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OPINION	:	No. 82-314
of	:	AUGUST 18, 1982
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THE HONORABLE GEORGE AGNOST, CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO, has requested an opinion on the following question:

Are funds which are collected by "friends committees" which have been established for the benefit of many of the elected officials of the City and County of San Francisco "campaign funds" within the meaning of sections 12400 through 12407 of the Elections Code so that such funds may not be expended for the personal use of such officials?

CONCLUSION

All funds which are collected by "friends committees" which are "controlled committees" within the meaning of the Political Reform Act of 1974 are "campaign funds" for the purposes of sections 12400 through 12407 of the Elections Code and hence may not be expended for the personal use of such officials. Funds which are collected by

"noncontrolled committees" within the meaning of the Political Reform Act of 1974 are also "campaign funds" as contemplated by the above cited Elections Code provisions unless it is clear from the surrounding circumstances that such funds are not donated for "political purposes" as contemplated by the Political Reform Act and the regulations of the Fair Political Practices Commission. Because of the restrictions of sections 12400 through 12407 of the Elections Code, persons desiring to make unrestricted gifts to candidates or officeholders through intermediaries should do so through persons or groups which are not legally "campaign committees."

ANALYSIS

San Francisco has a local ordinance which places a $750 limitation upon contributions which may be made to candidates or political committees. The City Attorney has construed the proscriptions of this ordinance narrowly so that with respect to candidates or local officials the limitation applies only to contributions made for the purpose of actually influencing the election of or defeat of the candidate or official to office. Accordingly, contributions made to or for the benefit of a candidate or official for *other* purposes do not fall within the proscriptions of the ordinance.

We are advised that "friends committees" have been established in San Francisco for the benefit of some of the city and county's elected officials. Such "friends committees" will solicit funds for the local officers. These funds have been used by the officers for such matters as subscribing to newspapers, hiring extra staff, taking constituents out to dinner to discuss city business, and defraying expenses incurred on trips made in connection with the discharge of official duties. We have ascertained that some of these committees are registered with the Secretary of State as "controlled committees" within the meaning of the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) and others are registered as "noncontrolled committees" within the contemplation of that act.[1]

Under state law, that is, the PRA, a payment (with exceptions not germane herein) to a candidate[2] or committee "to the extent that consideration of equal or greater value is not received" by the donor is either a "gift" or a "campaign contribution." (Gov. Code, § 82028.) This distinction is significant for purposes of the PRA since different legal consequences flow under that act dependent upon the characterization of the payment. If the payment is a "campaign contribution," it will fall within the requirements of filing

[1] The Political Reform Act of 1974 will hereinafter be designated "PRA." The distinction between campaign committees which are "controlled committees" or "noncontrolled committees" will be discussed *infra*.

[2] As will be explained *infra* "candidate" will normally encompass all elective officials even if they are not presently running for office.

"campaign statements" (Gov. Code, § 84200 et seq.) and within certain statutory proscriptions. (Gov. Code, § 84300 et seq.)[3] If the payment is a gift, it will be considered as "income" to the candidate (Gov. Code, § 82030) and reportable as such in his or her "statement of economic interests." (Gov. Code, § 87200 et seq.) Furthermore, gifts of $250 or more will give rise to the "conflict of interest" provisions of Government Code sections 87100-87103 whereby the candidate, as a public official, is required to disqualify himself when matters come before him with respect to persons who have been a "source of income" in that or a greater amount. Accordingly, for purposes of the PRA, it is necessary to determine whether a payment is a campaign contribution or a gift in order to comply with that act.

With this brief background as to the PRA, we move to the provisions of sections 12400 through 12407 of the Elections Code, not a part of the PRA, which were added to the law by chapter 956, Statutes of 1981.

Sections 12400 through 12407 comprise chapter 5 of division 9 of the Elections Code and were added by chapter 956, Statutes of 1981 to that code. That chapter is titled "Limitations on Uses of Campaign Funds." Section 12400 sets forth the legislative findings, providing in part that "[t]he Legislature finds and declares that the political process is strengthened and public confidence in elected officials will be enhanced by limiting the uses of campaign contributions." Section 12401 sets forth the basic prohibition at issue herein, and provides:

> "Notwithstanding any other provision of law, campaign funds, including funds of political action committees, shall not be used for personal use. A payment from campaign funds is for personal use if the payment creates a substantial personal benefit and does not have more than a negligible *political*, *legislative*, *or governmental purpose*. However, a payment from campaign funds is not for personal use if it is to replace articles lost, damaged, or stolen in connection with political, legislative or governmental activity." (Emphasis added.)

