



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

December 27, 2023

April Boling

Re: Your Request for Advice
Our File No. I-23-152

Dear Ms. Boling:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹ 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, we treat your inquiry as a request for informal assistance.²

QUESTIONS

Where a candidate does not solicit funds for a committee primarily formed to support the candidate nor appears at an event, but the primarily formed committee requests a donor list from the candidate’s fundraiser, if the fundraiser provides the list, is that coordination under Regulation 18225.7? Does the answer change if the committee requesting the donor list is a general purpose recipient committee rather than a primarily formed committee?

CONCLUSIONS

When a primarily formed or general purpose committee receives a donor list from a candidate’s controlled committee fundraiser, that candidate makes an in-kind contribution to those committees. Using the donor list in connection with making expenditures that support the candidate or oppose the candidate’s opponent will result in coordination with the candidate, and in that circumstance, all expenditures made by the committee to support the candidate or oppose the candidate’s opponent will be considered contributions to the candidate and will be subject to the applicable contribution limit.

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 18104 through 18998 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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS AS PRESENTED BY REQUESTER

You request advice on behalf of the primarily formed committee, Neighborhood Action Council Supporting Kevin Faulconer for Supervisor 2024, and the general purpose committee, The Community Leadership Coalition. You would like to know whether either of these committees may request and receive the donor list from a fundraiser for candidate Kevin Faulconer.

ANALYSIS

Section 82015 defines a contribution as an expenditure made at the behest of a candidate unless full and adequate consideration is received for making the expenditure. Regulation 18215(b)(3) states that the term “contribution” includes any goods or services received by or behested by a candidate. Sections 85301 and 85303 establish the maximum amount a contributor can give to a candidate in a year.

An expenditure may not be considered independent and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf or for whose benefit the expenditure is made if the expenditure is made with the cooperation of, or in consultation with, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate. (Section 85500(b)(1).) An expenditure is presumed to be made at the behest of a candidate if it is based on information about the candidate’s campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof. (Regulation 18225.7(d)(1).) An expenditure is also presumed if made by or through any candidate or committee agent during the agent’s involvement in the current campaign. (Regulation 18225.7(d)(2).)

We have previously advised that there was coordination between a committee and a vendor where a candidate provided their logo to the vendor free of cost to use on merchandise sold by the vendor because the publicity provided as a result of the vendor displaying the candidate’s logo benefitted the candidate. Thus, the vendor was making a contribution to the committee, and the vendor’s services would need to be reported as an in-kind contribution to the committee if the committee did not receive any commission from the sales. (*Lawler* Advice Letter, No. A-22-020.) We have also previously advised that the provision of an organization’s mailing list constitutes an in-kind contribution to the recipient. (*McFarlane* Advice Letter, No. T-83-065; *Woosley* Advice Letter, No. A-97-107.) The Commission has also found that donating mailing lists to another candidate or committee is an in-kind contribution. (*Dennis* Advice Letter, No. A-93-141; *Olson* Advice Letter, No. A-89- 600.) The contribution amount is the fair market value of the list, which is the amount it would cost the committee to purchase a similar list on the open market (e.g., from a mailing house). (*Smith* Advice Letter, No. I-00-147.)

Here, a primarily formed and a general purpose committee seeks the donor list from a candidate controlled committee’s fundraiser and a candidate for whom the primarily formed committee supports. The donor list will be given to these committees by the candidate’s controlled committee fundraiser, which discloses the identities of the candidate’s supporters and can be used to solicit further contributions, send advertisements, or expend additional funds on supposed independent expenditures supporting the candidate. Therefore, the donor list will be considered an in-kind contribution to either committee that receives it.

If the committee uses the donor list to make an expenditure that either supports the candidate or opposes the candidate's opponent(s), the giving and receiving of the donor list will constitute cooperation between the candidate and the committee, resulting in a coordinated expenditure. Use of the donor list in making an expenditure would include, but not be limited to, soliciting contributions from persons on the donor list to fund communications and distributing communications to persons on the donor list. A coordinated expenditure by the primarily formed or general purpose committee will be a campaign contribution to the candidate, subject to the contribution limit, and aggregated with any other contributions to, or expenditures for, the candidate. As a result, we recommend seeking additional advice before using the information on the donor list.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "Katelyn L. Baeta-Orick".

By: Katelyn L. Baeta-Orick
Counsel, Legal Division

KBO:aja