



# California Fair Political Practices Commission

October 23, 1986

Eron Brennan  
Vice-President  
The Public Eye  
Post Office Box 640402  
San Francisco, CA 94164

Re: Your Request for Advice  
Our File No. A-86-266

Dear Mr. Brennan:

Thank you for your letter dated August 14, 1986, requesting advice under the campaign disclosure provisions of the Political Reform Act.<sup>1/</sup> This letter is to confirm the advice I provided to you in our telephone conversation of October 2, 1986.

## FACTS

You have provided us with the following facts:

The Public Eye, Inc., is a nonprofit corporation which provides production assistance for public interest groups, organizations, and others. Among those to whom you are considering giving assistance are some elected officials for the purpose of providing informational reports about pending legislation.

Consistent with the policy of the cable television company which will air these reports, these programs will in no way be campaign-oriented or political in nature. The Public Access Channel makes available free television air time to any group of individuals from within the franchise area on a first-come, first-served basis. Therefore, the channel is accessible to anyone and no purchase of air time is required. The program must meet certain criteria. For example, it must not be commercial or involve political campaigning.

As part of your community services program, The Public Eye wants to make the production assistance service available to any public official who chooses to use it. The basic cost for producing a series of 10 five-minute, bi-weekly shows will be

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<sup>1/</sup>Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

\$3,000. Some money is contributed by individuals to support the community services program in general, and some is donated to support specific shows.

#### QUESTIONS

In your letter, you asked the following questions:

- (1) Would public officials using this service have to report use of the service in any way, and does this jeopardize the tax status of the contributions?
- (2) If money is donated for a specific series involving an elected official, can it be donated directly to The Public Eye or is it a contribution to the official or his or her committee?

In our telephone conversation, we also discussed the following:

- (3) If The Public Eye were to produce the same type of community service program during a non-election period, would the answers to (1) and (2) above be different?

#### CONCLUSIONS

(1) Elected officials who are provided with free television time during an election period would be receiving "in-kind contributions" from the Public Access Channel and the The Public Eye if the officials' opponents were not provided with the same opportunity for free air time and production assistance. The amount of the in-kind contributions would be the fair market value of the air time provided by the Public Access Channel and the production assistance provided by The Public Eye.

We are unable to provide advice as to whether the making of such contributions would jeopardize the tax status of The Public Eye. You may wish to call the Franchise Tax Board at their toll-free number, (800) 852-7050, for information regarding The Public Eye's tax status.

(2) If money is donated for the purpose of funding a specific series involving an elected official, and the series is aired during an election period, the person(s) making the donation would be making in-kind contributions to the elected official. The official would be required to disclose on his or her campaign disclosure statement the required information regarding the person who made the payment.

(3) During a non-election period, the Public Access Channel and The Public Eye may provide elected officials with a forum for providing information to the public about official business, and they will not be making contributions to the public officials. In addition, persons who donate money for a specific series involving an elected official will not be making campaign contributions to the official.

ANALYSIS

FPPC Regulation 18215<sup>2/</sup> defines the term "contribution" as:

(a) ...any monetary or nonmonetary payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the actions of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage or 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...

During an election period, radio and television stations which provide equal time for all candidates for the same office are not making contributions to the candidates. However, if free radio or television time, or a rebate or discount in the cost of the air time, is provided to an elected official and not extended on an equal basis to all candidates for the same office, the official has received an in-kind contribution in the amount of the fair market value of the air time or the difference between the fair market value and the discounted price. Government Code Section 82015.

During a non-election period, elected officials who receive free air time for the purpose of providing information to the public concerning official business are not receiving

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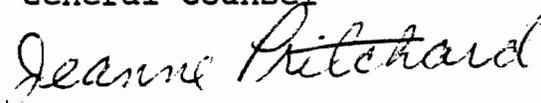
<sup>2/</sup>Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code unless otherwise noted.

"contributions." This is because the officeholders are not involved in an election and the purpose of the show is informational, rather than campaign-related. In this context the free air time is similar to providing the officeholder with an opportunity to make a speech to the public to provide information about governmental business, rather than to influence the voters in connection with an election.

I hope this adequately reiterates the advice I provided to you in our telephone conversation. Please contact me if you have any additional questions.