Section 12402 lists certain expenditures which are to be "considered the personal use of campaign funds" and which are "not to be made unless there is a reasonable relationship to *political*, *legislative*, *or governmental purposes*" (emphasis added) including such matters

[3] We note that the provisions of the Political Reform Act placing a monetary limitation upon expenditures by candidates of campaign funds (§ 85100 et seq.) were held unconstitutional in *Hardie* v. *Eu* (1976) 18 Cal.3d 371, *cert. denied*, 430 U.S. 371 as an undue burden upon First Amendment guarantees to political expression and were repealed by chapter 1095, Statutes of 1977.

as travel expenses and settlement of lawsuits. Section 12403 sets forth certain limitations on the purchase or lease or refurbishing "of vehicles, appliances, equipment, or real property." Section 12404 sets forth the limitations upon the use of "surplus campaign funds under the control of a former candidate or officeholder or his or her controlled committee" such as the repayment of loans which had a "reasonable relationship to *political*, *legislative or governmental activity*" (emphasis added) or the payment of outstanding campaign expenses. Section 12405 sets forth certain civil penalties for violation of chapter 5 and provides that the Attorney General and district attorneys shall be civil prosecutors. Section 12406 provides generally that campaign funds are not trust funds. Finally, section 12407 states:

> "This chapter shall not be construed to impose any reporting obligations in addition to those obligations imposed by other provisions of law, nor shall this chapter apply to the expenditure of campaign funds in conjunction with any pending litigation."

Nowhere in chapter 5 of division 9, or elsewhere in the Elections Code, is there a definition of either the terms "campaign contributions" or "campaign funds."[4]

The question presented for resolution herein is whether the funds which are collected by "friends committees" which have been established for the benefit of many of the elected officials in San Francisco are "campaign funds" within the meaning of sections 12400 through 12407 of the Elections Code so that such funds may not be expended for "personal use" as contemplated by those sections.

We conclude that the Legislature intended to maintain a consistent body of law with respect to the distinction between "campaign contributions" and "gifts."

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[4] The Waxman-Dymally Campaign Disclosure Act, previously contained in sections 11500 et seq. of the Elections Code, comprised chapter 1 of division 9 of the Elections Code. It consisted of articles 1 through 8. Article 1 set forth the definitions for purposes of *that* chapter and act. The term "contribution" was defined in section 11516 of the Elections Code, and as material to our consideration herein, provided that such were payments, gifts, etc. "made for the purpose of influencing the nomination or election of any candidate, or for the qualification, passage, or defeat of any measure."

In 1974 the voters adopted the Political Reform Act of 1974, Government Code section 81000 et seq., which included and includes a comprehensive scheme for reporting campaign receipts and expenditures by candidates and committees. In 58 Ops.Cal.Atty.Gen. 203, 213-215 (1975) we concluded that the Political Reform Act of 1974 superseded the substantive provisions of the Waxman-Dymally Campaign Disclosure Act, that is, articles 3, 4 and 5 thereof, leaving only various nonsubstantive provisions operative, including the definitions.

The Waxman-Dymally Campaign Disclosure Act was finally repealed by chapter 160, Statutes of 1981 in recognition of the complete supersession of that act by the Political Reform Act of 1974.

Accordingly, the same meaning should be attributed to the terms "campaign contributions" and "campaign funds" in the new Elections Code provisions as are attributed to those terms in the PRA. Thus, applying the provisions of the PRA and the regulations of the Fair Political Practices Commission to funds received by "friends committees" we conclude:

1. All funds which are collected by "friends committees" which are "controlled committees" within the meaning of the PRA are "campaign funds" for the purposes of sections 12400 through 12407 of the Elections Code and hence may not be expended for the personal use of such officials as contemplated by those sections;

2. Funds which are collected by "friends committees" which are committees but are not "controlled committees" within the meaning of the PRA (*i.e.* "noncontrolled committees") are also "campaign funds" as contemplated by the new Elections Code provisions unless it is clear from the surrounding circumstances that such funds are not donated for "political purposes" as contemplated by the PRA and the regulations of the Fair Political Practices Commission; and

3. Persons desiring to make unrestricted gifts to candidates or officeholders through intermediaries would be best advised to do so through persons or groups which are not legally "campaign committees."

