



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 6, 2016

Savith Iyengar
Deputy City Attorney
Office of the City Attorney
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704

Re: Your Request for Advice
Our File No. A-16-171

Dear Mr. Iyengar:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Are fees charged to a contribution by a vendor or collection agent when a contribution is made electronically included as a part of the contribution?
2. When is a contribution made through an electronic payment service like PayPal or Square Cash "received" by a committee? Is an electronic contribution reportable if it is rejected by the committee, and the funds are never transferred to the committee?

CONCLUSIONS

1. Yes. The entire amount authorized by the contributor, including any amount charged by the vendor or collecting agent, is the amount of the contribution under Regulation 18421.3.
2. The contribution is "received" on the date the vendor or collection agent like PayPal or Square Cash obtains possession or has control of the debit/credit account information under Regulation 18421.1. If an electronic contribution is declined by a committee, it need not be reported if it is rejected prior to the closing date of the campaign statement on which the contribution would otherwise be reported.

¹ 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.

FACTS

There are fundraising services which process credit card contributions made via the Internet that charge a processing fee, which is paid by the contributor. You have indicated that several of these Internet based fundraising service providers do not disclose the processing fee to the committee receiving the contribution. The recipient committee only sees that they have received a contribution, and not how much the contributor paid the service to process that contribution.

Electronic payment services like PayPal and Square Cash allow a payer to cancel a payment up until the moment it is "accepted." Until that time, the funds are "unclaimed" and the contributor can cancel the contribution. The payee may also elect to reject an unclaimed payment. In the past, committees have rejected pending contributions while still unclaimed, because the amounts exceeded the local \$250 contribution limit. By cancelling the payment, the committees rejected the attempted payment, and therefore never took possession or control of the over the limit contribution.

ANALYSIS

Processing Fees

The Act contains disclosure and recordkeeping requirements with respect to contributions and it prescribes the manner in which contributions of \$100 or more may be made. (Section 84200 et seq.; and Section 84300(c).) Under the relevant provisions of the Act, candidates and committees may raise contributions over the Internet, as long as the Act's disclosure and recordkeeping requirements are met. (Section 84300.) Thus, committees may use the vendors or collecting agents where contributors use their credit cards as the means of payment, provided that the procedure complies with the disclosure provisions of the Act, as described below.

Regulation 18421.3(a) provides, in relevant part, that the "entire amount authorized by the contributor is the amount of the contribution. Any amounts deducted or charged by the vendor or collecting agent are deemed to be expenditures from the campaign bank account at the time the fees are deducted or charged."

For credit card transactions, the entire amount charged to each contributor's credit card is the amount of the contribution. The committee should not subtract any fees retained or charged by the credit card company. As such, the "contribution" that would need to be disclosed as received by the committee is the total amount of the payment made to the vendor or collecting agent by the contributor.

The service fee charged or retained by the vendor or collecting agent is considered an expenditure of the committee. Therefore, any amounts charged or withheld by the vendor or collecting agent must be reported by the committee as expenditures at the time the fees are deducted or charged.

Any vendor or collecting agent whose services are utilized by a committee must provide information concerning the amount charged for each contribution made, so that the committee may accurately disclose the total amount of each contribution received, as well as expenditures made.

In addition, the committee receiving such contributions would need to know the amounts of any fees charged by the vendor or collecting agent to ensure that no over the limit contributions are received or accepted.

Receipt of Contributions

Generally, a contribution that has been received must be reported on the candidate's or committee's campaign statement. (Section 84211 et. seq.) For reporting purposes, Regulation 18421.1(e) sets forth when a monetary contribution is received. It states, in relevant part, that

...[A] monetary contribution made through wire transfer, credit card transaction, debit account transaction or similar electronic payment option (including those made via the Internet) is 'received' on the date the candidate or committee, or the agent of the candidate or committee, obtains possession or has control of the debit/credit account information or other payment information by which the contribution is made, or on the date the candidate or committee, or the agent of the candidate or committee, obtains possession or has control of the funds, whichever is earlier.

Thus, the date a vendor like PayPal and Square Cash, as an agent of the committee, "obtains possession or control" of the payment information or the funds, whichever is earlier, is the date that the committee receives the contribution.

There is a narrow exception to the general rule requiring reporting of contributions received. Section 84211(q) provides that a contribution need not be reported and is not deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.


Additionally, Section 84203(c), regulates the reporting of returned "late contributions," which need not be reported and are not deemed accepted if they are not cashed, negotiated, or deposited and are returned to the contributor within 24 hours of receipt. Late contributions are those received during the 90 days before or on the date of the election where the candidate or measure will be voted on. (Section 82036.)

When a committee rejects a pending contribution, either before the closing date of the campaign statement on which the contribution would otherwise be reported, or within 24 hours of receipt in the case of late contributions, the electronic contribution would likewise be deemed not accepted and would not need to be reported.

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

Sincerely,

Hyla P. Wagner
General Counsel

By: 
Zachary W. Norton
Senior Counsel, Legal Division

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