

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the matter of:)	
)	
Opinion requested by)	No. 75-171-B
H.L. Masini, County Clerk,)	February 4, 1976
Fresno County)	
)	

BY THE COMMISSION: We have been asked the following questions by Lee Palmer, Assistant County Clerk of Fresno County:

When a district subject to the Uniform District Election Act, Elections Code Sections 23500, et seq., conducts an election, each candidate may submit a statement of qualifications to the district for inclusion in a voters' pamphlet. Elections Code Section 10012.5. Each candidate pays his pro rata share of the pamphlet publication costs unless the district agrees to pay the cost of the qualifications statements for all candidates seeking district office. Elections Code Section 23510.5.

(1) If a district pays or offers to pay for the publication of a candidate's qualifications statement, is the district required to submit a statement of organization to the Secretary of State (Government Code Section 84101) and to file campaign statements pursuant to Sections 84200, et seq.?

(2) If a district purchases space in a voters' pamphlet for the purpose of presenting arguments on a measure, is the district required to file campaign statements pursuant to Sections 84200, et seq.?

CONCLUSION

(1) A district which pays or offers to pay for the publication of a candidate's statement of qualifications is not a committee within the meaning of Section 82013 and, therefore, need not file either a statement of organization or campaign statements.

(2) A district which purchases space in a voters' pamphlet for the purpose of presenting arguments on both sides of a ballot measure is not a committee within the meaning of Section 82013(b) and need not file campaign statements.

ANALYSIS

(1) Government Code Section 84101^{1/} requires every committee of the type defined in Section 82013(a)^{2/} to file a statement of organization with the Secretary of State within ten days after its formation. A person or organization is a committee under Section 82013(a) only if it receives contributions totaling \$500 or more within a calendar year.^{3/} Certainly the district is not a committee within the meaning of

^{1/} All statutory references are to the Government Code unless otherwise noted.

^{2/} Section 82013 reads:

"Committee" means any person or combination of persons who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party, whether national, state or local, if:

(a) Contributions received total five hundred dollars (\$500) or more in a calendar year;

(b) Expenditures and contributions made, other than contributions described in subsection (c), total five hundred dollars (\$500) or more in a calendar year; or

(c) Contributions of cash, checks and other cash equivalents paid directly to candidates and committees total five thousand dollars (\$5,000) or more in a calendar year. Persons or combinations of persons who are covered by this subsection but not by subsections (a) or (b) are deemed to be committees only for purposes of Chapter 4 of this title.

^{3/} See opinion requested by John W. Witt, 1 FPPC Opinions 1 (No. 75-044, Feb. 21, 1975).

Section 82013(a) since government districts do not receive political contributions. Therefore, a district is not required to file a statement of organization with the Secretary of State pursuant to Sections 8-100, et seq.

Although a district is not a committee within the meaning of Section 82013(a), if we were to conclude that a district were a committee within the meaning of Section 82013(b) or (c), it would have to file campaign statements. Section 82013(b) deals with committees which make campaign expenditures and contributions, and Section 82013(c) deals with "major donors," committees which make large monetary contributions directly to candidates or to other committees; but both subsections require that the contributions or expenditures be made for "the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure."

A district which, pursuant to Elections Code Section 23510.5,^{4/} pays or offers to pay for the publication of a candidate's statement of qualifications on an equal basis with all other candidates is not acting with the purpose of influencing voter action for or against any particular candidate. Rather, the district is seeking to perform an educational function by publicizing the qualifications of all candidates equally. The offer to pay for the publication of qualifications statements must be extended to all candidates equally, and each candidate is permitted to write his or her own statement. If a district provides a forum to all candidates equally, it cannot be said to have acted for the political purpose of influencing voter action for or against any particular candidate. Accordingly, a district which, pursuant to statute, pays or offers to pay for the publication of all candidates' statements of qualifications is not a committee and, consequently, need not file campaign statements.

(2) Similarly, if a district were to purchase space in the voters' pamphlet for the purpose of presenting arguments

^{4/}Elections Code Section 23510.5 provides, in pertinent part:

On the 110th day prior to the day fixed for the general district election the secretary shall deliver a notice to the county clerk. The notice... shall also contain the following:

...
(b) Whether the district or the candidate is to pay for the publication of a statement of qualifications pursuant to Section 10012.5.

on both sides of an issue, it would not be a committee and, therefore, would not have any reporting obligations. Moreover, even if the district submitted an argument for publication in the voters' pamphlet which supported only one side of a measure, it still would not be a committee. State statutes (e.g., Education Code Section 1461; Elections Code Sections 3783 (county), 5012 (city) and 5157 (district initiative)) permit the district or any voter to submit an argument supporting or opposing a ballot measure for publication at district expense.^{5/} Thus, by statute, the right to have arguments printed in the voters' pamphlet is extended on an equal basis to supporters and opponents alike. If no counter-arguments are submitted to the clerk and, consequently, only the district's argument appears in the voters' pamphlet, the district still cannot be said to have acted for the political purpose of influencing voter action for or against a particular measure.

This situation is analogous to the candidate's statement of qualifications discussed above; a candidate's failure to accept the district's offer to pay for the statement of qualifications does not give the district's action a political purpose merely because the district pays for his opponent's statement. It is the bona fide offer to print qualifications statements or ballot arguments on an equal basis which is important in determining whether the district acted with a political purpose.

Approved by the Commission on February 4, 1976.
Concurring: Brosnahan, Carpenter, Lowenstein, Miller and Waters.


Daniel H. Lowenstein
Chairman

^{5/} With respect to the printing and distribution of candidate qualifications statements in the voters' pamphlet, the Elections Code establishes a procedure by which each candidate is billed unless the district agrees to incur these costs for all candidates. Elections Code Section 23510.5. On the other hand, no procedures exist for billing costs incurred in the printing and distribution of arguments concerning ballot measures. We have been advised that the practice among election officials in California is that costs relative to ballot measure arguments must be paid by the government entity conducting the election.