At first blush, one might conclude that the funds collected by "friends committees" as established in San Francisco are not campaign funds because they are, at least presently, not used to aid in the election or reelection of the officers for whom the funds are raised. (*Cf.* prior Elec. Code, § 11516 discussed in note 4, *supra*.) However, an examination of the PRA as presently constituted, and the administrative regulations adopted pursuant to that act, belies such conclusion.

The PRA deals with and regulates in great detail the receipt, expenditure and reporting of campaign funds by candidates and committees. (See, generally, Gov. Code, §§ 84100-84400.) Accordingly, the recently enacted provisions of chapter 5 of division 9 of the Elections Code and the pertinent provisions of the PRA are statutes in *pari materia*, and should be construed together. (*Isobe* v. *Unemployment Ins. Appeals Bd.* (1974) 12 Cal.3d 584, 590.) As stated in *Tripp* v. *Swoop*: "where as here two codes are to be construed, they 'must be regarded as blending into each other and forming a single statute'." (*Tripp* v. *Swoop* (1976) 17 Cal.3d 671, 679.) As noted by a leading commentator on statutory construction:

> "When a legislature enacts a provision, it has available to it all the other provisions relating to the same subject matter which it enacts at that time, whether in the same statute or in a separate act. Experience indicates

> that a legislature does not deliberately enact inconsistent provisions when it is cognizant of them both, without expressly recognizing the inconsistency. The critical question concerns how reasonable it is to assume that legislators and members of the public know the provisions of other acts on the same subject when they consider the meaning of the act to be construed. . . ." (2A *Sutherland*, *Statutory Construction*, § 51.03, p. 298, (4th Ed. 1973).)

All legislators would clearly have been aware of the PRA, since all must file campaign reports pursuant thereto (see *infra*). Furthermore, that the Legislature had the PRA in mind when it enacted sections 12400 through 12407 of the Elections Code appears clear from the fact that it alluded to "controlled committees" in section 12404 with respect to the use of surplus "campaign funds,"[5] which committees are creatures of the PRA, as well as alluding to "reporting obligations" in section 12407, *supra*.

Article 2 of chapter 4 of the PRA (Gov. Code, § 84200 et seq.) provides for the filing of campaign statements. Section 84200, as reenacted in 1980 (Stats. 1980, ch. 289, § 8, p. 79), and as amended in 1981 (Stats. 1981, ch. 78, § 1, p. 134), contains comprehensive requirements with respect to who must file campaign statements, and when they must be filed. For our purposes herein, an examination of subdivisions (a) and (c) will suffice:

Subdivision (a) provides:

> "(a) *All candidates and committees* shall file campaign statements no later than July 31 and January 31 if they have made or received *contributions* or made *expenditures* during the six calendar months before the closing date of such statements; provided, that a candidate who, during the past six calendar months has filed a declaration pursuant to Section 84205, shall not be required to file a statement. *All elected officers shall file campaign statements no later than July 31 and January 31*; provided that this requirement does not apply to elected officers whose salaries are less than one hundred dollars ($100) a month or to judges, unless such elected officer or judge is a candidate or committee which receives contributions or makes expenditures during the applicable six-month period. Filers specified in subdivision (c) shall not file the campaign statement required by this

[5] "Upon leaving any elective office, or at the end of the post election period following the defeat of a candidate for elective office, whichever occurs last, surplus *campaign funds* under the control of a former candidate or officeholder *or his or her controlled committee* shall only be used or held for the following purposes: . . ." (Emphasis added.)

subdivision for the six-month period in which an election referred to in subdivision (c) is held." (Emphasis added.)[6]

And subdivision (c) provides:

"(c) If an election is held on a date other than the first Tuesday after the first Monday in June, or the first Tuesday after the first Monday in November, candidates voted on in such elections, their controlled committees and committees formed or existing primarily to support or oppose such candidates or measures voted on in such election shall file campaign statements in connection with the election and shall also file the campaign statements required by subdivisions (a) and (b) for any six-month period in which such an election is not held. . . ."

Accordingly, as to elected officers who receive salaries of more than $100 per month, candidates and *committees*, there is a continuing obligation to file "campaign statements" which is triggered by the making of or receipt of "contributions" or "expenditures."

