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*1997 Cal. Fair-Pract. LEXIS 166, \**

## CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION ADVICE LETTERS

No. **A-97-107**

1997 Cal. Fair-Pract. LEXIS 166

April 4, 1997

**[\*1]** Carolyn S. Woosley  
President  
LA List  
Post Office Box 30074  
Long Beach, California 90853

Re: Your Request for Advice

Dear Ms. Woosley:

This letter is a response to your request on behalf of the LA List for advice regarding the Political Reform Act (the "Act").

### FACTS

You currently serve as President of LA List. LA List is a non-profit PAC with a goal of supporting, through direct membership contributions, first-time women candidates for non-partisan, local office in Los Angeles County. You have been bundling small contributions (typically \$50 or less) to your candidates since 1992. Your membership fee is \$25.

### QUESTIONS & ANALYSIS

1. "Can we give our mailing list to candidates we endorse for them to use in soliciting funds?"

Nothing in the Act per se forbids your organization from giving its mailing list to the candidates it endorses. However, by providing the mailing list, your organization would be making an "in-kind" contribution to the endorsed candidate (unless, of course, the candidate fully compensates LA List for the mailing list). The Act defines "contribution" in terms of "payment," which is in turn defined as (among other things) "... a transfer ... of ... anything **[\*2]** of value, whether tangible or intangible." (Sections 82015 and 82044.) We have previously advised that the selective provision of an organization's mailing list constitutes an "in-kind" contribution to the recipient. (McFarlane Advice Letter, No. T-83-065.) The amount of the contribution is the fair market value of the list, which is determined by reference to the cost of a similar list obtained from a mailing house.

(Ibid.)

If the fair market value of your mailing list, as provided to the candidate, exceeds the contribution limit applicable to the candidate, both you and the candidate will have violated the Act. (Section 85301 et seq.) The endorsed candidate may pay LA List the difference between the fair market value of the list and the applicable contribution limit in order to avoid a violation of the contribution amount limit.

Depending upon the timing of the contribution, there may also be a violation of Section 85305, which restricts candidate fundraising to a certain period of time preceding the election. If you do provide the mailing list to the endorsed candidate(s) without compensation (thereby making a contribution), you should be sure to do so after the fundraising "window" [\*3] opens under the Act, or there will be a violation of Section 85305.

Also, if the fair market value of the mailing list (i.e., the amount of the contribution) provided to the candidate exceeds \$100, the independent expenditure limitation in Section 85500(c) may be triggered. That section provides that any contributor of \$100 or more per election to a candidate is considered "to be acting in concert with the candidate," and may not make contributions and independent expenditures which exceed the applicable contribution limit. (Section 85500(c).)

2. "This membership list we give to candidates cannot be in label format -- that is considered an in-kind contribution. Is that true?"

Please see the response to your first question, above. Whether the mailing list is already in label format is irrelevant to whether providing the list is a contribution to the candidate.

3. "In our newsletter can we describe/discuss our candidates with our LA List membership?"

Nothing in the Act forbids LA List from describing or discussing in its newsletter the candidates it endorses. The facts stated in your letter do not suggest that the endorsement or the newsletter feature(s) will be made [\*4] at the behest of the candidates. If this is in fact correct, then the newsletter features are not contributions to the endorsed candidates.

If this is not correct, i.e., if the newsletter features are made at the behest of the endorsed candidates, within the meaning of the Act (see footnote 4), then the costs of producing and distributing the newsletter would constitute a contribution to the endorsed candidates, absent an applicable exception. Just such an exception is Regulation 18215(c)(9), which may apply to your organization's situation. This exception excludes from the definition of contribution those payments made by an organization for its "regularly published newsletter" under certain conditions. (Regulation 18215(c)(9).) The circulation of the newsletter must be limited to your members and those who request or purchase the newsletter. (Ibid.) The exception applies only to regularly incurred costs of publication. Any special or additional costs incurred would be considered contributions to the endorsed candidates; for example, expanded circulation or substantial alterations in size, style, format, or a change in publication schedule, such as a special edition. (Ibid.) If your [\*5] newsletter satisfies the criteria stated in Regulation 18215(c)(9), the costs incurred in publishing the edition(s) in which you describe or discuss your endorsed candidates would not be considered contributions to the candidates, even if they are made at the behest of the candidates.

4. "In this same newsletter article, may we ask our membership to contribute to the campaigns of our endorsed candidates?"

