



California Fair Political Practices Commission

April 23, 1986

Ephraim Margolin
Attorney at Law
Attn: Nicholas C. Arguimbau
240 Stockton Street, Third Floor
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. I-86-112

Dear Mr. Margolin:

You have written to us requesting advice pursuant to Government Code Section 83114(b) with regard to an unnamed client. Your letter states the facts as follows.

FACTS

I represent a judge who is the subject of proceedings before the California Commission on Judicial Performance, which have been initiated pursuant to Article VI Section 18 of the California Constitution and Rule 905 of the California Rules of Court. On behalf of my client, whose name and the details of his case before the Commission must remain confidential pursuant to Article VI Section 18 of the Constitution, I request written advice with respect to his duties under the Political Reform Act in accordance with Government Code § 83114(b). My client faces a difficult dilemma at this point in those proceedings. Based upon a preliminary review of the partial discovery provided to him by the Attorney General, it has become evident to him that presentation of his case before the Judicial Performance Commission will require extensive pretrial preparation, including the taking of numerous depositions, and will also require an unexpectedly lengthy hearing on the merits. As a result, my client has concluded that he does not personally possess the financial resources necessary to conduct a minimally adequate defense. He has concluded that he can meet the needs for his defense, however, if he seeks funds

Ephraim Margolin
April 23, 1986
Page 2

from third parties. It is, therefore, necessary for him to set up a legal defense fund and to have solicited contributions to that fund to permit him to carry on his defense.

My client has formally inquired of the California Fair Political Practices Commission ("FPPC") what his duties are with respect to such a fund and the contributions thereto and has been told by a staff person that such contributions must be treated as gifts for purposes of Government Code Section 87207 and associated regulations. As a consequence, he is required under state law so interpreted to disclose the name, address, and business activity of each donor of over \$25, as well as the amount and date of receipt (Government Code § 87207). Such reports filed with FPPC are, in accordance with Government Code § 81008, public records.

Because the amounts required to be paid for my client's defense are substantially greater than the amounts involved in election campaigns for judges of his status, it may be anticipated that the filing of a statement disclosing multi-thousand dollar contributions to a legal defense fund will raise great amounts of public speculation and make it virtually impossible to maintain the secrecy of the proceedings before the Commission. Moreover, disclosure of the names of donors of substantial sums to my client under the conditions that the purpose of the funds not be disclosed would make fundraising practically impossible.

Because of the above, the FPPC staff person's advice to my client that he must include contributions to a defense fund in his annual income-and-gifts report, while perhaps otherwise reasonable interpretation of Government Code § 87203, results in a clash with respondent's rights under Article VI, Section 18(f) of the California Constitution to have these proceedings maintained in confidence, and his due process right to be represented by counsel in the Commission proceedings. The conflict is especially severe as a result of respondent's lack of authority to waive confidentiality and thereby allow his contributors publicly to explain the large gifts involved. Cf. Mosk v. Superior Court (1979) 25 Cal.3d 474, 494.

In addition, the forced disclosure of information concerning funds raised for legal defense raises questions about interference with the attorney-client privilege (Evidence Code § 952).

Finally, it should be noted that the Fair Political Practices Commission has discretion to set, by rule, the timing of required disclosure of gifts to a public official. (Government Code § 87203.)

The apparent constitutional clash, which would render the disclosure requirements of the Political Reform Act unconstitutional as applied to this case, can be avoided, however, under a proper construction of the relevant statutes and regulations. The term "gift" (defined in Government Code § 82028 as "any payment to the extent that consideration of equal or greater value is not received," excluding "informational material") need not include payments to a legal defense fund at all, since such payments do not necessarily provide anything "of value" to an individual who would be entitled to counsel even if he couldn't pay, and does not obtain any tangible or intangible benefit unless he actually prevails. Moreover, the time, if at all, when my client will receive any benefit from such a payment, will be when the proceedings before the Judicial Performance Commission are resolved in his favor.

