



FAIR POLITICAL PRACTICES COMMISSION

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July 27, 2004

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

Re: **Your Request for Advice**
Our File No. A-04-143

Dear Mr. Churchwell:

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

QUESTION

May association funds from CLCA's membership account be transferred to CLCA's campaign committee, LandPAC?

CONCLUSION

Yes. Nothing in the Act prohibits CLCA from transferring funds from its membership account to its LandPAC account for the purpose of making contributions. CLCA will not qualify as a committee by virtue of these transfers. However, if the transferred funds are from membership dues, the funds must be attributed to the members on a pro rata basis. No single member may give more than \$5,300 to LandPAC for the purposes of making contributions to state candidates. On the other hand, if the transfer to

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

LandPAC consists of other funds, other than membership dues, the association cannot transfer (in the aggregate) more than \$5,300 per year.

FACTS

California Landscape Contractors Association ("CLCA") is a sponsored committee known as LandPAC. LandPAC raises approximately \$20,000 per year from the members of CLCA. In some cases, CLCA may wish to contribute more than the amount held in LandPAC's bank account. In such situations, the CLCA would like to transfer association funds to LandPAC for the purposes of making contributions.

ANALYSIS

Campaign Reporting

The Act requires committees to file campaign statements disclosing the contributions the committee receives. (Sections 84200, 84211.) A person qualifies as a "committee" if the person receives contributions totaling \$1,000 or more in a calendar year. (Section 82013(a).) A "contribution" is defined as a payment made for political purposes for which full and adequate consideration is not received. (Section 82015(a); regulation 18215(a).) A payment is made for political purposes if 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; or if it is received by or made at the behest of:

"An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union or corporation."
(Regulation 18215(a)(2)(D).)

We have advised that if a union uses money received in the form of membership dues to make contributions to candidates and committees, the funds used are considered "contributions" from the members to the union. (Regulation 18215(b)(1); *Barringer* Advice Letter, No. A-85-004.) As noted above, when contributions of \$1,000 or more are received a recipient committee is formed. (Section 82013 (a).) However, when an association such as the CLCA, has a sponsored committee, membership dues paid to the association and used for political purposes, would not trigger the association as a committee itself, so long as the criteria in regulation 18419(c) are met.

"(1) The sponsor does not directly or indirectly make or receive a sufficient amount of contributions or independent expenditures, other than those in support of its sponsored committee, to satisfy the thresholds set forth in Government Code section 82013. A sponsoring organization makes contributions and expenditures in support of its sponsored

committee when it provides the committee with member contributions or money from its treasury, with the exception of establishment or administrative costs (see 2, California Code of Regulations section 18215(c)(16));

“(2) The sponsored committee reports all contributions and expenditures made in support of the committee by the sponsor, its intermediate units, and the members of such entities. With respect to a member contribution which is channeled through the sponsor or an intermediate unit, the member is the contributor;

“(3) The sponsored committee reports as an intermediary the sponsor and, if required by paragraph (f) of this regulation, any intermediate unit, as an intermediary, if the sponsor or intermediate unit directly or indirectly provides the committee with \$100 or more in member contributions regardless of whether any member for whom the sponsor or intermediate unit acts contributed \$100 or more; and

“(4) A responsible officer of the sponsor, as well as the treasurer of the sponsored committee, verifies the committee’s campaign statement pursuant to Government Code section 81004.”

Assuming these criteria are met, contributions from CLCA to LandPAC will not result in CLCA becoming a committee in its own right. (See also, *McCall* Advice Letter, No. A-95-085.) With respect to member contributions which are channeled through the sponsor, the individual member is the contributor. (Regulation 18419(c)(2).) In addition, the committee must report as an intermediary the sponsor if the sponsor “directly or indirectly provides the committee with \$100 or more in member contributions regardless of whether any member for whom the sponsor [or intermediate unit] acts contributed \$100 or more” on its campaign disclosure statements. (Regulation 18419(c)(3).)

Proposition 34

While you have not asked specifically about the contribution limits of Proposition 34, you should be aware that section 85303(a) could apply to donors to LandPAC in some circumstances. Section 85303(a) provides:

“(a) A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than five thousand dollars (\$5,000) per calendar year for the purpose of making contributions to candidates for elective state office.”²

² The threshold was adjusted from \$5,000 to \$5,300 for the current calendar year, and will be readjusted effective January 1, 2005, pursuant to regulations 18544 and 18545.

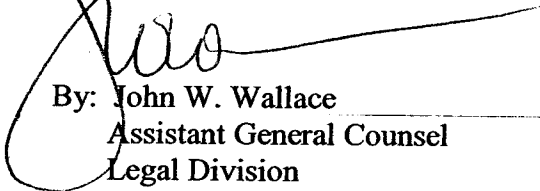
CLCA's members are all considered "persons" within the meaning of the Act. (Section 82047.) Thus, the aggregate of contributions given to LandPAC and attributed to any one member of CLCA, for the purpose of making contributions to candidates for elective state office, may not exceed \$5,300 in a calendar year.³

On the other hand, if the transfer to LandPAC is from funds of CLCA, other than membership funds, and are made for the purpose of making contributions to candidates for elective state office, then the limit in section 85303(a) would apply to CLCA's transfers and they could not exceed \$5,300 in a calendar year.

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

Sincerely,

Luisa Menchaca
General Counsel



By: John W. Wallace
Assistant General Counsel
Legal Division

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³ Aggregation applies with respect to contributions made by any one member separate from his or her member contribution.