



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 9, 2021

Ashlee N. Titus
Attorney
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-21-079

Dear Ms. Titus:

This letter responds to your request for advice regarding the campaign disclosure provisions of the Political Reform Act (the "Act").¹ Since your inquiry is general in nature, we are treating your request as one for informal assistance.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.

QUESTION

Do the fundraising structures described below, which allow a vendor to deduct its fees and costs as well as a subvendor's fees, commissions and costs from contributions collected prior to sending the net amount to a candidate comply with the one bank account rule for candidates?

CONCLUSION

No. As explained below, the fundraising structures you have described, where a vendor or subvendor's fees, commissions and costs would be taken from a donor's contribution, and the net amount provided to the candidate's committee, do not comply with the one bank account rule (Section 85201). Any payments made by a vendor to a subvendor would need to be made with funds that originate in the Committee's single campaign bank account. Further, these payments would be reportable subvendor payments under Section 84303.

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 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 seek advice on behalf of Bell, McAndrews & Hiltachk, LLP, as this firm has a number of clients who have asked for review of several different fundraising agreements that fit within three separate contract structures utilized by many modern-day campaigns, described below. Each arrangement allows the vendor to take its fees, as well as its subvendor's fees, from a contribution and then send the net contribution to the candidate. Your scenarios are as follows:

Structure 1: Online Fundraising Version 1.

The vendor collects contributions online, the vendor retains both its own fee, and a fee for its subvendor, the fundraising consultant's commission, per a contractual agreement. The vendor then promptly remits the net contributions to the candidate's campaign committee. The vendor provides the campaign with all necessary information to meet the disclosure requirements of the Act, including the itemized fees withheld, the gross contribution amounts, and required donor information.

Structure 2: Online Fundraising Version 2.

The vendor raises funds and takes the vendor fee before promptly transferring the net contributions to the candidate, but there also is a revenue share/list broker component to the contractual agreement. Here, the vendor has a license to rent a fundraising solicitation list, which typically is owned by another candidate, PAC, or nonprofit organization.

The candidate is asked to pay a set fee to use the list, and that fee is taken out by the vendor prior to transferring funds to the candidate. The fee is taken in the form of divvying up contributions raised from the list. A common fee is \$25 for every 1,000 names. The vendor retains a portion of this fee and provides a portion to the entity that owns the list. It is common that the vendor does not provide information to the candidate on who actually owns the list.

Structure 3: Direct Mail Fundraising.

The vendor is hired to solicit contributions via direct mail. The solicitations contain a pre-printed return envelope with the Business Reply Mail (BRM) postage fee paid by the vendor, which is only charged per piece when the return envelope is scanned by the United States Post Office (USPS). The contributions are collected by the vendor on behalf of the candidate and retained in a separate escrow account. Prior to transferring contributions to the candidate, the vendor retains its own processing fees and the charges for expenses attributable to the direct mail fundraising program, such as the BRM postage fees charged to the vendor's USPS account. The vendor may also remit a commission or fundraising fee to another consultant. The vendor provides the campaign with all necessary information to meet disclosure requirements in the Act, including the itemized fees withheld, the gross contribution amounts, and required contributor information, and promptly transfers gross contributions to the candidate.

These direct mail fundraising contracts also may include the list broker fee structure outlined in Structure 2, and those fees are retained by the vendor prior to transferring gross contributions to the candidate, as described in Structure 2.

ANALYSIS

Section 85201 establishes that a candidate's campaign funds must be held in one account established at a financial institution located in the state. Known as the "one bank account rule," Section 85201 requires that all contributions to a candidate and all campaign expenditures for that candidate must be deposited and expended from one established campaign contribution account. Section 85201 states:

- (a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial institution located in the state.
- (b) As required by subdivision (f) of Section 84102, a candidate who raises contributions of two thousand dollars (\$2,000) or more in a calendar year shall set forth the name and address of the financial institution where the candidate has established a campaign contribution account and the account number on the committee statement of organization filed pursuant to Sections 84101 and 84103.
- (c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account.
- (d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.
- (e) All campaign expenditures shall be made from the account. . . .

(Section 85201.)

Regulation 18524 also addresses the investment and expenditure of campaign funds. It provides that, in relevant part:

- (a) All contributions received by a candidate shall be deposited in the candidate's campaign bank account established pursuant to Government Code Section 85201. The candidate shall make all campaign expenditures from the campaign bank account. Moneys in the candidate's campaign bank account shall be spent only on expenses associated with the candidate's election to the specific elective office designated in the statement of intention and expenses associated with holding that office.

As stated in the *Turner* Advice Letter, No. A-05-020, a fundraising scenario complies with the Act's one bank account rule where a vendor deducts its own fees before turning over the net contribution to the committee so long as the following are met: (1) the entire amount charged to each contributor is the amount of the contribution, without reflecting any fees retained or charged by vendor, (2) the net contributions collected by the vendor are promptly deposited in the Committee's account, and (3) any service fee charged or retained by the vendor for its services is considered and reported as an expenditure by the Committee.

In the three scenarios you have provided above, the vendor is deducting its fees and expenses directly from the contribution and providing the candidate with the net contribution. In the *Turner* Advice Letter, we have advised that in a certain set of limited circumstances, it is permissible for a vendor to deduct its own fees, so long as the transactions are reported. However, unlike the scenario in *Turner*, under your facts the vendor would also be taking subvendor's fees directly from the contribution prior to providing it to the candidate. Stated another way, the vendor would collect money on behalf of the Committee, and then make a payment of Committee funds to another vendor, without those funds ever passing through the single campaign bank account. Section 85201 specifically requires that all contributions made to the candidate be deposited in the account, as well as that all campaign expenditures be made from the account. In the three scenarios outlined above, any payments made by a vendor to a subvendor must originate from the Committees' bank account.

With respect to the subvendor fees, Section 84303(a) states that an expenditure of \$500 or more shall not be made, "other than for overhead or normal operating expenses, by an agent or independent contractor... on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee." Regulation 18431(a)(1)(D) specifically provides that payments to subvendors for analysis, advice, or management services in connection with campaign fundraising must be reported. Additionally, Regulation 18431(a)(2) requires subvendor reporting for products or services that show how a campaign is conducted. The payment of fees and commissions for fundraising consultants, fees to rent fundraising solicitation lists, and postage costs for mail solicitations constitute management services in connection with campaign fundraising and also show how a campaign is being conducted. As such, these payments are reportable subvendor payments under Section 84303.

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

Sincerely,

Dave Bainbridge
General Counsel

By: Zachary W. Norton
Senior Counsel, Legal Division

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