



FAIR POLITICAL PRACTICES COMMISSION

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January 5, 2011

Jesse Mainardi
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, California 94108

Re: Your Request for Advice
Our File No. A-10-191

Dear Mr. Mainardi:

This letter responds to your request for advice regarding the campaign reporting provisions of the Political Reform Act (the "Act").¹ Your request is made on behalf of several state candidates and committees.

QUESTIONS

1. Is a committee required to report payments received from an on-line credit card processing company, hired by the committee, as contributions received from an intermediary?
2. Is a committee required to report payments received from ActBlue as contributions received from an intermediary if ActBlue (i) processes on-line credit card contributions made to campaign committees (ii) compiles a list of candidates of only one political party for whom it will accept contributions before entering into a contract with a committee, (iii) has registered with the IRS as a political organization and (iv) has filed campaign statements identifying itself as a general purpose committee?

CONCLUSIONS

1. No. A credit card processing company that is hired by a committee is not an intermediary because it is not acting on behalf of a contributor, but rather on behalf of the committee.

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.

2. Yes. A company that has not been hired by a committee to act as the committee's collection agent, has filed with the IRS as a political organization and has filed campaign statements in which it identifies itself as a general purpose committee is a "committee" under Section 82013. When such a committee transmits payments attributable to earmarked contributions from third parties, the recipient committee must report the payments as contributions received through an intermediary.

FACTS

You state that ActBlue is a website that processes credit card contributions from third parties for candidates registered as Democrats. ActBlue is registered in California as a general purpose committee and files campaign statements on Form 460 reporting all contributions it has received. ActBlue does not use its own funds to make contributions, rather it merely processes internet credit card contributions earmarked for a particular candidate. ActBlue reports all pertinent contributor information to the committees receiving the contributions.

You have directed us to ActBlue's website for additional information about ActBlue. The following information is found on the website: ActBlue has elected to file with the IRS as a political organization; ActBlue can contribute to and coordinate with candidates; ActBlue weekly transmits funds to committees consisting of the aggregate contributions received since the last transmission; ActBlue is a "PAC;" ActBlue "creates new sources of early money" by building "new grassroots power bases" and is the "largest source of funds for Democrats;" and ActBlue creates a list of candidates in its candidate directory for which it will receive contributions. Act Blue compiles the list, choosing to list only Democrats and omitting candidates who are "not serious- e.g. if their website is a complete hideous mess."

ANALYSIS

We have broken down your question into two questions to distinguish between the facts recited in your letter and additional information appearing on ActBlue's website.

Question 1. Committees are required to report the name and address of any person who acts as an intermediary for a contributor. (Section 84302.) A person is considered an intermediary when "the recipient of the contribution would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution." (Regulation 18432.5.)

You believe that ActBlue is not an intermediary, citing our prior advice that a committee is not required to disclose an on-line credit card processing company as an intermediary. (*Turner* Advice Letter, No. A-05-020.) In *Turner*, the committee entered into a contract with the Visteva Corporation to produce a website for communication and fundraising, including accepting contributions via credit card available through the website. We considered when a contribution is "received" if the contribution is made via a credit card company. Our conclusion that the contribution was received when it was received by the credit card company was based on the fact that the organization receiving and transmitting the contributions was the committee's agent.

The committee, therefore, was not required to disclose the company as an intermediary.² Applying *Turner* to your facts, if ActBlue is nothing more than an internet credit card processing company hired by a committee to process contributions, it is not an intermediary under Section 84302.

Question 2. The fact that ActBlue files campaign statements as a general purpose committee suggests that it is, indeed, a committee under Section 82013. The fact that ActBlue has elected to file with the Internal Revenue Service as a 527 political organization supports this view. If ActBlue merely processes internet credit card contributions, it would not file campaign statements or file with the IRS as a political organization. Also, the website indicates that ActBlue is a "PAC" (a political action committee.) A PAC is a general purpose committee. (See Form 460, page one.)

The website states that ActBlue "creates new sources of early money" by building "new grassroots power bases" and that it is the "largest source of funds for Democrats." These activities, we believe, go beyond merely processing contributions as a collection agent of a committee.

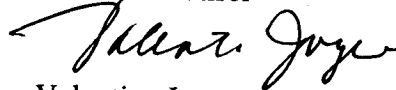
The website also states that ActBlue will list candidates for state election in every state and "if you're missing a candidate, please let us know and we will post them ASAP" and "We list all Democratic candidates for each U.S. House and Senate seat, and do our best to add new candidates as soon as they emerge and register with the FEC." It goes on to say that ActBlue occasionally omits "a candidate who is clearly 'not serious' -e.g., if their website is a complete hideous mess." Hence, Act Blue, like any committee under Section 82013, selects the candidates it will support: "serious" candidates who are Democrats. The selection is made when ActBlue lists candidates in its candidate directory. This selection is what distinguishes ActBlue from companies that are hired by a committee to act as the committee's collection agent.

Under these particular circumstances, ActBlue is a "committee" under Section 82013 and must, therefore, be reported by a committee as an intermediary when the committee receives contributions from ActBlue that are earmarked by a third party contributor.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Valentina Joyce
Counsel, Legal Division

² Turner relied on advice letters and a Commission opinion to the California Republican Party in 1999 where affinity credit cards were at issue. In the opinion, (In re California Republican Party (1999) 13 FPPC Ops. 1.) and the accompanying memorandum, the Commission reasoned that since the California Republican Party had negotiated the deal with the credit card company through a contractual transaction with full and adequate consideration on both sides, affinity credit cards were not contributions and were an allowable practice.