

December 12, 2005

Mari Lee  
Treasurer, OakPAC  
XXXXXXXXXXXX Avenue  
Oakland, CA 94618-1113

RE: Request for Written Interpretation

Dear Ms. Lee:

This is in response to your letter requesting a written interpretation from this office of several provisions of the Oakland Campaign Reform Act (OCRA). Your letter states that OakPAC is a state general purpose committee that also qualifies under OCRA as a "broad based political committee." You request an interpretation on five specific questions set forth below.

The interpretation below constitutes the opinions and analysis of the Executive Director of the Commission based on a hypothetical set of facts. The interpretation does not reflect or bind in any way any future action, opinion or decision of the Commission, the Executive Director or the City Attorney's office, nor does it provide any immunity against administrative action by the Commission or any other action by other enforcement agencies. For legal advice you should consult an attorney. Should you object to the following interpretation, or if you desire the Commission to adopt the following opinions or analysis as its own, please contact me to discuss having all or part of the following placed before the Commission at a regularly noticed meeting.

**I. APPLICABLE LOCAL LAW AND COMMISSION POLICY**

OCRA Section 3.12.060 provides in relevant part:

- A. No broad-based political committee shall make to any candidate for city office and the controlled committee of such a candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than two hundred fifty dollars (\$250.00) [\$300 per CPI adjustment] for each election except as stated in subsection B of this section.

- B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no broad-based political committee shall make to any candidate for city office and the controlled committee of such candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than one thousand dollars (\$1,000.00) [\$1,200 per CPI adjustment] for each election.
- C. Any broad-based political committee that makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of the amounts stated in subsection A of this section.
- D. This section is not intended to prohibit or regulate contributions to persons or broad-based political committees for the purpose of influencing elections for offices other than city offices.
- E. Upon the effective date of the ordinance codified in this section, a broad-based political committee making independent expenditures supporting or opposing a candidate for city office shall separately account for contributions received and contributions or expenditures made for the purpose of influencing such elections for city office. Where a broad-based political committee has separately accounted for such contributions and expenditures for such elections for city office, contributors to that broad-based political committee may contribute more than the amounts set forth in subsection A of this section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for city office.
- F. Candidates for city office shall not be held responsible for violations of this provision by any broad-based political committee.

In its attempt to interpret subsections 3.12.060(C)-(F), the Commission adopted in 2002 a formal policy which states:

1. A person making independent expenditures to influence an election for local office may satisfy the "separate accounting" provisions of OCRA Section 3.12.060(E) by timely filing a properly completed FPPC Form 460 with the appropriate filing officer.
2. An independent expenditure will be deemed to have been made from "qualifying contributions" (i.e., contributions of \$300 or less to broad based political committees) if the person making the independent expenditure has received an amount of qualifying contributions at least equal to the amount of the independent expenditure before or during the reporting period in which the independent expenditure is disclosed.

In addition to the above law and policy, Commission staff is frequently guided by relevant and analogous regulations and advice letters promulgated by the Fair Political Practices Commission ("FPPC").

### **QUESTION NO. 1**

**While each contributing entity is limited to \$300 of permissible funds, what is the time limit for these contributions? If John Doe contributed \$100 each year (in 2000, 2001 & 2002), is John Doe prohibited from having any further contributions counted towards permissible funds after 2002?**

### **ANSWER TO QUESTION NO. 1**

Commission staff notes your use of the term "permissible funds." You described this term in previous conversations as that part of a contribution to OakPAC that can be applied to an independent expenditure under Section 3.12.060(E). As a practical matter and for purposes of this memorandum, "permissible funds" essentially means the first \$300 of a contribution to OakPAC that can be applied to an independent expenditure relating to a candidate for local office. For example, if a person makes a \$5,000 contribution to OakPAC, only the first \$300 of that contribution would be considered "permissible funds" that can be applied to the independent expenditure.

The first part of Question No. 1 asks for the "time limit" on contributions used to make independent expenditures under Section 3.12.060. This question is relevant because the above-quoted Commission policy states that an independent expenditure will be deemed to have been made from "permissible funds" so long as the person making the independent expenditure has received the contribution "before or during" the reporting period in which the independent expenditure is disclosed. Neither OCRA nor the Commission policy expressly addresses the first part of Question No. 1.

You have indicated that OakPAC is a state general purpose committee and qualifies as a "broad based political committee" under OCRA. To qualify as a broad based political committee under OCRA, the committee must 1) be in existence for more than six months, 2) receive contributions from more than 100 persons, and 3) make contributions to five or more candidates. [O.M.C. 3.12.040] As you know, broad based political committees no longer exist as creatures of state law. Their comparable successors, so-called "small contributor committees," require that the contributions qualifying them as small contributor committees be received within 36 months before making specified contributions. [Title 2, Cal. Code Regs. §18503] Based on this time frame, I would conclude and recommend that a committee receive the contribution used to make an independent expenditure no more than 36 months before the independent expenditure is made.

