



## FAIR POLITICAL PRACTICES COMMISSION

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November 21, 2005

Dominick V. Spatafora  
Legal Consultant  
NORCAL  
560 Davis Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94111

**Re: Your Request for Advice  
Our File No. A-05-208**

Dear Mr. Spatafora:

This letter is in response to your request for advice on behalf of NORCAL Mutual Insurance Co. regarding campaign rules under the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Is it permissible under the Act for NORCAL Mutual Insurance Co. to offer its employees paid time off in return for their contributions to its political action committee?

### CONCLUSION

The Act does not prevent NORCAL from offering its employees paid time off in return for their contributions to NORCAL's political action committee. However, in transactions under the program you describe, the employees would be regarded as intermediaries for the true contributor, which would be NORCAL. Both the employees and the recipient committee would be required to disclose this relationship.

### FACTS

NORCAL Mutual Insurance Company ("NORCAL") created a California political action committee last year called the MICRA California PAC (the "PAC"). Half of the PAC's activities are dedicated to education and the other half to fundraising. In order to generate interest and energy around your PAC you may implement a program that would reward NORCAL employees with paid time off ("PTO") if they contribute to

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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.

the PAC. Thus for example, employees who contribute \$100 to the PAC might get a half-day off, and those who contribute \$150 might receive a full day of PTO.

### ANALYSIS

The term "contribution" is defined at section 82015 and regulation 18215 to include "any payment made for political purposes." (Regulation 18215(a).) "Payment" is defined at section 82044 to include a "transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." Thus any incentive offered by NORCAL for a contribution to the PAC, if it is a tangible or intangible thing of value, might also be classified as a "contribution" to the PAC since it would be a payment made for a political purpose – namely, to generate another contribution to the PAC.<sup>2</sup>

However, we do not believe that it is appropriate under these facts to classify the PTO incentive as a contribution to the PAC. Under the incentive program you describe, the PAC would *not* receive two separate contributions each time an employee takes advantage of the program. The PAC would simply receive a payment in money from a NORCAL employee, who in turn would be reimbursed by PTO from NORCAL, a non-monetary payment used as a medium of exchange between NORCAL and the employee. We conclude therefore that the employee's role in the transaction is that of an intermediary, who delivers a monetary contribution to the PAC in exchange for PTO from NORCAL.<sup>3</sup>

The Act does not prohibit the kind of transaction you propose. However, the Act does require that the true source of a contribution be properly identified and reported (section 84301) and, more particularly, section 84302 provides that no contribution be presented by an intermediary without full and accurate disclosure of the parties involved in the transaction. Regulation 18432.5(b) and (c) outlines the reporting obligations of the intermediary and the recipient, as follows:

(b) Any person who qualifies as an intermediary for the making of a contribution shall disclose to the recipient of the contribution both his or her own full name and street address, occupation, and the name of his or her employer, if any, or his or her principal place of business if he or she is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the contributor.

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<sup>2</sup> The paid service of an employee is presumptively a thing of value which NORCAL would forego in exchange for a monetary contribution to the PAC.

<sup>3</sup> Regulation 18423, which treats payments for personal services as contributions and expenditures, does not govern incentive plans whose end product is monetary contributions to a specific recipient.

(c) The recipient of the contribution shall include in his or her campaign statement the name of the intermediary and other information disclosed pursuant to Government Code Section 84302 and subdivision (b) of this section, if the recipient knows or has reason to know that a contribution is made by an intermediary.

Finally, because NORCAL would be regarded as the true contributor in each of the transactions effected under the incentive plan you describe, NORCAL should be mindful of the contribution limit prescribed at section 85303(a), which provides that:

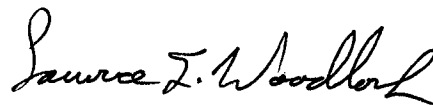
(a) A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than five thousand dollars (\$5,000) per calendar year for the purpose of making contributions to candidates for elective state office.<sup>4</sup>

To recapitulate, nothing under the Act prohibits the incentive program you describe, but it is necessary to recognize that the true contributor in such transactions would be NORCAL, and to fully and accurately account for the payments actually received by the PAC. Section 84302 and regulation 18432.5 (quoted above) detail the disclosure and reporting obligations that both the involved employees and the recipient PAC must satisfy. Any NORCAL contributions to the PAC that are made for the purpose of making contributions to candidates for elective state office may not exceed \$5,600, in total, during any calendar year.

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

Sincerely,

Luisa Menchaca  
General Counsel



By: Lawrence T. Woodlock  
Counsel, Legal Division

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<sup>4</sup> This amount is adjusted biennially for inflation. The current limit under this section is \$5,600 (see regulation 18545(a)(7).) Note too that NORCAL would incur additional reporting obligations as a "major donor" under section 82013(c), if its total contributions reached \$10,000 within a calendar year.