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MEMORANDUM

Statutory requirements affecting solicitation, limitations on contributions and the reporting and filing of campaign financial statements in a California Gubernatorial Campaign.

IN GENERAL

The purpose of this memorandum is to discuss the legal aspects of solicitation, limitations on contributions and reporting and filing financial statements affecting the California Gubernatorial Campaign. This will deal both with contributions originating within the state and from outside the state.

CALIFORNIA STATUTES

California reporting requirements generally are contained in sections 4501 to 4539 of the California Elections Code.

In brief, all candidates and the treasurer of each campaign committee must file a campaign statement for both the primary and the final election within 35 days after the date of each election. Official forms have now been made available and are sent to the candidates within 3 days after each election.

The Code requires that the statements show amounts received "in detail". It also requires that there be a complete listing of all of the contributors of the money that is received.

This raises the question whether in listing the names of the contributors it is necessary to couple their names with the specific amounts that that particular contributor conveyed to the candidate or his committee.

The California law has been interpreted as to not to require such reporting. It is a strained result but the present Governor of California when he was Attorney General issued such an opinion in 32 OP Atty Gen 88 .

It requires that all you have to do in the section relating to the receipt of funds is to list "in detail" all of the funds that you have received, and then a separate section requires that you list all of the names of the contributors. In practice then, candidates, particularly since the Attorney General's opinion, have made a separate listing of the money received without reference to the contributor and then dropped to the next section and listed the donors without relating the amount of the contribution to the names.

The reports for the Governorship must be filed with the California Secretary of State and a copy with the county clerk in the county in which the candidate resides.

The question arises as to the date from which receipts and disbursements must be reported in the primary election. Although there is no case law in this point, practice has dictated that the filing requirements relate only to transactions subsequent to the actual filing by the candidate. The filing dates for 1962 are March 7 to March 30.

With regard to the limitations of campaign contribution, in terms of amount, this problem is not specifically dealt with in the California Elections Code and it is not held that individuals or corporations are in any way restricted. The philosophy of the California Code has been to force disclosure rather than attempt specific limitation.

WHO HAS DUTY TO FILE CAMPAIGN STATEMENT

A campaign statement must be filed by both the candidate and the treasurer of each campaign committee. (Section 11560, Elections Code). The candidate would be required to report personal receipts and expenditures made by him and also receipt and expenditures of a committee if he has knowledge of a committee's financial transactions. (20 OPS Atty Gen 197).

Every committee must appoint a treasurer to "receive and disburse all monies contributed for campaign purposes, and keep a true account thereof, and shall in the same manner and on the same type of form as required of candidate, file a campaign statement." (Section 11530, Elections Code).

It is clear that a committee outside the state may solicit and contribute in a California Gubernatorial election without violating state law. The question then arises as to whether such a committee must file a separate campaign statement.

There is no doubt that the treasurer of a committee organized to solicit and contribute campaign funds in California would be required to file a separate campaign statement. A "committee" is defined as a "committee or group of persons organized for the purpose, or charged with the duty of conducting the election campaign of any political party, or any candidate or group of candidates". (Section 11502, Elections Code). It can be assumed that conducting a campaign includes any group which is organized for the purpose of soliciting contributions for a candidate. In 32 OPS Atty Gen 88, at P. 96, the opinion stated that where a dummy organization is set up through which money is contributed to a committee, the dummy organization itself would constitute a committee, and would be required to appoint a treasurer and file a campaign statement.

The difficult question is the applicability of the Elections Code to an out-of-state committee. The Code is silent on this matter. Normally, of course, the applicability of any state statute does not go beyond the territorial boundaries of the state. However, if part of a transaction takes place in California and part outside of California, such part as taken place in California may be sufficient to provide the basis for applying a California statute to a foreign individual, corporation or committee.

The California Corporate Securities Act requires a foreign corporation to secure a permit to engage in solicitation and sale of its securities in California, even though the stocks are issued in a foreign state (94 CA 2d 320). It is equally true that where all the transactions occur without the state, the California Securities Act would not apply. (47 CA 2d 832, 8 C 2d 241). In analogy to the Securities Act case, that when a committee outside the state directly contributes in California, the California Elections Code would be applicable and would require the committee to file a separate campaign statement. I believe the direct contribution in California would be a sufficient basis to apply the Elections Code.

It should be noted at this time that the enforcement of the requirement to file a campaign statement is to make violation of the above provision a misdemeanor. (Elections Code, Section 12053). The failure to file a campaign statement, however, is not considered to be an offense against the election franchise and thus does not provide a ground for contesting an election. Merrick v. Porter (22 CA 344 (1932); Elections Code, Section 20021).

Section 11563 provides that no officer shall issue any certificate of nomination or election to any person until his campaign statement has been filed. The prohibition to issue the certificate applies only if the candidate does not file a campaign statement. If a committee, supporting a candidate, does not appoint a treasurer nor file a campaign statement, the officer can not withhold the issuance of the certificate. (32 OPS Atty Gen 88 (1958)).

Unlike many other states, California does not penalize corporate contributions for state offices. It is clear that an organization whose sole purpose is to support the election of one or more candidates for a state office in California can properly solicit and receive contributions from corporations organized under the law in the state of California or one of the other states of the union and make expenditures subject to the reservation that certain limited types of corporations are prohibited from making such a contribution or expenditure. For example, a

national bank, a federally organized corporation, a government contractor, a registered holding company or a California licensee under a license granted by a state agency are not permitted to make political contributions.

FEDERAL STATUTES

Any federal reporting requirements are covered by the Federal Corrupt Practices Act contained in Title 2 of the U. S. Code Annotated, appearing primarily in sections 241 to 256.

The federal requirements clearly do not apply to state primary elections.

The committee as proposed does not fall within the definition of a "political committee" under section 241(c). A political committee is "an organization which accepts contributions and makes expenditures for the purpose of influencing or attempting to influence the election of candidates of presidential or vice presidential elections. The federal jurisdictional requirement is twofold; one is interstate transaction and the other is the election of a federal officer. Section 241(b) defines a "candidate" as "an individual whose name is presented at an election for election as senator or representative in _____, the Congress of the United States."

The committee under consideration being organized in behalf of a state officer would not be required to file a federal campaign statement.