A-84-331

State of California

Fair Political Practices Commission

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

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

June 29, 1984

Leo Sullivan, Esq.
1010 Second Avenue, Suite 2301
San Diego, CA 92101

Dear Mr. Sullivan:

On June 11, 1984, we discussed the question of whether contributions to a legal defense fund for Mayor Hedgecock to help pay for his attorney expenses would count as contributions under the Political Reform Act, and be reportable on the Mayor's campaign statements. I advised you that in the past we have always said that contributions for an official's legal expenses are contributions under the Act unless the legal expenses are for a purely personal purpose unrelated to the official's status as a candidate or as a public official. You informed me that you would ask for written advice as to whether special circumstances in Mayor Hedgecock's case might make it appropriate to treat contributions to such a fund as gifts rather than as contributions under the Act. Since I have not heard from you, I assume you are in agreement with our initial determination that contributions to such a legal defense fund are contributions within the meaning of Government Code Section 82015.

Very truly yours,

Barbara A. Milman

Barbara A. Milman
General Counsel

BAM:plh

A-84-331

Oliver Sullivan Cummins & Wertz
A PROFESSIONAL CORPORATION
LAWYERS

JOHN ROSS WERTZ
SCOTT C. CUMMINS
LEO SULLIVAN
MORGAN DENE OLIVER
BARRY L. BELL
STEVEN GRANT AMUNDSON
GEORGE BURKE HINMAN
ELAINE A. ROGERS

OF COUNSEL
JOSEPH H. CUMMINS
GLEN R. ROBERTS

1010 SECOND AVENUE, SUITE 2301
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 233-1888

DEC 24 8 38 AM 84

December 19, 1984

Ms. Barbara A. Milman, General Counsel
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804

Re: Roger Hedgecock/Californians for the Future

Dear Ms. Milman:

We represent Roger Hedgecock and Californians for the Future, a committee controlled by Roger Hedgecock.

Californians for the Future is a committee which has been formed and is controlled by Roger Hedgecock for the purpose of soliciting contributions and making expenditures for, among other things, the payment of attorney fees and related litigation expenses incurred by Roger Hedgecock, the Roger Hedgecock for Mayor Committee, and any officers, employees and agents of the Roger Hedgecock for Mayor Committee, in connection with the recent investigations by the District Attorney, the Grand Jury and the Fair Political Practices Commission, the civil lawsuits filed by the District Attorney and the FPPC, and the criminal proceedings now being conducted by the District Attorney.

The attorney fees and related litigation expenses will be paid directly by the Committee or will be paid as reimbursement to persons who have paid such fees, regardless of the time period in which the fees were paid or incurred.

The investigations and litigation incident to which the attorney fees and litigation expenses have been or will be incurred concern alleged violations of the Political Reform Act and related perjury and conspiracy charges incident to Roger Hedgecock's candidacy for office and status as an office holder. The gist of the civil complaint and criminal indictment prosecuted by the District Attorney is that Roger Hedgecock, the Roger Hedgecock for Mayor Committee, and Peter Q. Davis, the treasurer of the Roger Hedgecock for Mayor Committee, failed to properly report campaign contributions and expenditures, and that Roger Hedgecock, as a candidate and office holder, failed to properly report income on his statements of economic interests. The suit filed by the FPPC parallels the civil and criminal actions prosecuted by the District Attorney, and includes additional allegations regarding improper reporting of contributions to and

expenditures by the Roger Hedgecock for Mayor Committee, additional allegations regarding improper reporting of income by Roger Hedgecock, and allegations regarding conflicts of interest on the part of Roger Hedgecock while Mayor of the City of San Diego. The civil and criminal actions now pending against Roger Hedgecock affect his status as an office holder in that criminal convictions may lead to his expulsion from office and his inability to be a candidate for office in the future, and civil liability will adversely impact the performance of his duties in office and his future as a candidate and office holder.

The Committee has filed a statement of organization under Section 84101 of the Political Reform Act, will report all contributions and expenditures under the Political Reform Act, and will file all other reports, statements and documents required to be filed by the Political Reform Act.

