



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 15, 2019

Melissa Barton
Government Relations Program Coordinator
American Institute of Architects, California Council
1303 J Street, Suite 200
Sacramento, CA 95814

Re: Your Request for Informal Assistance¹
Our File No. I-18-142

Dear Ms. Barton:

This letter responds to your request for advice regarding the campaign reporting provisions of the Political Reform Act (the "Act").² Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice. Because your question is general in nature, we are treating your request as one for informal assistance.³

QUESTIONS

1. If the AIACC makes a payment from member dues collected to its sponsored committee, CalcPAC, would AIACC become a separate committee?
2. Would the AIACC's dues-paying members' payments to CalcPAC through the AIACC be considered earmarked contributions? If dues are not earmarked by the AIACC's dues-paying members, who is the source of those contributions?
3. What contribution limits, if any, apply to the AIACC's potential contribution of a portion of its dues revenue to CalcPAC?

¹ Please note this letter is a corrected version of the letter originally issued on February 26, 2019, which contained an error with respect to Section 85303.

² 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.

³ Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSIONS

1. The AIACC could become a separate committee as discussed below.
2. Under the facts you have provided, AIACC's payments from member dues to CalcPAC are not earmarked contributions at this time. The sources of contributions collected by AIACC are its dues paying members and the sources of contributions passed by AIACC to CALcPAC are the dues paying members regardless of whether the funds are earmarked.⁴
3. Section 85303 prohibits a person from making a contribution to a committee of more than \$7,800 per calendar year for the purpose of making contributions to candidates for elective state office.

FACTS

The American Institute of Architects California Council ("AIACC") is an association of individuals in California with more than 11,000 members including licensed architects, emerging professionals, and allied partners in design. The AIACC advocates for its members and for improving the quality of the built environment. The AIACC is exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code because it is a membership organization described in Section 501(c)(6) of that code. The AIACC sponsors the California Architects for Livable Communities Political Action Committee ("CalcPAC").

AIACC members pay dues to the AIACC, and the AIACC is considering contributing a portion of its dues revenue to CalcPAC, the amount at this time is unknown. Those AIACC members' dues are not subject to any agreement regarding their use to make a subsequent contribution to another specifically identified recipient. At some point in the future AIACC may seek agreements from its members regarding the use of member dues for contributions to other committees. At this time any subsequent contribution of these funds by CalcPAC to support a particular state ballot measure or candidate will be contingent on a future determination by the AIACC to support that state ballot measure or candidate.

You are seeking guidance relating to the AIACC's potential contribution of a portion of its dues revenue to the CalcPAC.

ANALYSIS

If the AIACC pays a portion of its member dues revenue to CalcPAC, would the AIACC itself be a "committee" pursuant to Section 82013(a) and would the transfer of dues be considered earmarked contributions? If dues are not earmarked by the AIACC's dues-paying members, who is the source of those contributions?

⁴ You have stated that the CalcPAC has made no decisions as to how it plans to use the member funds it will receive at this time. Should AIACC or CalcPAC seek to collect earmarked member funds or contribute earmarked member funds to another committee at some point in the future, please seek further advice as to reporting requirements and applicable contribution limits for those funds. Section 85704(b) provides guidance on when a contribution may become earmarked.

Definition of Committee Under the Act

Section 82013 provides that a “committee” means, any person⁵ or combination of persons who receive contributions totaling two thousand dollars (\$2,000) or more in a calendar year, or make independent expenditures totaling one thousand (\$1,000) or more in a calendar year, or make contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

A “sponsored committee” is a committee, other than a candidate controlled committee that has one or more sponsors. Any person, (except a candidate, proponent, or other individual) may sponsor a committee. A person sponsors a committee if any of the following apply:

- (1) The committee receives 80 percent or more of its contributions either from the person or from the person’s members, officers, employees or shareholders;
 - (2) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers or employees;
 - (3) The person provides, alone or in combination with other organizations, all or nearly all of the administrative services for the committee; or
 - (4) The person sets, alone or in combination with other organizations, the policies for soliciting contributions or making expenditures of committee funds.
- (c) A sponsor that is a multipurpose organization, as defined in subdivision (a) of Section 84222, and that makes contributions or expenditures from its general treasury funds shall comply with Section 84222.

(Section 82048.7(b) and (c); also see Regulation 18419.)

Regulation 18419(c) provides that a sponsor itself is not a committee within the meaning of Section 82013 if all of the following criteria are satisfied:

- (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 [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 [Regulation] 18215(c)(16));

⁵ “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

(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 [Section] 81004.

With respect to member contributions that are channeled through a sponsor, the individual dues paying 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).)

Provisions Applicable to Multipurpose Organizations

Section 84222 defines "multipurpose organization" as an organization described in Sections 501(c)(3) to 501(c)(10), inclusive, of the Internal Revenue Code and that is exempt from taxation under Section 501(a) of the Internal Revenue Code. This includes trade associations and professional associations. The AIACC is a multipurpose organization under the Act.

