



California Fair Political Practices Commission

February 27, 1986

David Winkler
The Del Mar Partnership
300 Fifteenth Street
Del Mar, CA 92014

Re: Your Request for Advice
Our File No. A-86-035

Dear Mr. Winkler:

Thank you for your letter requesting advice concerning the duties of The Del Mar Partnership, Inc. ("Del Mar"), under the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/}

FACTS

In 1984, Del Mar proposed a commercial project known as the Plaza. The Plaza project has been involved in a long planning process which will culminate with the Planning Commission and the City Council hearings sometime in February 1986.

On April 8, 1986, there will be an election which will include City Council races and will include an initiative ballot measure which would require projects such as the Plaza project to be approved by the voters.

Del Mar recently conducted a poll to determine the voters' position on various issues, including the Plaza project and the initiative measure. In your letter, you stated that this poll was conducted for internal business decisionmaking purposes and for purposes of informing the Planning Commission and the City Council of what the residents of the City of Del Mar would like to see in the Plaza project. The poll includes questions about attitudes toward local public officials and toward a public vote on the Plaza project.

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

QUESTIONS

You have asked a series of questions, which we have restated, as follows:

(1) Will Del Mar incur any campaign reporting obligations if it provides the results of its survey to Planning Commissioners, City Councilmembers, other government officials, individuals running for election, or supporters of the Plaza project?

(2) If Del Mar provides the results of its survey to a candidate or committee, will that candidate or committee be required to report the receipt of the survey results as a contribution?

CONCLUSIONS

(1) Del Mar will have reporting obligations only if it makes "independent expenditures" totaling \$500 or more in a calendar year or makes "contributions" totaling \$10,000 in a calendar year.

(2) If Del Mar provides the results of its survey to a candidate or committee which requests the results or uses the results for political purposes, that candidate or committee will be required to report the receipt of the survey results as a contribution.

ANALYSIS

Initially, you should note that no law prohibits Del Mar from revealing the results of its survey, either publicly or privately, to any candidate, committee, government official, or other person. However, under the Act, contributions to, and expenditures by, candidates and committees trigger campaign reporting obligations. Accordingly, it is necessary to discuss whether the activities of Del Mar would be considered either a contribution or an expenditure which must be reported on campaign statements, and, if so, the reporting responsibilities of Del Mar and the persons who receive the survey results.

A group or organization qualifies as a committee, and is subject to the campaign reporting requirements of the Act, if it receives "contributions," makes "independent expenditures," or makes "contributions" over a specified threshold level. Section 82013. The facts provided in your letter do not indicate that Del Mar plans to solicit and receive contributions. Therefore, we shall focus on the situations

David Winkler
February 27, 1986
Page 3

when Del Mar's activities would be considered to be making "independent expenditures" or "contributions."

If Del Mar makes "independent expenditures" of \$500 or more in a calendar year, Del Mar will be considered a committee and will be required to file campaign statements. Section 82013(b). An independent expenditure is an expenditure "made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee." Section 82031. Thus, Del Mar would make an independent expenditure if it makes any payment in connection with a communication to influence the passage or defeat of a ballot measure, such as the initiative measure which would require voter approval of certain development projects, or a measure to approve or disapprove the Plaza project, and that payment is not made to or at the behest of any committee formed to support or oppose the ballot measure.

In your letter you stated that Del Mar's survey was conducted for business decisionmaking purposes and not for political purposes. We think that a survey which includes questions about voter attitudes toward elected officials or holding elections on specific matters is conducted for political, as well as business purposes. However, whether expenditures incurred in connection with conducting a survey are considered independent expenditures will depend on the use of the survey results rather than the purpose of the survey. If Del Mar does not use the survey results for any communication to influence the voters in connection with an election, then the cost of conducting the survey would not be considered an independent expenditure. However, if Del Mar uses the results of the survey in a communication, such as an advertising campaign, to influence the actions of the voters in connection with an election, then the costs of conducting the survey, as well as the costs of making the communication, would be considered independent expenditures. See, enclosed copy of advice letter to Kirk Pessner, dated June 15, 1978 (File No. A-78-080). Accordingly, if Del Mar conducts the survey, and subsequently uses the survey results in a communication to influence the outcome of an election, and the total cost of the survey and the communication is \$500 or more, Del Mar will qualify as an independent expenditure committee and must file campaign statements. If Del Mar makes independent expenditures

David Winkler
February 27, 1986
Page 4

of \$500 or more, you should contact this office concerning Del Mar's specific campaign reporting obligations.

If Del Mar makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees, Del Mar will be considered a major donor committee and must file campaign statements. Section 82013(c). A "contribution" includes any monetary or nonmonetary payment for political purposes for which full and adequate consideration is not made to the donor. Regulation 2 Cal. Adm. Code Section 18215 (copy enclosed). A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or made at the behest of:

(A) 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....

* * *

(D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.