We have concluded that contributions to and expenditures by the Committee are political contributions and expenditures and must be reported as such. Section 82015 of the Political Reform Act[1/] defines a "contribution" to include any payment "unless it is clear from the surrounding circumstances that it is not made for political purposes." Section 18215(a) of the Regulations[2/] provides that a contribution-type payment is made for political purposes if it is made at the behest of a candidate "unless it is clear from surrounding circumstances that the payment was received or made at his or her behest for personal purposes unrelated to his or her candidacy or status as an office holder," and any payment received or made at the behest of a controlled committee. Section 18215(b) of the Regulations defines "made at the behest" to mean a payment made "under the control or at the direction of a candidate [or] controlled committee."

Section 82025 of the Political Reform Act defines an "expenditure" to include a payment by a candidate or committee "unless it is clear from the surrounding circumstances that it is not made for political purposes." Section 18225(a) of the Regulations provides that an expenditure-type payment is made for political purposes if it is made by a candidate "unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder," and any payment made by a controlled committee.

The FPPC has consistently taken the position that contributions and expenditures to defray attorney fees of a candidate or office holder are for political purposes and must be reported as such

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1/ Section 81000 et seq. of the Government Code.
2/ Section 18110 et seq. of Title 2 of the California Administrative Code.

unless the litigation has nothing to do with the individual's candidacy or status as an office holder. This position has most recently been confirmed in your letter to me dated June 29, 1984, a copy of which is enclosed, in which you advised me that "in the past, we have always said that contributions for an official's legal expenses are contributions under the Act unless the legal expenses are for a purely personal purpose unrelated to the official's status as a candidate or as a public official." See also 5 FPPC Opinions 14 (1979) (Litigation expenses paid by a candidate who brought suit seeking to remove another candidate from the ballot must be reported as political expenditures); FPPC Private Advice Letter to Kenneth Cory, dated September 15, 1977 (C-86) (A committee must report as expenditures monies raised to pay legal fees from indictment proceedings); FPPC Private Advice Letter to Tony Bennetti, December 14, 1979 (C-123) (An office holder who accepts funds to pay for legal expenses incurred in the course of defense against a possible conviction which would cause expulsion from office must report the funds as contributions as their use bears directly on his status as an office holder); FPPC Private Advice Letter to Andy Scherone, dated June 23, 1980 (C-134) (Costs of litigation and related expenses which are key to the success of a campaign are reportable as contributions); FPPC Private Advice Letter to Betty L. Wallis, dated April 16, 1981 (C-146) (Expenditures of personal funds by city council members in a lawsuit to defend against a recall action are reportable campaign expenditures).

We have also concluded that because the contributions are political contributions and must be reported as such, they are excluded from the definition of income by Section 820930(b)(1) of the Political Reform Act and from the definition of gift by Section 82028(b)(4) of the Political Reform Act.

We will continue to rely on your letter of June 29, 1984, as sufficient advice with regard to these matters unless we hear from you otherwise pursuant to Section 83114(b) of the Government Code and Section 18329 of the Regulations.

Very truly yours,

Leo Sullivan

Leo Sullivan
For
OLIVER SULLIVAN CUMMINS & WERTZ
A Professional Corporation

LS:8285A

cc: Mr. Stuart H. Swett
Chief Deputy City Attorney
City of San Diego

Oliver Sullivan Cummins & Wertz
A PROFESSIONAL CORPORATION
LAWYERS

JOHN [illegible] WERTZ
SCOTT [illegible] CUMMINS
LEO SULLIVAN
MORGAN DENE OLIVER
BARRY L. BILL
STEVEN GRANT AMUNDSON
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ELAINE A. ROGERS

OF COUNSEL
JOSEPH H. CUMMINS
GLEN R. ROBERTS

1010 SECOND AVENUE, SUITE 2301
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 233-1888

December 19, 1984

Mr. Stuart H. Swett
Chief Deputy City Attorney
City of San Diego
202 "C" Street
San Diego, California 92101

Re: Roger Hedgecock/Californians for the Future

Dear Mr. Swett:

We represent Roger Hedgecock and Californians for the Future, a committee controlled by Roger Hedgecock.