ISSUE

In your letter, you have posited the issue as follows:

Therefore, it is submitted the FPPC should, and to avoid constitutional conflicts must, construe the reporting requirements of the Political Reform Act as exempting the reporting of contributions to a legal defense fund earmarked for defending proceedings under Article VI, Section 18 of the Constitution under the facts of this case and, in addition and in the alternative, as precluding any reporting requirement under such rules unless and until my client receives the benefit of resolution of the proceedings in his favor. FPPC should so rule.

ANALYSIS

Your request for advice pursuant to Government Code Section 83114(b) fails to meet the requirements for such a request.

Ephraim Margolin
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2 Cal. Adm. Code Section 18329(b)(2)(A). (Copy enclosed.) However the Commission will provide you and your client with general guidance in the form of informal assistance pursuant to 2 Cal. Adm. Code Section 18329(c).

An officeholder may raise legal defense funds by way of campaign contributions or by way of gifts. See Opinion Requested by George Agnost, 65 Ops. of Calif. Atty. Gen. 493 (1982). See also, Elections Code Section 12400, et seq.

In the case of campaign contributions, the reporting requirements may be found in Government Code Sections 84200 et seq. This would require that funds being currently raised be reported on or before July 31, 1986, along with expenditures, pursuant to Government Code Sections 84200 and 84211. This would require that any contributions and expenditures of \$100 or more be itemized.

In the case of gifts, donations being currently raised would be required to be reported next March, if the amount received equals or exceeds \$50 from a single source during this calendar year (not \$25 as erroneously stated in your letter). The use to which the funds are put by your client would not be required to be disclosed.

Under the unusual circumstances postulated in your letter,^{2/} we would continue to advise that reporting the donations as gifts would be appropriate.^{3/} Such reporting would not occur until well after the action involving your client before the Commission on Judicial Performance is completed. Even then, there will be no requirement of any disclosure of the purpose for which the funds are received, only their receipt. This will present no problems for your client. His purported inability to disclose the purpose for which the funds are received is solely related to factors external to the Political Reform Act (Government Code Sections 81000-91015).

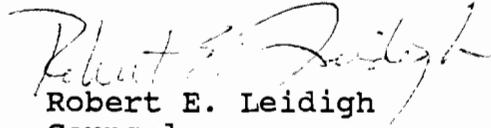
^{2/} Your letter postulates a set of facts, infra, where the mere disclosure of the purpose for which the funds were raised would violate the California Constitution. Without indicating any agreement with your postulated legal conclusion, we have taken this into consideration in this case. (See enclosed newspaper clippings.)

^{3/} Since the purpose of the expenditure may not be disclosable pursuant to Calif. Const. Art. IV, Section 18, campaign disclosure in this instance would be inappropriate and disclosure of the funds as gifts will suffice.

Ephraim Margolin
April 23, 1986
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We trust that this informal assistance provides you and your client with the information which you seek.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

Here in California

S.F. Judge Cleared by State Disciplinary Panel

SAN FRANCISCO (AP)—The state Commission on Judicial Performance has cleared a San Francisco judge for approving the no-bail release of a man arrested on sexual assault charges who is accused of murdering a woman several days after being freed.

The actions by Municipal Court Judge Charles Egan Goff "in no way transgressed established procedures," the commission said in a statement made public Monday. "Judge Goff did nothing inappropriate."

Goff is a member of the Commission on Judicial Performance, but took no part in the consideration of his case, the commission said.

The commission also said it had no jurisdiction over the pretrial release procedures themselves.

Goff signed an order last Dec. 8 releasing Robert Fairbank, 33, of San Francisco without bail, two days after he was arrested for investigation of forced oral copulation of a San Francisco woman in his apartment.

Fairbank had a record of non-violent crimes in the past. His release was arranged routinely under a program in San Francisco courts allowing most types of criminal defendants to be freed without bail before trial, and was not opposed by the district attorney's office.

Six days later, the body of Wendy Cheeks, 24, a graduate student at San Francisco State University, was found near Hillsborough in San Mateo County. Police said she had been stabbed and set afire.

