

MEMORANDUM

DATE: APRIL 19, 2005

TO: CALIFORNIANS FOR LITERACY AND COMMUNITY LIBRARIES

FROM: DIANE M. FISHBURN *DMF*
MELISSA A. MIKESSELL

RE: CONTRIBUTIONS MADE BY PUBLIC CHARITIES TO THE COMMITTEE

This memorandum summarizes the rules relating to contributions made by public charities to Californians for Literacy and Community Libraries (the "Committee").

BACKGROUND

The Committee is formed for the sole purpose of supporting the passage of the Library Bond Measure on the June, 6, 2006 Election ballot. A number of non-profit organizations including local Friends of the Library groups have indicated an interest in making contributions to the Committee. Most of these non-profit organizations are tax exempt under Internal Revenue Code section 501c3 (hereinafter referred to as public charities).

In making contributions to the Committee, public charities must take into account both state campaign law considerations as well as the application of federal tax laws relating to tax exempt organizations.

SUMMARY OF ADVICE

Organizations which do not contribute a total of \$1,000 or more in a calendar year to ballot measure committees including the Committee will not trigger reporting obligations under state campaign laws. Organizations which plan to contribute \$1,000 or more in a calendar year to ballot measure committees need to review their filing obligations under state law.

STATE CAMPAIGN LAW

By making contributions to the Committee, public charities may incur reporting obligations under the state campaign reporting laws as either a Recipient Committee or a Major Donor.

A Major Donor is a person or organization who makes contributions totaling \$10,000 or more during a calendar year to committees which support or oppose state or local ballot measures, candidates or political parties. Major Donors file a report of their contributions either once or twice per year depending on the level of their activity.

Lance H. Olson
Bruce J. Hagel
Diane M. Fishburn
Elizabeth L. Gade
Deborah B. Caplan
N. Eugene Hill
Richard C. Miadich
Melissa A. Mikesell
Erin V. Peth

By contrast, a Recipient Committee is an entity which collects funds from others and then uses those funds to make contributions totaling \$1,000 or more in a calendar year to committees which support or oppose state or local ballot measures, candidates or political parties. A Recipient Committee is required to report both its receipts and expenditures.¹

In general, public charities will want to avoid incurring the registration and substantial reporting obligations of a Recipient Committee. The basic rule is that the organizations will not trigger these requirements if the funds used to make the contributions to the Committee are not funds received from others (i.e., member or donor funds). Thus if an organization has other funds such as investment or other income, it may use these funds to make its contributions to the Committee and file reports as a Major Donor if those contributions total \$10,000 or more in a calendar year.

However, the organization will incur reporting obligations as a Recipient Committee if it solicits funds totaling \$1,000 or more from donors for the purpose of making contributions to the Committee. Thus if an organization solicits its donors for funds to make contributions to the Committee in support of the statewide Library Bond campaign, it is soliciting reportable contributions and it must report those receipts as well as of its expenditures relating to the campaign.

In addition, even if an organization does not expressly solicit its donors for the 2006 campaign, if the organization has established a "history" of using member or donor funds for making contributions to ballot measure or other committees, it will also be required to register as a Recipient Committee. An organization establishes a "history" of making contributions if it has made contributions totaling \$1,000 or more in any of the four years prior to making a contribution.

For example, if a public charity contributed \$1,000 last year to a local library bond measure using donor funds, it has now established a "history" of making contributions from donor funds. Accordingly, prior to making a contribution to the Committee this year, it will have to register with the Secretary of State and file reports as a Recipient Committee. On the other hand, if the group made contributions totaling less than \$1,000 per year in the previous four years, or made contributions aggregating more than \$1,000 more than four years ago, the group will not trigger the reporting requirements of a Recipient Committee.

Additional information concerning these reporting requirements can be obtained from our office or the Fair Political Practices Commission (www.fppc.ca.gov).

FEDERAL TAX LAW

Under the federal tax law, public charities which are tax exempt under Section 501c3 are permitted to support or oppose ballot measures—this activity is considered "lobbying" under federal tax law. There are, however, limitations on the amount of lobbying each group may conduct.

¹ A full explanation of the reporting obligations of Recipient Committees is beyond the scope of this Memorandum. Additional information on these obligations may be obtained from the FPPC.

In general, the law provides that a public charity may use its resources to conduct lobbying activities including activities in support of a ballot measure committee, only if "no substantial part" of the organization's activities are lobbying activities. What constitutes "no substantial part" is based on an analysis of an overall assessment of the lobbying activities of an organization including contributions made to ballot measure committees, its endorsements, volunteer time spent on lobbying and ballot measure campaigns, and other types of support activities.

Public charities also have the option under Internal Revenue Code section 501h to elect to have their lobbying activities measured by an expenditures test rather than the "no substantial part" test in the statute. The IRS has adopted regulations based on section 501(h) which define the relevant terms and establish the monetary limits for the lobbying activities. In general, the advantage of the 501h election is that only the organization's *expenditures* for or against the ballot measure count as lobbying, and that those expenditures may be as much as 20 percent of your annual budget, depending on the size of the organization. Because the 501h test is based on expenditures along, lobbying time spent by volunteers does not count against the limit.

To take advantage of this election, the public charity must file a one-page, one-time form to notify the IRS that the organization is electing to use the expenditure test under 501h (IRS Form 5786). The public charity is then required to provide certain information concerning its lobbying activities as part of its annual information returns filed with the IRS (and the FTB in the case of California charities).

Each non-profit organization should consult its own tax advisor in order to apply these rules to their circumstances. Resources in this area are also available from Northern California Grantmakers (see "The Public Charity's Guide to the California Initiative Process" at www.ncg.org), and from the Alliance for Justice (see, e.g., "Seize the Initiative" available from www.alj.org). For legal advice, I also would refer these organizations to Greg Colvin or his law partner, Rosemary Fei, of Silk, Adler & Colvin in San Francisco, if they wish to consult tax counsel who specialize in the areas of lobbying activity by public charities.

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