Californians for the Future is a committee which has been formed and is controlled by Roger Hedgecock for the purpose of soliciting contributions and making expenditures for, among other things, the payment of attorney fees and related litigation expenses incurred by Roger Hedgecock, the Roger Hedgecock for Mayor Committee, and any officers, employees and agents of the Roger Hedgecock for Mayor Committee, in connection with the recent investigations by the District Attorney, the Grand Jury and the Fair Political Practices Commission, the civil lawsuits filed by the District Attorney and the FPPC, and the criminal proceedings now being conducted by the District Attorney. Funds contributed which are not used for attorney fees will be used for exploratory activities regarding the possibility of Roger Hedgecock seeking future statewide office, to support candidates for statewide office, and to support or oppose statewide ballot measures. Funds contributed will not be used for anything other than the purposes described above and for administrative expenses of the Committee, and in particular will not be used for the personal use of Roger Hedgecock or any other person, and will not be used in support of or in opposition to a candidate for City of San Diego office or for any other purpose related to a City of San Diego candidate, committee, office or election.

The attorney fees will be paid directly by the Committee or will be paid as reimbursement to persons who have paid such fees, regardless of the time period in which the fees were paid or incurred.

The investigations and litigation incident to which the attorney fees and litigation expenses have been or will be incurred concern alleged violations of the Political Reform Act,[1] alleged perjury regarding verifications required by the Political Reform Act, and alleged conspiracy regarding alleged violations of the Political Reform Act and the San Diego Municipal Election Campaign Control Ordinance (the "local campaign ordinance")[2] incident to Roger Hedgecock's candidacy for office and status as an office holder.

The Committee filed a statement of organization under Section 84101 of the Political Reform Act, will report all contributions and expenditures under the Political Reform Act, and will file all other reports, statements and documents required to be filed by the Political Reform Act.

We have concluded that the contribution restrictions of the local campaign ordinance are not applicable to the funds contributed to and expended by the Committee because the ordinance applies only to local elections. In Section 27.2901 of the Municipal Code, the City Council declares that the purpose and intent of the ordinance is "to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns and municipal elections." With regard to the $250 contribution limitation, Section 27.2941(a) prohibits contributions in excess of $250 if made "with respect to a single election in support of or opposition to such candidate, including contributions to all committees supporting or opposing such candidate." With regard to organizational contributions, Section 27.2942 prohibits contributions from any person other than an individual "to any candidate or committee." Section 27.2903(b) defines candidate to mean an individual who is listed on the ballot or who has begun to circulate nominating petitions for nomination or election "to any elective City office," or who receives contributions or makes expenditures with the view to bring about his nomination or election "to any City office." Section 27.2903(c) defines City office to mean "the offices of Mayor, Councilman and City Attorney of the City of San Diego." Section 27.2903(g) defines election to mean "any primary, general or special election held in the City of San Diego." Finally, Section 27.2903(d) defines committee to mean "any person or combination of persons who directly or indirectly receives

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1/ Section 81000 et seq. of the Government Code.
2/ Section 27.2901 et seq. of the San Diego Municipal Code.

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 City measure."

In short, because the funds will be contributed and expended for attorney fees rather than in support of a local candidate or to influence a local election, Roger Hedgecock is not a candidate under the local ordinance, the Committee is not a committee under the local ordinance, funds received by the Committee are not contributions under the local ordinance and the contribution limitations of the local ordinance are simply not applicable.

Furthermore, we do not believe the local campaign ordinance would be constitutional if it is construed to limit the ability of a candidate or office holder to raise attorney fees for his defense in criminal and civil litigation.

Please let me know if you believe a formal opinion of the City Attorney is necessary with regard to these matters.

Very truly yours,

Leo Sullivan
For
OLIVER SULLIVAN CUMMINS & WERTZ
A Professional Corporation

LS:8288A

cc: Ms. Barbara A. Milman
General Counsel
Fair Political Practices Commission