an ad today, this is the name you would use.

The California Restaurant Association was founded in 1929 as the Southern California Restaurant Association (the name changed to the current version in 1982). It was formed as a nonprofit trade association/business league and is exempt from taxation under section 501(c)(6) of the Internal Revenue Code.

The California Restaurant Association Issues PAC was incorporated in 1990 as a nonprofit “social welfare” organization and is a sponsored recipient committee of the California Restaurant Association. It is exempt from taxation under 501(c)(4) of the Internal Revenue Code.

You provided additional information at this office’s request. First, there is no common direction and control between the Association and the Issues PAC. Two of the Trustees of the Issues PAC were elected to the CRA’s Board of Directors for 2004. There are 14 trustees of the Issues PAC and 39 directors of the Association.

Second, the funds contributed by the Association came entirely from the sale of assets of the Association’s or the interest earned on the proceeds of the sales. No part of any contributions was derived from member dues.

## ANALYSIS

### *Question 1:*

You ask whether the Issues PAC and the Association are considered separate donors for purposes of the advertising disclosure statutes. (§§ 84501-84511.) In looking to the advertising disclosure scheme, we receive no guidance on the definition of the term “donor.” The essence of your question is whether the relationship between the two

entities you identify is of such a nature that they are considered one in the same, or whether they are sufficiently independent to constitute separate entities. Therefore, we turn to other provisions in the Act to discern whether general principles in the Act shed light on how the definition of “donor” may apply in the circumstances you describe.

Possibly the most closely analogous concept is found in regulation 18428, which provides for the campaign reporting rules of “affiliated entities.” If two or more entities are affiliated, their contributions are aggregated. Regulation 18428, subdivision (a), states:

“(a) The combined activities of affiliated entities (see Government Code section 85311; 2 Cal. Code Regs. section 18225.4) shall be used to determine whether a monetary threshold in the Political Reform Act or these regulations has been met or exceeded.”

Therefore, we turn to section 85311, which defines “affiliated entities.”<sup>2</sup> The hinge on which the determination is made is shared direction and control between or among entities. Thus, for purposes of contribution limits, the statute states:

“¶...¶

“(b) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

“(c) *If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.*

“(d) Contributions made by entities that are majority owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their decisions to make contributions.” (Italics added.)

In the circumstances you describe, the Issues Pac and the Association are two different corporations. While two members of the 14-member governing body of the PAC are also members of the 39-member governing body of the Association, there is no common direction and control between the two bodies – neither entity is controlled by a majority of the same persons. Moreover, the funds which comprise the contributions of each entity derive from different sources. As a result, and limited to the specific facts of

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<sup>2</sup> Both regulation 18428 and section 85311 are based on two 1976 opinions, *In re Lumsdon* (1976) 2 FPPC Ops. 140, and *In re Kahn* (1976) 2 FPPC Ops. 151.

this case, we conclude that the Issues PAC and the Association are separate donors for purposes of the advertising disclosure requirements.<sup>3</sup>

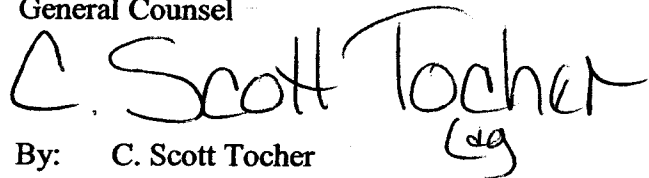
*Question 2:*

Your 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 have advised that the purposes of the statute are best served by requiring disclosure of the two most recent contributors of identical amounts. (*Olson Advice Letter, No. A-04-045.*)

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

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink that reads "C. Scott Tocher" with a stylized flourish at the end.

By: C. Scott Tocher  
Counsel, Legal Division

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<sup>3</sup> We note that this advice is necessarily fact-dependent. In other circumstances, section 84505 may apply. Section 84505 states::

"In addition to the requirements of Sections 84503, 84504, and 84506, the committee placing the advertisement or persons acting in concert with that committee shall be prohibited from creating or using a noncandidate controlled committee or a nonsponsored committee to avoid, or that results in the avoidance of, the disclosure of any individual, industry, business entity, controlled committee, or sponsored committee as a major funding source."