For purposes of the PRA, the term "candidate" is defined in section 82007 of the Government Code. For our purposes, suffice it to say that a candidate includes "an individual who is listed on the ballot . . . for nomination for or election to any elective office," which clearly would include the officials of San Francisco involved herein. Significant for our purposes is the proviso in section 82007 which provides that "[a]n individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to section 84214 [of the Government Code]." Section 84214 provides for the filing of "statements of termination" by candidates and committees pursuant to regulations adopted by the Fair Political Practices Commission. Such regulations are found in title 2, section 18404 of the California Administrative Code which essentially requires that there are to be no future activities with respect to the receipt of contributions or the making of expenditures, that all debts are discharged or cannot be discharged, that no surplus funds remain, and that all campaign statements have been filed. It is our understanding that major officeholders generally do not file such "statements of termination" until such time as they intend to "retire" from public officeholding.

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[6] The officials involved herein all receive salaries in excess of $100 per month.

Section 84205 contains an exemption from the filing requirements of section 84200 for candidates or *elected officers* where they file a statement under penalty of perjury that less than $500 will be received or expended on behalf of or in support of their candidacy.

No such exemption is provided for as to committees.

Accordingly, holders of elective offices are normally "candidates" throughout their terms of office. This is significant when one looks at other definitions in the PRA such as the definitions of "committee" and "controlled committee" as well as being significant with respect to the filing requirements for campaign statements as set forth above. (See Gov. Code, § 84200, *supra*.) "Committee" is defined in section 82013 of the Government Code as follows:

> "'Committee' means any person or combination of persons who directly or indirectly:
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> "(a) *Receives contributions* totaling five hundred dollars ($500) or more in a calendar year;
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> "(b) Makes independent expenditures totaling five hundred dollars ($500) or more in a calendar year; or
>
> "(c) *Makes contributions* totaling five thousand dollars ($5,000) or more in a calendar year *to or at the behest of candidates* or committees.
>
> "A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214." (Emphasis added.)

"Controlled Committee" is defined in section 82016 as follows:

> "'Controlled committee' means a *committee* which is controlled directly or indirectly *by a candidate* or which acts jointly *with a candidate* or controlled committee in connection with the making of expenditures. *A candidate* controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee."

It is to be recalled that some of the "friends committees" under consideration herein are registered with the Secretary of State as "controlled committees," while others are registered as "noncontrolled committees." (See Gov. Code, §§ 84101-84103.)[7]

[7] Accordingly, the mere fact that a candidate or officeholder has a "significant influence" over the actions of an individual or group of individuals does not make them a "controlled committee" (*e.g.* wives, children, lawyers). Such individual or individuals must, in the first instance, be a "committee," *i.e.* must receive the requisite "contributions" or make the requisite "expenditures."

As already noted above, elected officers who receive salaries of more than $100 per month, candidates and *committees* have, under the PRA, a continuing obligation to file "campaign statements" which arises from the making of or receipt of "contributions" or "expenditures." We have just set forth the definitions of the terms "candidate" and "committees" for purposes of the PRA. The PRA also defines the terms "contributions" and "expenditures" as set forth below:

> "Contributions" for purposes of the PRA are defined in section 82015 of the Government Code as follows:
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> > "'Contribution' means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received *unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure*. . . ." (Emphasis added.)

"Expenditures" for purposes of the PRA are defined in section 82025 as follows:

> "'Expenditure' means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, *unless it is clear from the surrounding circumstances that it is not made for political purposes*. An expenditure is made on the date the payment is made or on the date the consideration, if any, is received, whichever is earlier." (Emphasis added.)

Accordingly, gratuitous expenditures made at the behest of a candidate or elected official would be a "contribution." Furthermore, insofar as both "contributions" and "expenditures" are concerned, payments made for "political purposes," actually *or potentially*, fall within such terms.