Officers said Fairbank was arrested after Cheeks' car was found near his apartment. He is charged with kidnapping and murder, and faces a preliminary hearing in Redwood City Tuesday.

The woman in the oral copulation case and Cheeks' family joined in lodging complaints against Goff, saying he should not have released Fairbank without bail. The case has prompted some San Francisco officials to call for changes in the release program.

Needs link schools in China, state visiting educator notes similarities

Mark Glover
Staff Writer

An education official from China Tuesday that his nation and California have similar educational needs — more money for schools, more teachers and more facilities. We want to employ more stress education in China. Your (American) emphasis on education is the foundation of your industrialization and your science and technology," said Xiaolin, who is spending most of his year in the United States on a fellowship granted last year through the University of Chicago's department of education. Xiaolin, whose specialty is administration and management, is working in the California education department's Office of Humanities Curriculum Services. He also will spend part of the year in Washington, D.C. Xiaolin has worked for the Chinese Ministry of Education for 10 years. He has overseen enrollment programs for foreign students and scholars from more than 100 countries and has been in charge of all educational exchanges with the United States. He said he hopes to be able to apply some of his experiences in this country to the Chinese education system, which recently underwent sweeping changes. The changes are part of Chinese leader Deng Xiaoping's effort to modernize education

and promote more industrialization in the world's most populous nation.

"It involves the whole education structure. It is quite historical," Xiaolin said.

Programs instituted in China include compulsory nine-year enrollment, accelerated vocational training, increased stress on high school and college-level education, increased efforts to educate people in remote regions, more cultural exchanges with other countries and more decision-making freedom for college-level administrators.

Xiaolin said he has found that students in the United States usually assume that they will attain a high school-level education. Likewise, many expect to go to college.

In China, he said, that has not been a certainty, especially in isolated areas of the world's third-largest country.

In China last year, he said only 1.7 million completed college-level requirements, a small percentage in a country with an estimated population of about 1.1 billion.

He said China's huge population has been a major stumbling block. Xiaolin noted that California's growing population and need for more teachers, school buildings and funding represent a microcosm of China's problems.

For example, he said, China has about 9 million teachers, which is still short of the number needed. Of these, he said more than one-fourth are considered undertrained.

"You can see that it is a challenge to achieve higher education enrollment," he said.

Xiaolin said increased scientific and technological cooperation between China and the United States will help China achieve its education goals. He also said the Chinese government is committed to establishing a 24-hour educational television channel that will reach every section of the country.

City Council delays N. Natomas

By Jim Sanders
Bee Staff Writer

To avoid a potential court fight, the Sacramento City Council voted unanimously Tuesday to delay a vote on the North Natomas community plan and to ask planning commissioners to review several proposed changes to the plan.

Planning Director Marty Van Duyn said state and local laws require the Planning Commission to consider any "substantial changes" in a community plan, and he recommended the following North Natomas proposals be studied by the board:

- Air-quality plans proposed by city planners and by North Natomas landowners.
- A proposal by city planners to remove some North Natomas construction phasing requirements in exchange for contractual agreements with developers.
- A council decision to alter zoning on about 450 acres of North Natomas land owned by George Tsakopoulos west of Interstate 5.

Van Duyn said city planners are not convinced the proposed changes are substantial — with the possible exception of the air-quality plans — but the council is protecting itself legally by seeking Planning Commission review.

"This precludes them from raising the issue of whether such matters should have been heard by the commission," Van Duyn said of critics of the North Natomas plan who already have filed several suits that could affect development in the area.

Mayor Anne Rudin agreed the one-month delay is meant to ensure the council has complied with state and local laws. The Planning Commission will review the North Natomas issues May 1; the council will consider its recommendations May 13.

"We'd like the council to act on the plan as soon as possible, but we want it to be done correctly," Maurice Read, spokesman for North Natomas landowners, said of the one-month delay. "This is

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Controversial Roseville judge probed by state panel on judicial discipline

By Claire Cooper
Bee Legal Affairs Writer

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The nature of allegations pending before the Commission on Judicial Performance against Municipal Court Judge Richard Ryan was not disclosed.