The second part of Question 1 asks whether successive contributions of \$100 in 2000, 2001 and 2002 preclude the maker from having any additional contribution count towards "permissible funds" after 2002. As you know, OCRA does not restrict contributions to general purpose committees other than those restrictions contained in Section 3.12.060. In other words, so long as a committee "separately accounts" for contributions received and contributions or expenditures made for the purpose of influencing elections for city office, contributors are not limited by OCRA in what they can contribute to a general purpose committee.

The Commission's interpretive policy effectively states that any independent expenditure made to influence an election for local office must be attributable to the first \$300 of any contribution received "before or during" the reporting period in which the independent expenditure is disclosed. Thus, under your scenario, John Doe's successive contributions could be applied to a single independent expenditure made after 2002 (within 36 months before the independent expenditure was made), or applied to independent expenditures made in the years in which the contributions were made, so long as such contributions were not "double counted" to apply to more than one independent expenditure (see response to Question No. 3, below).

Nothing in OCRA or the Commission's policy would preclude John Doe from making contributions to OakPAC after 2002, nor prohibit OakPAC from applying the first \$300 of any such contribution to a new independent expenditure. That being said, Commission staff is concerned that the current language in OCRA and the Commission's policy does not address possible efforts to skirt the requirements of Section 3.12.060 by a contributor who makes a series of "piecemeal" contributions to OakPAC in order to fund one or more independent expenditures. For example, if John Doe were to make a \$3,000 contribution to OakPAC, only the first \$300 of that contribution could be applied to an independent expenditure. But if John Doe made ten, \$300 contributions, the question arises whether all such contributions could be applied to one or more independent expenditures.

To avoid the potential situation of piecemeal contributions, Commission staff concludes and would recommend that the Commission adopt and apply an interpretation that permits a committee to apply no more than \$300 from any single contributor per candidate opposed or supported by an independent expenditure. For example, if John Doe made ten, \$300 contributions to OakPAC and OakPAC made five independent expenditures of \$3,000 each in the June, 2006, election in support of three local candidates, no more than three of John Doe's ten contributions could be applied towards funding the independent contributions. On the other hand, if John Doe made ten, \$300 contributions to OakPAC, and OakPAC made five independent contributions of \$3,000 each -- three in support of three local candidates and two against two local candidates -- then five of John Doe's ten contributions could be applied towards funding the independent contributions.

## **QUESTION NO. 2**

**If John Doe contributed \$300 in 2002, and if this \$300 was counted towards an IE which was made in 2002, can John Doe make another \$300 contribution in 2005 for another IE in 2005?**

## **ANSWER TO QUESTION NO. 2**

Yes, for the reasons given above.

## **QUESTION NO. 3**

**If OakPAC makes IEs every year, can John Doe's \$300 yearly contribution be counted as permissible funds for each calendar year?**

## **ANSWER TO QUESTION NO. 3**

Yes, so long as John Doe's yearly contribution is not "double counted" towards more than one independent expenditure. For example, if John Doe makes a \$300 contribution in 2005, and OakPAC makes two, \$3,000 independent expenditures in 2005 -- one in support of Candidate A and one in opposition to Candidate B -- John Doe's \$300 contribution must be applied to only one of the two independent expenditures that OakPAC makes.

## **QUESTION NO. 4**

**If OakPAC has \$20,000 in permissible funds raised since its last IE, and if it wishes to make IEs to three candidates in the 2006 election, can it make IEs of \$20,000 per candidate? Or must it divide the \$20,000 in permissible funds between the three candidates?**

## **ANSWER TO QUESTION NO. 4**

OakPAC must divide the money, otherwise OakPAC will either be "double counting" existing permissible funds or using non-permissible funds to finance the independent expenditures.

## **QUESTION NO. 5**

**Some committees wishing to make IEs were formed many years ago. In counting permissible funds, is there any time limit on how far back we may go to begin tracking these contributions?**

**ANSWER TO QUESTION NO. 5**

See answer to Question No. 1. Commission staff concludes and would recommend that contributions used to make an independent expenditure be received within 36 months before the independent expenditure is made. The date on which a committee is formed should have no bearing on the timing of contributions for purposes of Sections 3.12.060(C)-(F) or 3.12.050(C)-(F).

I hope the above discussion has been helpful. Please feel free to call me if you have any further questions.

Very truly yours,

Daniel D. Purnell  
Executive Director

cc: Mark Morodomi