Please see our response to question no. 3. Urging your organization's members to contribute, as opposed to merely discussing the endorsed candidates, in the newsletter article will not change the analysis in that response.

5. "Can we mail letters to our membership describing the candidates and enclosing a postcard asking them to notify us if they have given to our candidate(s)?"

Proposition 208 added Section 85312 to the Act. That section provides:

"The costs of internal communications to members, employees, or shareholders of an organization, other than a political party, for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or measures shall not be considered a contribution or independent expenditure under the provisions [\*6] of this act, provided such payments are not for the costs of campaign materials or activities used in connection with broadcasting, newspaper, billboard, or similar type of general public communication."

Under Section 85312, such a mailing by the LA List to its membership would be an "internal communication" if the mailing went only to the organization's members. Therefore, payments by the LA List for such a mailing would not be considered to be contributions or independent expenditures. (Section 85312.) The enclosure of the postcard would not change this result assuming the conditions stated in Section 85312 are otherwise met.

If the mailing were to include addressees other than the organization's members, it would not qualify as an "internal communication," and Section 85312 would not apply. However, the mailing still would not be considered a contribution to the endorsed candidates unless the mailing is made at the behest of the candidate. (See footnote 4.) However, if the mailing is made at the behest of the endorsed candidates and includes addressees other than LA List members, then the costs incurred by the LA List in making such a mailing would be considered an "in-kind" contribution [\*7] to the endorsed candidates, with the consequences discussed in our response to your first question, above.

If the mailing described in your fifth question is not made at the behest of the endorsed candidates and includes addressees other than LA List members (i.e., is not an "internal communication"), then the expenses incurred by your organization in making such a mailing may be an independent expenditure. The Act defines an "independent expenditure" as "an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate ... or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee." (Section 82031.) Presumably the endorsed candidates will be "clearly identified" in the letters. Whether the letter "expressly advocates the election or defeat of a clearly identified candidate ... or taken as a whole and in context, unambiguously urges a particular result in an election" is a difficult and complex question, which depends upon the wording of the letter. Without more facts about a particular [\*8] letter, we cannot reach a definitive conclusion. We wish merely to bring the issue to your attention.

If, in fact, the expenditures for the mailing are independent expenditures, they may trigger a reporting requirement. Enclosed please find the Commission's "Information Manual C," which explains those requirements in detail. Please see also the response to the next question.

6. "Must we register to become an independent expenditure committee?"

We assume that your organization is a "recipient committee." A "recipient committee" under the Act means any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. A recipient committee retains its status until such time as that status is terminated pursuant to Section 84214. (Section 82013.) The term "contribution" is defined in the Act as a payment for "political purposes," i.e., a payment which is used to make contributions or expenditures for the purpose of supporting or opposing state or local candidates or ballot measures. (Sections 82015 and 82025; Regulations 18215 and 18225.) A recipient committee may make independent expenditures. However, its status as [\*9] a recipient committee will not change. Consequently, your organization's status as a recipient committee will not change, even if it only makes independent expenditures in the future.

Proposition 208, the California Political Reform Act of 1996, became effective January 1, 1997. Pursuant to Proposition 208, a recipient committee that makes only contributions to candidates

may accept contributions totaling no more than \$500 per calendar year from any person. (Section 85301(d).) The committee may make independent expenditures in unlimited amounts. However, if the committee makes independent expenditures supporting or opposing a candidate, the contribution limits change: no person may contribute more than \$250 per election to the committee. (Section 85500(b); cf. Section 85301(d).) Note also that any contributor who makes a contribution of \$100 or more per election to a candidate for elective office shall be considered to be acting in concert with that candidate and shall not make independent expenditures and contributions which in combination exceed the amounts set forth in Section 85301 in support of that candidate or in opposition to the candidate's opponent or opponents. **[\*10]**

(Section 85500(c).) Therefore, if LA List makes independent expenditures supporting or opposing a candidate, it cannot receive contributions in excess of \$250 per person per election.

Also, it will have to ensure that if it makes contributions to a particular candidate that its combined independent expenditures and contributions to that candidate do not exceed the contribution limits applicable to the candidate.

7. "With whom do we register if we wish to become a small contributor committee?"

I have enclosed a copy of a recent advice letter, the Whipkey Advice Letter, No. A-97-045, which addresses this subject in some detail. I trust it will answer your questions.

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

Sincerely,

Steven G. Churchwell

General Counsel

By: John Vergelli

Staff Counsel, Legal Division

SGC:JV:ak

Enclosure

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