However, Ryan, 39, has been under fire publicly for a string of allegedly defective sentences and other

orders. In one case he was accused of increasing a drunken-driving sentence because the defendant had exercised his right to have a jury trial.

"It's a confidential hearing, and everybody that testifies is admonished not to discuss it," Placer County District Attorney Jack Shelley said Tuesday.

David Humphreys, the county's chief assistant public defender, said members of his staff also were asked by the state attorney general's office not to comment publicly on the case. The attorney general presents the evidence against judges who go before the commission.

Ryan was not at his office and did not respond to telephone inquiries Tuesday.

The investigation reportedly was touched off by a request to the commission from the Placer County Board to look into the controversy surrounding Ryan and clear the air. The commission can clear a judge or recommend that the state Supreme Court take a variety of sanctions, up to removing the judge from office.

Ryan was elected to preside over the county's busiest court in 1982. Previously he was a Justice Court judge in Placer County for four years, a seat he also won by election

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Leads link schools in China, state

Siting educator sees similarities

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SAN FRANCISCO, CALIFORNIA 94108

MAR 31 3 53 PM '86

TELEPHONE
(415) 421-4347

March 28, 1986

Robert Leidigh, Esq.
California Fair Political
Practices Commission
428 J Street
Sacramento, CA 95814

Dear Mr. Leidigh:

Re: Ephraim Margolin's Request for Advice
on Behalf of Client, Dated March 25, 1986

This letter will confirm our telephone conversation in which I explained that our client is unable to raise adequate funds for his defense if either (1) he is unable to disclose to potential donors to a legal defense fund the purpose of the donations and the nature of the proceedings involved, or (2) the potential donor is faced with ultimate disclosure of the donation and at the same time the possibility that the purpose for the donation could never be disclosed. You indicated that you interpreted the letter as covering these problems. In any event, I would request that these difficulties be taken into account in the issuance of a ruling.

Sincerely,


Nicholas C. Arguimbau

NCA:DTG

cc: Client

EPHRAIM MARGOLIN
NICHOLAS C. ARGUIMBAU
SANDRA COLIVER

LAW OFFICES OF
EPHRAIM MARGOLIN
240 STOCKTON STREET, THIRD FLOOR
SAN FRANCISCO, CALIFORNIA 94108

March 25, 1986

MAR 26 2 46 PM '86 TELEPHONE
(415) 421-4347

Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Dear Commissioners:

Re: Request for Written Advice

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My client has informally inquired of the California Fair Political Practices Commission ("FPPC") what his duties are with respect to such a fund and the contributions thereto and has been told by a staff person that such contributions must be treated as gifts for purposes of Government Code Section 87207 and associated regulations. As a consequence, he is required under state law so interpreted to disclose the name, address, and business activity of each donor of over \$25, as well as the amount and date of receipt (Government Code § 87207). Such reports filed with

FPPC are, in accordance with Government Code § 81008, public records.

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Because of the above, the FPPC staff person's advice to my client that he must include contributions to a defense fund in his annual income-and-gifts report, while a perhaps otherwise reasonable interpretation of Government Code § 82703, results in a clash with respondent's rights under Article VI, Section 18(f) of the California Constitution to have these proceedings maintained in confidence, and his due process right to be represented by counsel in the Commission proceedings.^{1/} The conflict is especially severe as a result of respondent's lack of authority to waive confidentiality and thereby allow his contributors publicly to

^{1/} The right to counsel extends to civil proceedings as a matter of "fundamental fairness" when "the deprivation the defendant faces is significant and the facts are complex," Salas v. Cortez (1979) 24 Cal.3d 22, 27. Under recent limiting rulings of the United States Supreme Court, the lack of a right to counsel in proceedings involving deprivation of a non-liberty interest is still merely a "presumption," Lassiter v. Dept. of Social Services, 452 U.S. 18, 27 (1981). Due process requires in any event that respondent be allowed "to meet [his] adversary on equal footing in a full and fair hearing," Alta-Dena Dairy v. County of San Diego (4th Dis., Div. 1, 1969) 271 Cal.App.2d 66, 77, which clearly implies the right to counsel in this case given the extensive involvement of attorneys in a year-long process leading up to the filing of charges in this case. Moreover, the constitutional due process right to counsel in these proceedings is explicitly codified in the

explain the large gifts involved. Cf., Mosk v. Superior Court (1979) 25 Cal.3d 474, 494.

