



## FAIR POLITICAL PRACTICES COMMISSION

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February 27, 2008

Louie A. Lujan  
Mayor, City of La Puente  
15900 E. Main Street  
La Puente, CA 91744

Re: Your Request for Informal Assistance  
**Our File No. I-08-010**

Dear Mr. Lujan:

This letter responds to your request for advice regarding the conflicts-of-interests provisions of the Political Reform Act (the "Act").<sup>1</sup> You should not construe this letter as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).) In addition, we base this letter on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Please note that we base our advice solely on the provisions of the Act. Because you seek general guidance, we provide you with informal assistance.<sup>2</sup>

### QUESTIONS

1. May you keep the contribution you accepted from the Coalition for a Safe and Clean Environment ("CSCE"), a Political Action Committee ("PAC")?
2. Are there restrictions on your becoming a board member for CSCE or on your fundraising for CSCE?

### CONCLUSIONS

1. Yes. The Act does not prohibit your taking the contribution.
2. Yes. If a local candidate is a board member of a committee, the committee is presumed to be that candidate's controlled committee. Any funds you raise as for CSCE

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not offer the immunity provided by a Commission opinion or formal written advice. (Regulation 18329(c)(3) copy enclosed.)

as a board member would be considered contributions to you. If you raise money for CSCE as you are now, with no CSCE position or authority over its expenditures, there are no restrictions. (See discussion below).

### **FACTS**

You are the City of La Puente's mayor and a city councilmember. You have been assisting CSCE, a statewide PAC, in its fundraising efforts. In this capacity, you have sought contributions for them, and offered advice about various elections and candidates. During our telephone conversation on January 31, 2008, you stated that the City of La Puente does not place contribution limits on local candidates. You also said that, though the CSCE board has not yet been assembled, the members would volunteer, not receiving compensation for their participation.

### **ANALYSIS**

#### **Contribution from CSCE to your campaign**

The Act defines a contribution 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." (Section 82015(a).)

You received a contribution from CSCE. The Act does not prohibit a local candidate from receiving contributions from state political committees with which he or she associates. If, however, any person donates to CSCE and earmarks that amount to be used as a contribution to you, that amount is considered a contribution to your campaign from the person who earmarked the payment and you must report that person as the true source of the contribution. (Section 84302.)

#### **Fundraising for CSCE**

There are no restrictions on your fundraising for CSCE as a local candidate. If, however, you become a member of the board of directors or you have significant influence over the committee's actions, and CSCE becomes your controlled committee, any contributions made to CSCE will be considered contributions to your campaign by way of your controlled committee. (See discussion below.)

#### **Your position on the board of directors**

##### **a. Controlled Committee**

The Act defines a controlled committee as "a committee that is controlled directly or indirectly by a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she control has a significant influence on the actions or decisions of the committee." (Section 82016(a).) The Commission has, in past letters, interpreted "controlled committee" broadly to include any significant participation by a candidate, his or her agent, or representatives of any other committee he or she controls. (See *e.g.*, *Kopp Advice Letter*,

No. A-97-108, *Higdon* Advice Letter, No. I-94-189.) Section 82016 describes two ways in which a general purpose committee may become a controlled committee.

First, the candidate might exert significant influence on the actions or decisions of the committee. For example, where a candidate is a voting member of a committee's leadership, such as the board of directors, he or she is presumed to be a controlling candidate because the candidate probably exercises significant influence on the actions or decisions of the committee. (*Leidigh* Advice Letter, I-92-547; *Ferguson* Advice Letter, No. A-86-044.)

Second, the candidate and the committee may act jointly in making expenditures. Thus, coordinating with the committee in making expenditures may result in the candidate "controlling" the committee. Additionally, developing or implementing strategy with the committee would constitute control. (*Leidigh* Advice Letter, *supra*, *Madden* Advice letter, No. A-85-197.)

While attending fundraising activities and assisting in fundraising may be a factor considered in determining whether the committee is controlled by the candidate, those activities in themselves would not constitute "control." (*Leidigh* Advice Letter, *supra*, *Madden* Advice Letter, *supra*.)

Thus, should you become a member of the board of directors for CSCE, depending on your role in the organization, it is possible that CSCE will become your controlled committee. You have not provided specific facts regarding the potential board of directors and its duties. When you know more about how the board will operate, you are welcome to make another inquiry.

#### **b. One Bank Account Rule**

The Act allows candidates to have one campaign bank account and one controlled committee for each office the candidate seeks. (Section 85201.)

The interplay between the one bank account rule of state law and the officeholder expense provisions of local jurisdictions is discussed in the *Hicks* Advice Letter, No. I-99-120 (copy enclosed). As described in the *Hicks* letter, the one bank account rule is currently interpreted to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each specific election. Thus, despite the one bank account rule, a candidate may have numerous bank accounts/committees open simultaneously if the candidate keeps a bank account/committee from a previous election open and establishes bank accounts/committees for future elections.

In addition to a committee for an election, the Commission has determined that a candidate may control a ballot measure committee (*Karpel* Advice Letter, No. A-93-356 and *Olson* Advice Letter, No. A-89-363), as long as the committee does not make contributions to support or oppose candidates, including the candidate controlling the ballot measure committee.<sup>3</sup> (*Weems* Advice Letter, No. A-91-448.) If CSCE is a general

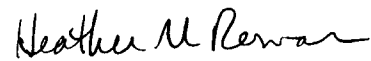
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<sup>3</sup> Effective January 2008, local candidates can control legal defense committees. (See Section 85304.5.)

purpose committee,<sup>4</sup> however, CSCE being your controlled committee would violate provisions of the Act.

Sincerely,

Scott Hallabrin  
General Counsel



By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl

Enclosures

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<sup>4</sup> A general purpose committee is a committee that is formed or exists primarily to support or oppose more than one candidate or ballot measure. (Section 82127.5.)