

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 5, 2010

Via Facsimile & Regular Mail

Jeff S. Jordan
 Supervisory Attorney
 Complaints Examination & Legal Administration
 Federal Election Commission
 999 E Street, N.W.
 Washington, D.C. 20463

RE: MUR 6272; U.S. Senate Campaign of California Assemblyman Charles DeVore

Dear Mr. Jordan:

We are in receipt of your letter to California Attorney General Edmund G. Brown Jr. concerning a complaint that has been filed with the Federal Election Commission regarding the U.S. Senate campaign of California Assemblyman Charles "Chuck" DeVore. (MUR 6272.) In your letter, you state that the complaint "indicates that the State of California may have violated the Federal Election Campaign Act of 1971, as amended (the 'Act')." Your letter adds that the Act allows the State of California to demonstrate in writing that no action should be taken against it. You have requested that we submit any factual or legal materials that we believe are relevant to the FEC's analysis of this matter.

In the copy of the complaint that accompanied your letter, California Citizens for Ethics in Government asserts that Assemblyman DeVore "is utilizing his staff from his State Assembly office to assist in the conduct and operation of his current campaign for election to the United States Senate." The complaint further asserts that Assemblyman DeVore "has not reported receiving any in-kind contributions from the California State Assembly, which paid the salaries of Assembly staff while they worked on Mr. DeVore's political campaign." In support of these allegations, the complaint cites an article that appeared in the March 24, 2010 edition of the Orange County Register. Neither the complaint nor the article asserts that the State of California has made any contributions to the DeVore campaign.

Under FEC regulations, a contribution includes "[t]he payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose, except for legal and accounting services provided under 11 CFR 100.74 and 100.75." (11 C.F.R. § 100.54; accord: 2 U.S.C. § 431(8)(A)(i).) This definition excludes: compensation paid on an hourly or salaried basis

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provided the employee makes up or completes time taken for political activities within a reasonable time; compensation paid on a commission or piece work basis, such as when an employee is paid only for work actually performed and the employee's time is considered his or her own to use as he or she sees fit; and bona fide vacation or earned leave time. (11 C.F.R. § 100.54, subds. (a), (b), (c).)

Under the circumstances described in the complaint, and under the applicable federal regulations, we are of the opinion that the State of California would not be a proper party to any further FEC proceedings in this matter. The State has no direct or indirect involvement in the campaign of Assemblyman DeVore. The FEC should direct any questions concerning the allegations in the complaint to Assemblyman DeVore's office or to the State Assembly.

In this regard, we would note that the Legislature, including the State Assembly, is a separate branch of government that is represented in legal matters by the California Office of Legislative Counsel. Further, complaints concerning alleged violations of campaign finance laws are ordinarily referred to the California Fair Political Practices Commission.

If there is any additional information concerning this matter that you believe would be appropriate to bring to our attention or if this office can be of any further assistance, please do not hesitate to contact me.

Sincerely,



MARK R. BECKINGTON
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

MRB:mb
cc: Stephen P. Acquisto, SDAG

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