California
Fair Political
Practices Commission

October 28, 1985

John David Warburton
1900 Salinas Road, Space 40
Watsonville, CA 95076

Re: Your Request for Advice
FPPC NO. A-85-214-1

Dear Mr. Warburton:

This is in response to your letter of October 10, 1985, requesting advice regarding the campaign disclosure provisions of the Political Reform Act (Government Code Sections 81000-91015). Specifically, you asked whether the activities of your organization require you to file a Statement of Organization and campaign disclosure reports pursuant to the Act.

In your letter, you state that the purpose of your organization is to oppose a rezoning proposal for the Scotts Valley General Plan which is being considered by the City Council, and that there is no election in Scotts Valley during 1985, either to vote on the rezoning proposal or to elect members to the City Council. You provided several pieces of literature which your organization has prepared and distributed to residents of Scotts Valley encouraging them to contact the City Council and attend Council meetings to voice opposition to the rezoning proposal. There is nothing in the literature which refers to or advocates the election or defeat of a candidate or measure.

Government Code Section 84101 requires all recipient committees to file a Statement of Organization. Section 82013(a) defines recipient committee as any person or combination of persons who "receives contributions totaling five hundred dollars ($500) or more in a calendar year."

In order for the funds received by your organization to be considered "contributions," the organization must be using those funds to make "expenditures" as defined in FPPC regulation 2 Cal. Adm. Code Section 18225 (copy enclosed). Section 18225 states that an "expenditure" is a payment made to or at the behest of a candidate or committee, or a payment for communications which "expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure." The regulation further defines the terms "clearly identified" and "expressly advocates."

428 J Street, Suite 800 • P.O. Box 807 • Sacramento CA 95804-0807 • (916) 322-5660

Because the materials you provided contain nothing that could be construed as expressly advocating the nomination, election or defeat of a candidate or measure, payments made by your organization are not "expenditures." Therefore, the payments your organization receives from its members are not "contributions" and you have no obligation to file a Statement of Organization or campaign disclosure reports.

Finally, you asked whether you can include certain material in your pamphlets, such as copies of court documents and material out of the General Plan. The Commission has no authority to authorize or prohibit inclusion of such materials and I am not aware of any other law which would prohibit it. However, you may wish to contact your local district attorney for a definite answer.

I hope the foregoing has been helpful. Please let me know if I can be of any assistance in the future.

Sincerely,

Carla Wardlow

Carla Wardlow
Political Reform Consultant

CW:kt

John David Warburton
1900 Salinas Rd. Space 40
Watsonville California 95076

Dear Persons
On 10/10/85 I phoned your office (Fair Political Practices Commission) and I talked with one of your staff. I told them that I wanted to know whether or not we should apply for a Statement of Organization (Recipient Committee) number? through the Secretary of States Office. Your staff member upon hearing our explanatiom said that they were positive that we did'nt have to but if we wanted to be sure we could send in our pamphlets and that your office would review them and send us a letter back telling us that either we would have to file for a Statement of Organization or not. We are opposing one of the proposals (rezoning proposals) of the City of Scotts Valley's new General Plan. This Plan is yet to be adopted and we the citizens cannot vote on it but it's or the outcome will be decided by a vote of the City Council. There is no ballot and no election of City Officials this year ---not until no general election until next June (of 86). We are (under State Law) allowed to attend the hearings and to voice our opinions, (input) We wonder however if our material (pamphlets) could be construed as political campaigning (howbeit far in advance) and if this would make it mandatory for us to have a Statement of Organization.

Time is of the essence to us and we would greatly appreciate hearing from you promtly.

Also we would like to know if we can include in our pamphlets a zeroxed copy of a Superior Court record such (documents) as the copy enclosed in this mailing. Please note we are not asking or telling anyone to vote in the future for any candidate and we are only interested at present in bringing out the true facts concerning our new, (fairly new) majority Council (government) and the restrictions that it is trying to impose upon us.

Also can we use copied material out of the new General Plan book in our pamphlets as a matter of reference for example, seeing as it was our tax dollars that paid for the Plan. We would like to use maps etc. such as the one you will notice in our golden or light brown pamphlet.

