

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: )  
 )  
 Opinion requested by: )  
 Douglas Buchanan, )  
 Attorney, Bishop )

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No. 78-013  
 May 1, 1979

BY THE COMMISSION: Douglas Buchanan, attorney for Roger Glidden, has asked a question based upon the following facts:

The Elections Code provides that if no candidate receives a majority of votes in a supervisorial primary election, the two candidates with the most votes go on the ballot in the general election and the remainder of the candidates are eliminated. Elections Code Section 6612. However, if one candidate receives the most votes and two candidates tie for the second highest number of votes, all three candidates are placed on the general election ballot. Id.

Glidden was a candidate in the June 1978 primary election for supervisor in Inyo County. In that election, one candidate had a plurality but not a majority of votes. Mr. Glidden tied with Maurice Jacobson for second. Pursuant to Elections Code Section 6612 each of the three candidates qualified for the general election ballot. However, Jacobson brought a lawsuit seeking to remove Glidden from the general election ballot on the ground that Glidden had, in fact, received less votes than Jacobson.<sup>1/</sup> Mr. Glidden paid the cost of the litigation from his own funds and his attorney asks whether these costs must be reported on Glidden's candidate's campaign statement.

CONCLUSION

The litigation expenses incurred are reportable by Mr. Glidden on his candidate's campaign statement.

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<sup>1/</sup> The decision of the Court of Appeal in the case is reported, Jacobson v. Glidden, 84 Cal. App. 3d 748 (1978).

ANALYSIS

Under the Political Reform Act a candidate is required to file campaign statements disclosing the contributions he has received and expenditures he has made. Government Code Sections 84200, 84201, 84206, 84210.<sup>2/</sup> Contributions include a candidate's own money or property used on behalf of his candidacy. Section 82015. By regulation, the Commission has further defined the term "contribution" as any payment for which full and adequate consideration is not paid that is received by or made at the behest of:

A candidate, unless it is clear from surrounding circumstances that the payment was received or made at his behest for personal purposes unrelated to his candidacy or status as an officeholder....

2 Cal. Adm. Code  
Section 18215(b)(1).

The Commission's regulations define the term "expenditure" in a similar manner. Expenditures include any payment made by:

A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his candidacy or status as an officenolder;....

2 Cal. Adm. Code  
Section 18225(b)(1).

Since the litigation expense payments are aimed at maintaining Mr. Glidden's status as a candidate, they are clearly related to his candidacy and should be reported on his candidate's statement as an expenditure. In addition, since Mr. Glidden has used his own funds to pay for the litigation, he must report the funds as a contribution to himself. Section 82015.

Although payments for the costs of litigation are not generally thought of as having any connection with political campaigns, in the circumstances presented here and in similar circumstances, the litigation costs are just as key to the

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<sup>2/</sup> All statutory references are to the Government Code unless otherwise noted.

success of the campaign as traditional campaign costs such as mailings and media advertisements. When expenditures are made to support litigation aimed at gaining a place on the ballot for a candidate or measure, aimed at keeping a candidate or measure off the ballot, or challenging the results of an election,<sup>3/</sup> the expenditures are made for the purpose of influencing the outcome of the election in favor of or against a particular candidate or measure and should be reported. Similarly, when expenditures are made during the course of a campaign for litigation designed to protect or vindicate the personal reputation of a candidate, those expenditures generally are made to forward the fortunes of the candidate in the election and should also be reported.<sup>4/</sup>

In the case before us the entire purpose of the candidate's defense of the lawsuit is to maintain his place on the general election ballot. Moreover, requiring the reporting of the litigation expenses in this case furrows the Act's purpose of full disclosure. See Section 81002(a). Although Mr. Glieden has paid his litigation expenses from his own funds, it is not unlikely that candidates engaged in similar litigation will seek to solicit funds from others

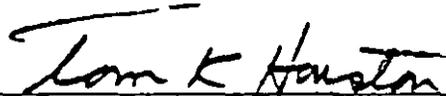
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<sup>3/</sup> Litigation challenging the results of an election must be distinguished from litigation challenging the constitutionality or legality of a statute enacted by an initiative. The only connection litigation in the latter category has to the election process is the coincidental one that the statute in question was enacted by the voters rather than a legislative body. Therefore, such litigation would not give rise to any campaign disclosure obligations.

<sup>4/</sup> We believe that in most cases similar to the one presented in this opinion, litigation expenses should be reported. Nevertheless, we can conceive of cases, especially those involving the personal reputation of a candidate, where the facts would indicate that the litigation is undertaken, carried out or defended primarily for purposes unrelated to the election process and should not be reported. Because reportability will depend on the particular facts of an individual case, we cannot formulate a rule which will cover all cases.

to pay the expenses. If such fundraising efforts were not reportable, candidates could obtain substantial amounts of money from contributors for the purpose of supporting their election without disclosing the source of funds.

Approved by the Commission on May 1, 1979. Concurring:  
Commissioners Houston, Lapan, McAndrews, Quinn and Remcho.

  
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Tom K. Houston  
Chairman