Although "political purposes" is not defined in the PRA, the Fair Political Practices Commission, as the administrative agency which administers the PRA, has provided a definition in interpretive administrative regulations found in title 2, section 18109 et seq. of the California Administrative Code. It is seen that "political purposes" is not restricted to receipts or expenditures made to further an individual's candidacy. Receipts or expenditures made to or by a "controlled committee," or with regard to the individual's status as an officeholder, or at their behest is enough. Thus sections 18215 and

18225 of those interpretive regulations, which define in more detail the terms "contribution" and "expenditure," each state in part as follows:

> ". . . A payment is made for political purposes if it is:
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> "(1) For the purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; *or*
>
> "(2) Received by or made at the behest of:
>
> "(A) A candidate, unless it is clear from surrounding circumstances that the payment was received or made at his or her behest for personal purposes unrelated to his or her candidacy *or status as an office holder*. The term "payment" includes the candidate's own money or property used on behalf of his or her candidacy;
>
> "(B) *A controlled committee*;
>
> ". . . . . .
>
> "(b) 'Made at the behest' means a payment made under the control or at the direction of a candidate, controlled committee, official committee of a political party, or organization formed or existing primarily for political purposes. . . ." (Emphasis added.)

From the foregoing statutory scheme it is clear that "friends committees" will have a continuing duty to file campaign statements with respect to "contributions" and "expenditures." Furthermore, the purposes for which such "friends committees" have received and expended funds as described to us by the requester were for "political purposes" within the meaning of the PRA even though not in direct furtherance of the official's candidacy. To be for "political purposes" they need only have related to the official's status as an officeholder. (*Ibid.*) Also, once the funds of the "friends committees" become "contributions" to the particular public official, the funds as "contributions" or "expenditures" may be reportable in the official's own campaign statement in his or her status as a "candidate" or "elected official." Accordingly, since "contributions" received by and "expenditures" made by "friends committees" are reportable in "campaign statements" under the PRA, it follows that such funds are "*campaign contributions*" and hence "*campaign funds*" within the meaning of California law.

Both these terms are to be found in the new chapter 5 of division 9 of the Elections Code with respect to the restrictions as to using "campaign funds" for personal use as contemplated by that law. (See Elec. Code, §§ 12400, 12401, discussed at the outset herein.) Therefore, construing the newly enacted provisions of Elections Code section 12400 et seq. together with the pertinent provisions of the Political Reform Act of 1974 as statutes in *pari materia*, we conclude that funds which are collected by "friends committees" established for the elective city officials of San Francisco are "campaign funds" within the meaning of sections 12400 through 12407 of the Elections Code if they are considered as such within the meaning of the PRA. If they are they may not be expended for the "personal use" of the city officials. To fall outside the PRA definition, the donations must be made to a "noncontrolled committee", and it must be made clear that such funds are not donated for "political purposes." (Gov. Code §§ 82015, 82025, *supra*.)

The foregoing conclusion is further supported by the fact that new chapter 5 of division 9 of the Elections Code itself permits the use of "campaign contributions" and "campaign funds" generally for "political, legislative or governmental purposes." (Elec. Code, §§ 12401, 12402.) Such fact demonstrates that the new law contemplates a broader concept of "campaign funds" than funds to be used to further an individual's candidacy for office. Like the PRA, the new law contemplates that campaign funds include funds which may be used by an official merely for purposes which relate to his status as an officeholder.

In concluding that the funds received by the "friends committees" in San Francisco are "campaign funds" if they qualify as such within the meaning of the PRA, we in no way conclude that true gifts may not be made to the elected officers involved herein through intermediaries so as, for example, to finance a vacation for an official or send an official's child to college. However, under current law and regulations it appears clear that such gifts may not be made through a "controlled committee." Whether they should even be made through a "noncontrolled committee" as defined in the PRA is problematical since personal funds may not be commingled with campaign funds. (Gov. Code, § 84307.) The manner in which such gifts may be made or structured is beyond the scope of this opinion. If a group of "friends" of an officeholder wish to make such gifts, we believe they should contact the Fair Political Practices Commission for guidance (see, Gov. Code, § 83114) to ensure that they do not run afoul of the campaign *or* gift reporting or other requirements of the PRA.[8] However, because of the restrictions of sections 12400 through 12407 of the

[8] For example, if a "committee" or even merely a bank account were established to collect gifts for an office- holder for personal use, it would seem that the committee should supply the officeholder with a list of the contributors and the amounts of each gift to enable the officials to properly report these gifts in their financial disclosure statements with the PRA (Gov. Code, § 87200 et seq.) as well as to enable them to abstain from participation in official decisions as required by the PRA (Gov. Code, §§ 87100-87103).

Elections Code, persons desiring to make unrestricted gifts to candidates or officeholders would be best advised to do so through persons or groups which are not legally "campaign committees."

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