Section 84222 defines when multipurpose organizations qualifies as a recipient committee under Section 82013(a) and establishes campaign reporting requirements for multipurpose organizations that are actively spending in state and local elections. Section 84222(c) provides that a multipurpose organization is a recipient committee within the meaning Section 82013(a) only under one or more of the following circumstances:

(1) The multipurpose organization is a political committee registered with the Federal Election Commission, except as provided in subdivision (a) of this section, or a political committee registered with another state, and the multipurpose organization makes contributions or expenditures in this state in an amount equal to or greater than the amount identified in subdivision (a) of Section 82013.

(2) The multipurpose organization solicits and receives payments from donors in an amount equal to or greater than the amount identified in

subdivision (a) of Section 82013 for the purpose of making contributions or expenditures.

(3) The multipurpose organization accepts payments from donors in an amount equal to or greater than the amount identified in subdivision (a) of Section 82013 subject to a condition, agreement, or understanding with the donor that all or a portion of the payments may be used for making contributions or expenditures.

(4) The multipurpose organization has existing funds from a donor and a subsequent agreement or understanding is reached with the donor that all or a portion of the funds may be used for making contributions or expenditures in an amount equal to or greater than the amount identified in subdivision (a) of Section 82013. The date of the subsequent agreement or understanding is deemed to be the date of receipt of the payment.

(5) The multipurpose organization makes contributions or expenditures totaling more than fifty thousand dollars (\$50,000) in a period of 12 months or more than one hundred thousand dollars (\$100,000) in a period of four consecutive calendar years.

(A) A multipurpose organization shall not qualify as a committee within the meaning of subdivision (a) of Section 82013 pursuant to this paragraph if the multipurpose organization makes contributions or expenditures using only available nondonor funds. A multipurpose organization that makes contributions or expenditures with nondonor funds shall briefly describe the source of the funds used on its major donor or independent expenditure report.

(B) For purposes of this paragraph, “nondonor funds” means investment income, including capital gains, or income earned from providing goods, services, or facilities, whether related or unrelated to the multipurpose organization’s program, sale of assets, or other receipts that are not donations.

Does the AIACC Qualify as a Recipient Committee Under Section 84222?

For purposes of this analysis the determinative question is whether AIACC qualifies as a recipient committee under Section 84222. If the AIACC does not qualify as a recipient committee under 84222, the AIACC will not be considered a separate committee from CALcPAC so long as AIACC meets the criteria for being a sponsor provided under Section 82048.7 cited above and AIACC satisfies all of the criteria found in Regulation 18419(c). With respect to member contributions that are channeled through AIACC as a sponsor, the individual dues paying member is the contributor. (Regulation 18419(c)(2).) In addition, the CALcPAC must report AIACC as an intermediary if AIACC “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).)

Alternatively, if AIACC qualifies as a recipient committee under Section 84222, it qualifies as a separate committee from CALcPAC and must report separately except as provided in Section 84222(f), which permits a multipurpose committee to report on its sponsored statement if the committee "is a membership organization, that makes all of its contributions and expenditures from funds derived from dues, assessments, fees, and similar payments that do not exceed ten thousand dollars (\$10,000) per calendar year from a single source."⁶

More specifically, you have asked about AIACC providing existing membership dues to CALcPAC that have not previously been designated for a political purpose as well as providing future membership dues to CALcPAC specifically designated for a political purpose. In regards to these questions, the AIACC will qualify as a recipient committee under Section 84222 if it solicits or receives contributions of \$2,000 or more from members specifically for the purpose of making contributions or expenditures or it makes contributions or expenditures totaling \$50,000 in a period of 12 months or more than \$100,000 in a period of four consecutive calendar years. If AIACC qualifies as a recipient committee and receives no other contributions other than contributions from membership dues, the AIACC will be considered a separate committee and will be required to file campaign statements separately from CALcPAC if the membership dues provided to CALcPAC exceed \$10,000 from any particular member.

With respect to membership dues provided to the AIACC as a recipient committee, the source of the contributions will be the individual members and reported pursuant to Section 84222. If the dues do not exceed \$10,000 from any particular member, AIACC need not report separately from CALcPAC if campaign activity is reported by CALcPAC pursuant to Section 84222(f).


What contribution limits, if any, apply to the AIACC's potential contribution of a portion of its dues revenue to CalcPAC?

Section 85303⁷ prohibits a person from making a contribution to a committee of more than \$7,800 per calendar year for the purpose of making contributions to candidates for elective state office.

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

Sincerely,

Dave Bainbridge
General Counsel


By: Sukhi K. Brar
Senior Counsel, Legal Division

SKB:jgl

⁶ We note that Regulation 18422 provides additional information with regard to committee naming requirements and reporting requirements for multipurpose organizations.

⁷ Also, see Regulation 18534 which provides rules for committee bank accounts required when a committee receives contributions subject to the limits of Section 85303 subdivisions (a) and (b).