In addition, the forced disclosure of information concerning funds raised for legal defense raises questions about interference with the attorney-client privilege (Evidence Code § 952).

Finally, it should be noted that the Fair Political Practices Commission has discretion to set, by rule, the timing of required disclosure of gifts to a public official. (Government Code § 87203).

The apparent constitutional clash, which would render the disclosure requirements of the Political Reform Act unconstitutional as applied to this case, can be avoided, however, under a proper construction of the relevant statutes and regulations. The term "gift" (defined in Government Code § 82028 as "any payment^{2/} to the extent that consideration of equal or greater value is not received," excluding "informational material") need not include payments to a legal defense fund at all, since such payments do not necessarily provide anything "of value" to an individual who would be entitled to counsel even if he couldn't pay, and does not obtain any tangible or intangible benefit unless he actually prevails. Moreover, the time, if at all, when my client will receive any benefit from such a payment, will be when the proceedings before the Judicial Performance Commission are resolved in his favor.

Therefore, it is submitted the FPPC should, and to avoid constitutional conflicts must, construe the reporting requirements of the Political Reform Act as exempting the reporting of contributions to a legal defense fund earmarked for defending proceedings under Article VI, Section 18 of the Constitution under the facts of this case and, in addition and in the alternative, as precluding any reporting requirement under such rules unless and until my client receives the benefit of resolution of the proceedings in his

rules of procedure of the Commission, Rule 910(a),
California Rules of Court.

^{2/} The Act also defines "payment" as a "payment, distribution, transfer, loan, advance, deposit, gift, or other

favor. FPPC should so rule.

My client has previously raised these issues before the Judicial Performance Commission itself by motion and requested therefrom a ruling that he need not report to FPPC the contributions to a legal defense fund earmarked for his defense in these proceedings and, additionally and alternatively, that no such reporting must be made until he has received the benefit of resolution of the proceedings in his favor. In his motion (titled "[Client's] Motion for Order Permitting Relief from Political Reform Act Requirements as Interpreted by Fair Political Practices Commission Officers and for Other Relief"), my client also made the following request:

"[Client] notes that it might be argued that he should approach the FPPC for such a ruling after full disclosure of the relevant facts rather than to approach the Commission. That course of action, however, is precluded by authority depriving him of the right to waive the confidentiality of these proceedings. Mosk, supra. Therefore, if the Commission is of the opinion that FPPC should be consulted with regard to this motion, respondent stands willing to serve counsel for FPPC provided an appropriate order permitting such service and limiting FPPC's right to disclose the matter further is forthcoming. Additionally and alternatively, if the Commission deems such a course appropriate, and issues an order permitting limited disclosure to FPPC and temporarily staying these proceedings, respondent will seek appropriate relief from FPPC pursuant to Government Code § 83114."

My client, by counsel, has received a response dated March 21, 1986, which reads in relevant part as follows:

"The members of the Commission have considered [client's] Motion for an

Fair Political Practices
Commission
Page -5-
March 25, 1986

Order permitting relief from the Political Reform Act requirements dated March 12, 1986. You are advised that the Commission has concluded it is without Constitutional or other authority to provide the relief sought."

The proceedings before the Judicial Performance Commission are presently set for trial April 21, 1986. My client will be unable to complete trial preparation or discovery by that date unless prompt relief is granted. Accordingly, it is requested that a prompt response be forthcoming.

Yours very truly,



Ephraim Margolin

EM:Dtg

cc: Client
Judicial Performance Commission
Masters
Assigned Deputy Attorney General