

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

January 8, 1985

Gerald A. Sperry  
City Attorney  
City Hall  
Stockton, CA 95202

Re: Your Request for Advice  
Our No. A-84-321

Dear Mr. Sperry:

Your letter requests advice on behalf of Stockton Mayor Randall (Randy) Ronk. The facts and issues are stated in your letter as follows:

Mayor and City Councilmember Randall (Randy) Ronk has authorized this office to request the assistance and opinion of the Fair Political Practices Commission in determining whether the enclosed "Newsletter" may be published and disseminated at public expense or whether the cost of such public publication and dissemination must be a personal expense.

The Council for the City of Stockton has adopted the following policy regarding newsletters:

### C. Out-Of-Town Conference/Newsletters

An equal amount shall be allocated annually for each Councilmember for attendance at City related out-of-town conferences and for printing and mailing of Newsletters from Councilmembers to their constituents.

The sole purpose of the Newsletter shall be to inform constituents of City activities and shall not be used to advance the political interest of a Councilmember. Recent court actions support the proposition that use of public funds to support or

Gerald A. Sperry  
January 8, 1985  
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oppose any candidate or to support or oppose any measure submitted to the electorate for approval is improper.

Councilmembers who plan to distribute Newsletters shall first submit a draft of the Newsletter to the City Manager for determination as to whether its printing and mailing can be done in-house or by outside means. Generally, large unsolicited outside mailings must be referred to private contractors because of the excessive demands on staff time. In such cases, individual Councilmembers will be responsible for contacting the contractor and making the required arrangements for printing and distribution. When done by outside sources, Councilmembers may submit billing of the work performed to the City Manager for payment from the Councilmember's respective travel budget.

Individual Councilmembers shall receive reimbursement only to the maximum allocated by the City Council in each budget year. Expenses above the maximum allocated cannot be paid unless the City Council increases the allocation.

Mayor Ronk's term will expire December 1, 1985, with the election being held November 5, 1985. Mayor Ronk has not announced that he will seek reelection.

#### ANALYSIS

As I indicated to you in our previous telephone conversation, ultimately the interpretation of the Policy of the Stockton City Council is up to the Council and you as its attorney. The Commission has no jurisdiction over that policy. You have also raised an issue with respect to the possible applicability of several court decisions regarding the legality of an expenditure of public funds to advocate electoral actions. Those issues should be addressed to the Attorney General's Office. We are unable to provide you with advice on this topic because the Political Reform Act only deals with reporting contributions and expenditures.

However, we are able to provide you with some guidance on the general question posed by your letter and its attachment. (See Exhibit "A", attached hereto.) Under the Political Reform

Act, we would not consider the payment for production and mailing of the newsletter of Mayor Ronk to be an in-kind contribution from the City of Stockton. Our reasoning is as follows:

(1) The Council has a uniform policy of permitting payment for newsletters by each councilmember.

(2) Mayor Ronk has not yet filed a declaration of candidacy for office.

(3) The newsletter is very similar in style and in content to legislative newsletters sent out by state legislators ("elected state officers").

While the Political Reform Act<sup>1/</sup> does not directly address newsletters sent out by local elected officials, it does address this issue as it relates to elected state officers. Section 89001, states as follows:

No legislative newsletter or other mass mailing shall be sent at public expense by or on behalf of any elected state officer after the elected state officer has filed a declaration of candidacy for any office.

The Commission has never treated the "public expense" aspect of such mailings as an in-kind contribution from the state to the elected state officer when the newsletter is sent out prior to a declaration of candidacy. If one were sent at public expense after a declaration of candidacy it might be treated as an in-kind expenditure; however, because this is expressly prohibited by Section 89001, it has not come up.

Again, we stress that the interpretation of the Stockton City Council's policy ultimately is a matter for the City Council to determine and the precise meaning of the phrase "shall not be used to advance the political interest of a Councilmember" is not for us to decide.

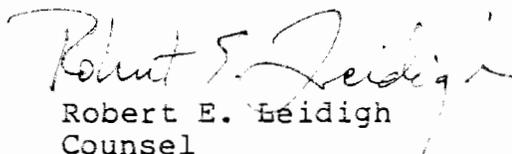
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<sup>1/</sup> Government Code Sections 81000-91014. All statutory references are to the Government Code.

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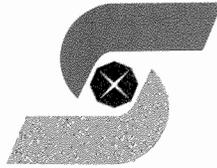
We hope that this letter is of some assistance to you, the City Manager and Mayor Ronk. Should any of you have further questions, please do not hesitate to call on us.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:plh  
Attachment



CITY OF STOCKTON

DEC 21 8 38 AM '84

CITY HALL  
STOCKTON, CA 95202

OFFICE OF THE CITY ATTORNEY  
(209) 944-8333

December 20, 1984

Fair Political Practices Commission  
1100 "K" Street  
Sacramento CA 95814

CITY COUNCIL NEWSLETTER

Mayor and City Councilmember Randall (Randy) Ronk has authorized this office to request the assistance and opinion of the Fair Political Practices Commission in determining whether the enclosed "Newsletter" may be published and disseminated at public expense or whether the cost of such public publication and dissemination must be a personal expense.

The Council for the City of Stockton has adopted the following policy regarding newsletters:

C. Out-Of-Town Conference/Newsletters

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Councilmembers who plan to distribute Newsletters shall first submit a draft of the Newsletter to the City Manager for determination as to whether

its printing and mailing can be done in-house or by outside means. Generally, large unsolicited outside mailings must be referred to private contractors because of the excessive demands on staff time. In such cases, individual Councilmembers will be responsible for contacting the contractor and making the required arrangements for printing and distribution. When done by outside sources, Councilmembers may submit billing of the work performed to the City Manager for payment from the Councilmember's respective travel budget.

Individual Councilmembers shall receive reimbursement only to the maximum allocated by the City Council in each budget year. Expenses above the maximum allocated cannot be paid unless the City Council increases the allocation.

Mayor Ronk's term will expire December 1, 1985, with the election being held November 5, 1985. Mayor Ronk has not announced that he will seek reelection.

On December 20, 1984, City Manager Ed Griffith requested the opinion of this office whether publication of the enclosed "Newsletter" should be paid for at public expense and whether said "Newsletter" advanced "the political interest of Mayor Ronk".

In reliance on Stanson v. Mott (1976) 17 Cal. 3d 206; Miller v. Miller (1978) 87 Cal. App. 3d 762; and People v. Battin (1978) 77 Cal. App. 3d 635, this office opined that it would not be a valid expenditure of public funds for the City of Stockton to pay for the publication and/or dissemination of said "Newsletter".

Mayor Ronk disagrees with the factual determination that (1) the content of said Newsletter is "political" or (2) if political that it would advance his political interests in that he is not presently running for public office.

Your review and advice is appreciated.



GERALD A. SPERRY  
CITY ATTORNEY

GAS:plc  
Enclosure

cc: Mayor Randall (Randy) Ronk  
City Manager

# State of California



## Fair Political Practices Commission

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(916) 322-5662 322-5660 322-5901 322-6441

December 28, 1984

Gerald A. Sperry  
City Attorney  
City Hall  
Stockton, CA 95202

Re: A-84-321

Dear Mr. Sperry:

Your letter requesting advice under the Political Reform Act has been referred to Robert E. Leidigh, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

  
Barbara A. Milman  
General Counsel

BAM:plh