Thankyou very much
Sincerely yours
Dave Warburton

John David Warburton
10/10/85

P.S. If we cannot use copies of the court doc. we would like to know why please. Thankyou

MITCHELL PAGE
PAGE & COBEN
ATTORNEYS AT LAW
105 SOQUEL AVENUE
SANTA CRUZ, CALIFORNIA 95060
408/429-9966

(SPACE BELOW FOR FILING STAMP ONLY)

FILED
Santa Cruz County
APR 25 1985
RICHARD W. BEDAL, Clerk
By _____, Deputy

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CRUZ

COMMITTEE FOR ORDERLY GROWTH, JOE MILLER and ROGER ANDERSON, Petitioners, vs. CITY OF SCOTTS VALLEY, Respondents.	No. 84739 NOTICE OF ENTRY OF JUDGMENT

TO: CITY OF SCOTTS VALLEY and to its attorney of record herein:

PLEASE TAKE NOTICE that on April 15, 1985, judgment was entered in favor of Petitioner and against Respondent for $13,193.00 in attorney's fees.

Dated: 4/25/85

MITCHELL PAGE, Attorney for Petitioners

C.

The necessity and financial burden of enforcement are such as to make the award appropriate.

There can be no question but that the necessity of private enforcement was clear in this case. As the Supreme Court stated in Woodland Hills II: "Inasmuch as the present action proceeded against the only governmental agencies that bear responsibility for [in that case, subdivision approval], the necessity of private, as compared to public, enforcement becomes clear." Woodland Hills II, supra, at 941. As in that case, this litigation was brought against the only public agency specifically charged by law with the responsibility for adoption of a general plan for Scotts Valley in compliance with State law.

It is equally clear that the financial burden of private enforcement in this case is such as to make an attorney's fee award appropriate. With regard to this aspect of C.C.P. §1021.5, the Supreme Court has stated:

> An award on the "private attorney general" theory is appropriate when the cost of claimant's legal victory transcends his personal interest, that is when the necessity for pursuing the lawsuit placed a burden on the plaintiff "out of proportion" to his individual stake in the matter. [Cit.] Woodland Hills II, supra, at 941

In the instant case, the individual Petitioners have no personal financial interest in the matter. Plaintiff Committee for Orderly Growth is an association of citizens and residents of the City of Scotts Valley who are devoted to ensuring that growth and development in the City occur in an orderly manner, and Plaintiffs Roger Anderson and Joe Miller are members of the association as well as City residents, devoted to the same ends. Plaintiffs

PAGE & COBEN
ATTORNEYS AT LAW
105 SOQUEL AVENUE
SANTA CRUZ, CALIFORNIA 95060
408/429-9966

herein acted in the capacity of "private attorneys general" in the classic sense, and clearly within the intended scope of C.C.P. §1021.5. The subsequent election of Plaintiffs Anderson and Miller to the Scotts Valley City Council in June, 1984, does not alter their posture at the time litigation was initiated (April, 1983) and the result sought achieved.

wanted apparently

II

$41,858.25 IS A REASONABLE AMOUNT FOR AN AWARD OF ATTORNEY'S FEES HEREIN

In Press v. Lucky Stores, Inc. (1983) 34 Cal.3d 311, 317-322, 193 Cal.Rptr. 900, the California Supreme Court clarified the procedure for determining the appropriateness and amount of an award under C.C.P. §1021.5. The proper procedure is first to determine the appropriateness of an award by application of the statutory factors set forth in C.C.P. §1021.5, and, if an award is found appropriate, then to calculate the amount of attorney's fees to be awarded.

The amount of the award is to be determined by following the guidelines set forth in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49 (hereinafter Serrano III), namely, determination first of a "touchstone" or "lodestar" figure based on a "careful compilation of the time spent and reasonable hourly compensation for each attorney . . . involved . . . ", which figure may then be augmented or diminished by using a multiplier after the Court has considered other factors concerning the case. The factors which a trial court may consider in adjusting the lodestar figure are set forth in Serrano III, supra, at 49. Trial court discretion in determining the amount of an attorney's fee award, based on the above method,

PAGE & COBEN
ATTORNEYS AT LAW
105 Soquel Avenue
SANTA CRUZ, CALIFORNIA 95060
408/429-9966