2 Cal. Adm. Code Section 18215(a).

A "payment" for purposes of the Act includes any monetary or nonmonetary benefit. Section 82044. If Del Mar were to provide the survey results to a candidate or committee which either requests the survey results or uses the survey results for political purposes, Del Mar's actions would constitute a payment for political purposes as specified in 2 Cal. Adm. Code Section 18215. Therefore, Del Mar would be making a contribution to the candidate or committee. In contrast, if Del Mar instead were to make the survey results available to the public, such as by presenting the results at a public meeting of the city council or by providing the results to a

David Winkler
February 27, 1986
Page 5

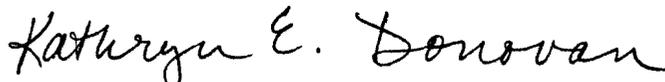
newspaper, Del Mar's actions would not be considered a contribution. Similarly, simply providing the results to a candidate or committee who neither requests nor uses the results would not be considered a contribution.

In the event that Del Mar makes a contribution to one or more candidates or committees, Del Mar should inform the candidates or committees of the amount of its contribution. The amount of the contribution to a candidate or committee is the fair market value of the benefit provided to the candidate or committee. The fair market value of the survey results would require a determination of the amount the candidate or committee would have to pay to obtain the information it received from Del Mar.

If, based on the above advice, you conclude that Del Mar will qualify as either an independent expenditure committee or a major donor committee, please contact us for specific advice about the campaign reporting provisions of the Act.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure



January 23, 1986

Ms. Carla wardlow
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: FPPC Opinion on Nonreportable Acts

Dear Ms. wardlow:

It was a pleasure speaking with you this past Wednesday, January 22, 1986 regarding information which must be reported as campaign contributions pursuant to the Fair Political Practices Act. I have summarized the background information on the upcoming election and our desire and intention to avoid having to report any contributions to any campaigns in the upcoming April 8, 1986 election. We are seeking an opinion from the FPPC which will identify, as clearly as possible, exactly what information can be disclosed publicly and private and to whom.

BACKGROUND

In the spring of 1984 The Del Mar Partnership, Inc. proposed to redevelop two commercial corners in the city of Del Mar. The Plaza project has been involved in a long planning process which will culminate with the Planning Commission and City Council hearings sometime in February, 1986.

In June, 1985 an initiative was qualified for the ballot which if passed will require the Plaza project and other projects to be put to a public vote. Although the initiative is detrimental to the Plaza redevelopment because of delays and the unknowns of the political process, The Del Mar Partnership has declared that it will not become involved in this political campaign.

On April 8, 1986 there will be an election which will include the initiative ballot measure and various races for City Council including that of incumbent mayor, Arlene Carston. The Del Mar Partnership seeks not to participate in either the initiative campaign, Mayor Carston's reelection, nor any other political campaign pending in April. The Plaza may be put to a vote at a subsequent election depending on the results of the April ballot on the initiative are known.

The Del Mar Partnership ran a poll in Del Mar at the end of December to help determine the electorates' position on various issues including the Plaza and the downtown initiative. This poll was run for internal business decision making purposes and to reveal results publicly to Planning Commissioners and City Council members to let them know what residents of this city would like to see in the redevelopment of the Plaza parcels.

ISSUES

In order to avoid making a reportable campaign contribution, we are requesting the FPCC to rule on the following questions:

1. Can poll results be revealed publicly:
 - a. About the project;
 - b. About the initiative?
2. Can poll results about the project be revealed privately to:
 - a. Project supporters;
 - b. Project supporters who may passively oppose or favor the initiative;
 - c. Plaza supporters who are members of an initiative campaign committee;
 - d. Government officials; and
 - e. Individuals running for election?

In answering questions 2. a-e, please break each response into issues which would (i) not influence the initiative election, (ii) might influence the initiative election, and (iii) would influence the initiative campaign. We believe examples of (i), (ii), and (iii) are as follows (Please correct us if we are wrong about these examples):

- (i) would not influence the election:
 - a. How frequently do you use the market at the Del Mar Plaza;
 - b. Should the Plaza property be redeveloped?

(ii) Could influence the election:

a. Do you read the Del Mar Citizen, if so, do you read the front page, letters to the editor, editorials?

b. Is Councilman Smith doing a good job?

(iii) would influence the initiative campaign:

a. Do you support a public vote on the proposed project?

b. Would you support a project if you knew that John Doe endorsed it?

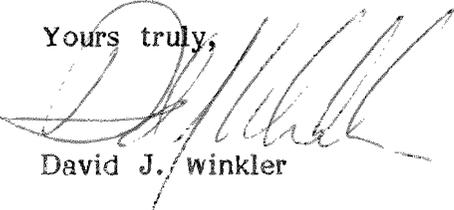
3. If the initiative passes and the Plaza is subject to a public vote, at what point must The Del Mar Partnership form a committee?
4. Are The Del Mar Partnership's pre-committee formation expenses reportable?
5. Can poll results be discussed in terms of generalities without releasing specific numbers to the individuals mentioned in questions 1 and 2 above?
6. Can The Del Mar Partnership state opinions even though such opinions may in part be based on information revealed by the poll?

Please consider all of these questions as soon as possible as The Del Mar Partnership will be making a presentation of the project to the Planning Commission and City Council within three to four weeks from the date hereof.

Although we desire to do everything possible to comply with all FPPC regulations and not make any contributions we, at the same time, believe that we have a constitutional right of free speech to promote our project. Please consider this in relationship to all questions mentioned above.

Your assistance and cooperation is greatly appreciated.

Yours truly,



David J. Winkler

DJW:sms