A-84-157

MAY 23 12 40 PM 84

UCLA Law School
405 Hilgard
Los Angeles, California 90024

May 17, 1984

Barbara Millman
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: Berman and D'Agostino
Campaigns, Inc.

Dear Barbara,

This letter is to memorialize our telephone conversation of Tuesday. Also, I should like to thank you and Jeanne Pritchard for your cooperation in responding to my inquiry on such short notice.

We discussed two questions relating to the slate mail program to be published by my client, Berman and D'Agostino Campaigns, Inc. (BAD Campaigns). First was the question of who was the "sender" of the slate, for purposes of the notices required by the Political Reform Act and the FPPC regulations. Second was the question of how the receipts and expenditures of the program will be disclosed.

With respect to the first point, the procedure we agreed upon is as follows. On the outside of each envelope, it will be stated that the mailing is sent by candidates and ballot measure committees named inside. Inside, the names of those candidates and measures who are "participating" in the program (i.e., who are paying BAD Campaigns for "featured" status in the mailings) will be marked with an asterisk. There will be a statement that the mailing was sent or paid for by the candidates and measures that are so marked. Both inside and outside will be the statement that the mailing is published by BAD Campaigns.

With respect to the second point, I indicated that BAD Campaigns regards its status as governed by Government Code Section 84303, and that pursuant to that section it intends to file campaign statements similar to those filed by Californians for Democratic Representation in 1982. That is, BAD Campaigns will file statements indicating the payments it receives from candidates and measures for participation in the slate mailing program. These payments will be reported as "miscellaneous receipts." In addition, the statements will report all the expenditures in connection with the slate program. The participating candidates and measures will be expected to disclose their payments to BAD Campaigns as expenditures, but will not report any additional details relating to the program.

You indicated that although you would prefer that the

details be reported by the participating candidates and measures rather than by BAD Campaigns, you accede to reporting as described in the foregoing paragraph for the primary election.

With respect to the general election and all future elections, you stated that the above reporting procedures would be impermissible because of a new regulation, Section 18431, which has been adopted by the FPPC but will not go into effect until after the primary. You indicated you will send me a copy of the new regulation as soon as possible.

I expressed my opinion that Government Code Section 84303 gives a slate mail publisher such as BAD Campaigns the right to elect to disclose the expenditures of the slate mail program itself rather than requiring the participating candidates and measures to do so. I asserted that if the new regulation purports to eliminate that right it is inconsistent with the statute and therefore invalid. You indicated your disagreement.

Finally, you indicated that some time later this year the Commission is likely to consider regulations relating to slate mail programs. I requested and you agreed that my clients and I will be notified of these proceedings at the earliest stage possible, as we are likely to have comments and suggestions.

Please let me know immediately if you believe any corrections or additions are needed to accurately reflect our agreements. Again, I am grateful for your assistance.

Sincerely,

Daniel H. Lowenstein

Daniel H. Lowenstein
Attorney for
Serman and D'Agostino
Campaigns, Inc.