California
Fair Political
Practices Commission

October 2, 1986

William A. Smelko
Security Pacific Plaza
1200 Third Avenue, Suite 716
San Diego, CA 92101

Re: FPPC Advice No. A-86-265

Dear Mr. Smelko:

This is in reply to your letter dated August 15, 1986, and to confirm the advice I provided to you by telephone concerning the campaign disclosure provisions of the Political Reform Act.

FACTS

In your letter, you provided us with the following facts:

(1) You are taking out a personal loan from a private individual.

(2) You will loan the proceeds of the loan to your committee, Bill Smelko for Assembly.

(3) Bill Smelko for Assembly will pay Creative International (an advertising agency and production company) $8,089 for a cable television show.

(4) Creative International will pay Cox Cable Channel 4 the $8,089 to produce and air a show call "Bill Smelko's Spotlight." The show will air every Monday night from 7:00 p.m. to 7:30 p.m. for 13 weeks beginning August 25, 1986.

(5) Bill Smelko for Assembly, Bill Smelko or Creative International will receive contributions from individuals, corporations and/or other candidates wishing to advertise on the show.

(6) Other candidates will be guests on the show.

(7) Corporations, other candidates and individuals will receive 30-second spots on the program as commercial time.

(8) The advertising revenue will be used to reimburse Bill Smelko for Assembly.

(9) Bill Smelko for Assembly will repay Bill Smelko.

(10) Bill Smelko will repay the private lender.

(11) Excess advertising revenue will be used by Bill Smelko for Assembly to help you in your election.

(12) Creative International will not be paid for its services.

In our telephone conversation, you described another transaction:

(13) You indicated that you made a partial loan repayment to the private individual referred to above by signing your employment paycheck over to the lender. You intended this payment to be a loan from you to your committee.

QUESTIONS

You asked which steps described above are reportable contributions and expenditures, and how to report each contribution and expenditure.

ANSWERS

The numbered answers below correspond to the numbered "steps" described in your letter and in our telephone conversation:

(1) and (2) The loan from the private individual is a contribution. Information concerning the loan from the private individual must be disclosed on your campaign disclosure statement. In Part 1 of Schedule B of the "Consolidated Campaign Statement" (Form 490), you must provide the name, address, occupation and employer of the private individual, along with the other required information concerning the loan.

(3) and (4) The payment to Cox Cable Channel 4 through Creative International is an expenditure which must be reported on Schedule E of the Form 490. Since Creative International is merely acting as a conduit for the payment to Cox Cable Channel 4, you must indicate that Cox Cable Channel 4 is the "payee" of the expenditure. On Schedule E, you may report this expenditure in the following manner:

(Payee)

Cox Cable Channel 4
(address)
THROUGH Creative International,
(address), acting as intermediary.

(5) In our telephone conversation, you indicated that no payments will be received from any persons for advertising time. Therefore, advice is no longer needed on this question.

(6) and (7) Other candidates who are "guests" on the show will be receiving "in-kind contributions" from you and your committee if they do not pay the fair market value for the time they are provided. The fair market value is whatever it would cost the candidates to purchase the air time on a similar show. However, those candidates who appear on the show who have paid the fair market value for the time provided to them have not received "in-kind contributions," and you are not required to disclose on your campaign statement the fact that they received the time. Any payments you receive from candidates should be reported as increases to cash on Schedule G. There is no reporting requirement with regard to time provided to corporations or other entities, or to individuals which are not candidates or committees.

(8) and (11) In our telephone conversation, you informed me that no advertising revenue has been or will be received. Therefore, advice is no longer needed on these questions.

(9) and (10) The repayment of the loan to the private lender must be reported in Part 2 of Schedule B of the Form 490.

(12) Any services provided to the campaign by Creative Internatioal for which the campaign does not provide full and adequate consideration must be disclosed as "in-kind contributions" received on Schedule C of Form 490. You must report the fair market value of the services provided by Creative Inernational. The "fair market value" is whatever it would cost to purchase the same or equivalent services on the open market. You should request that Creative International provide you with a written description and value of the services provided.

(13) The loan repayment you made by signing your employment paycheck over to the individual who made the loan to your committee should be reported in the following manner: In Part 1 of Schedule B of Form 490, report the amount of the check as a loan from yourself to your committee; in Part 2 of Schedule B, itemize the loan repayment to the individual. It is not nececessary to indicate on the campaign statement that the loan repayment was made by a third party check. However, if possible, you should retain a copy of your employment paycheck in your campaign records, along with an explanation of the transaction.

Please note that, in order to provide an accurate audit trail, all campaign receipts and expenditures should be made through the committee's bank account. Therefore, in the future, if you wish to make a loan repayment with your personal funds, you should deposit the personal funds in your campaign committee bank account, and then issue a committee check to the payee. This method should also be used if you make payments from your personal funds to vendors for campaign goods or services. Your payment to the committee should be reported either as a contribution received on Schedule A (if you do not intend to be reimbursed by the committee) or as a loan received on Schedule B (if you intend to be reimbursed by the committee).

ANALYSIS

The Political Reform Act of 1974 (Government Code Sections 81000 through 91015) requires that candidates and committees file periodic campaign disclosure statements reporting all contributions received and all expenditures made.

With regard to reporting loans, Government Code Section 84216 provides:

> Notwithstanding Section 82015, a loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.

With regard to valuation of goods or services received by a candidate or committee, Government Code Section 82025.5 provides:

> "Fair market value" means the estimated fair market value of goods, services, facilities or anything of value other than money. Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value, and a description of the goods, services, facilities, or other thing of value shall be appended to the report or statement. "Full and adequate consideration" as used in this title means fair market value.

With regard to reporting expenditures, Government Code Section 84211(j) provides that campaign statements must include the following information:

For each person to whom a expenditure of one hundred dollars ($100) or more has been made during the period covered by the campaign statement:

(1) His or her full name;
(2) His or her street address;
(3) The amount of each expenditure;
(4) A brief description of the consideration for which each expenditure was made;
(5) In the case of an expenditure which is a contribution, the date of the contribution, the cumulative amount of contributions made to a candidate, elected officer or committee, the full name of the candidate and the office and district for which he or she seeks nomination or election. In the case of a contribution in support of or opposition to a measure, the number or letter of the measure and the jurisdiction in which the measure or candidate is voted upon; and
(6) The information required in paragraphs (1) through (4) above, for each person, if different from the payee, who has provided consideration for an expenditure of one hundred dollars ($100) or more during the period covered by the campaign statement.

For purposes of subdivisions (h), (i) and (j) only, the terms "expenditure" or "expenditures" means any individual payment or accrued expense, unless it is clear from surrounding circumstances that a series of payments or accrued expenses are for a single service or product.

I hope this letter adequately reiterates the advice I provided to you in our telephone conversation. Please call me at (916) 322-5662 if you have any additional questions, or if you would like assistance in completing the campaign statement.

Sincerely,

Diane M. Griffiths
General CounseD

Jeanne Pritchard

By: Jeanne Pritchard
Division Chief, Technical
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DMG:JP:kmt

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August 15, 1986

Ms. Alice Hughes
Fair Political Practices Commission
428 "J" Street, Ste. 700
Sacramento, California 95814

Dear Alice:

It was a pleasure speaking with you last week, and I wanted to write to let you know what is happening with the television show. I am also asking for advice with respect to the reporting requirements for the money which is borrowed, received and spent.

Step 1: I am taking out a personal loan from a private individual for $8,100. Step 2: The proceeds of that loan will be loaned by me to Bill Smelko for Assembly. Step 3: Bill Smelko for Assembly will pay Creative International (an advertising agency and production company) $8,089 for the show. Step 4: Creative International will pay Cox Cable Channel 4 the $8,089 to produce and air a show called "Bill Smelko's Spotlight." The show will air every Monday night from 7:00 p.m. to 7:30 p.m. for thirteen (13) weeks beginning August 25, 1986. This means the show will air for two (2) weeks after the election. Step 5: Bill Smelko for Assembly, Bill Smelko or Creative International will receive contributions from individuals, corporations and/or other candidates wishing to advertise on the show. Step 6: Other candidates will be guests on the show. Step 7: Corporations, other candidates and individuals will receive 30-second spots on the program as commercial time. Step 8: The advertising revenue will be used to reimburse Bill Smelko for Assembly. Step 9: Bill Smelko for Assembly will repay Bill Smelko. Step 10: Bill Smelko will repay the private lender. Step 11: Excess advertising revenue will be used by Bill Smelko for Assembly to help me win my election. Finally, Step 12: Creative International will not be paid for its services.

My questions are: (i) Which steps are reportable contributions and/or expenditures; and (ii) how will one or all of these steps, if reportable, fit on your very professionally tailored report forms?

As a non-incumbent, I can assure you that unique ideas appear to be the only way to survive, much less win. I hope that my unique approach to electioneering does not cause you too much difficulty, but I would much rather be safe now than sorry later.

I would very much appreciate receiving an answer to my questions before the next reporting period so that I can make the full disclosures required by law and public interest, besides unless I find out soon, my secretary and my campaign treasurer will go nuts trying to figure out what to do and how.

Thank you for your courtesy and cooperation.

Very truly yours,

William A. Smelko

WAS:jb

cc: Pat Webb, Esq.
Ms. Linda Keene