Sincerely,

Diane M. Griffiths  
General Counsel



By Jeanne Pritchard  
Division Chief, Technical  
Assistance and Analysis Division

DMG:JP:cah



August 14, 1986  
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Fair Political Practices Commission  
Legal Division  
428 "J" Street, 8th Floor  
Sacramento, CA 95814

Dear Sir/Madam,

I am writing to you in reference to some questions we have regarding public access television programming and Fair Political Practice Standards.

The Public Eye, Inc. is a non-profit corporation which among other things provides production assistance for public access cable television programming to public interest groups, organizations, etc. Among those to whom we are considering giving assistance are some elected public officials for the purpose of providing informational reports about pending legislation, that otherwise would not be presented to the public. Consistent with the policy of public access and the cable television company, these programs will in no way be campaign oriented or political in nature. I should point out that the Public Access Channel makes available free television air time to any group or individual from within the franchise area on a first come, first serve basis. Therefore, this Channel is accessible to anyone and no purchase of air time is required. Also, the program must meet certain criteria, such as not be commercial or involve political campaigning.

As part of our Community Services Program (see attached description), The Public Eye wants to make this service available to any public official who chooses to use it. The basic cost for producing a series of 10 five minute bi-weekly shows is \$3000. Some money is contributed by individuals to support the Community Services Program in general, and some is donated to support specific shows.

The questions we have are as follows:

1. Would public officials using this service have to declare the service in any way, and in your opinion does this jeopardize the tax status of the contributions?
2. If money is donated for a specific series involving an elected official, can it be made directly to The Public Eye or is it construed as a contribution to the "Friends Committee"?

Your response to these questions as well as other questions that we should have asked but didn't will be greatly appreciated. Thank you for your assistance in this matter.

Sincerely yours,

Eron Brennan  
Vice-President

P.S. If you need any additional information, please call me at my studio during the day at (415) 928-5122.

P.O. BOX 640402  
SAN FRANCISCO, CA 94164  
415 751 3970

VIDEO SERVICES FOR THE COMMUNITY AND THE ARTS



### COMMUNITY VIDEO SERVICES

The Public Eye, Inc., with its commitment to socially responsible television, has created a program of information and assistance designed to reach out to those groups and organizations working in the public interest. Through this project we will provide at little or no cost, creative and technical services to aid organizations in utilizing television to communicate their ideas to the community. The types of services would include consultation and evaluation, development of programming ideas, writing, production and post-production, distribution as appropriate, and publicity as needed. In addition, we will provide education and training to staff/membership as requested in order to facilitate independent production.

The process as we envisage it would begin with a preliminary meeting with the organization to determine if and/or how we might be of service. Once a need for our services has been established, after exploring a range of ways that video might be utilized, we will provide the necessary creative and technical services to assist the organization in implementing its ideas.

Television, in its various current forms, has become the primary source of information and entertainment for society. Therefore, it is imperative that public interest organizations maximize utilization of this valuable resource. We think that this program will assist those working for the common good by creating opportunities for them to benefit through the production of socially responsible television.

Kee'd FPPC  
8/25/86

GORDON COLOGNE  
ATTORNEY AT LAW  
GOVERNMENT RELATIONS

925 "L" STREET  
SUITE 1150  
SACRAMENTO, CA 95814  
(916) 444-5532

4330 LA JOLLA VILLAGE DRIVE  
SUITE 230  
SAN DIEGO, CA 92122  
(619) 457-4915

Respond to Sacramento address.

August 22, 1986

Fair Political Practices Commission  
Technical Assistance  
P.O. Box 807  
Sacramento, CA

Gentlemen:

I need some technical assistance. In discussing this matter over the telephone I am advised I may be in violation of your regulations and I would like to know if that is so, how I extricate myself.

I am a registered Lobbying Firm operating as a sole proprietorship under the name Gordon Cologne & Associates. One of my registered "employers" is the law firm of Best, Best & Krieger. The firm does considerable work in water and municipal law and occasionally refers a client to me when a legislative resolution seems appropriate. I watch legislation for BB&K and track bills. From time to time I talk to legislators about a bill but usually only to get background. I have never charged B.B. & K. for any of this work. We share office space in San Diego and they carry me on their letterhead as "of counsel" but I have no other interest in the firm and receive none of their profits.

When a client is referred to me, I register the client as an employer and bill the client directly. BB&K do not share in my fees in these matters.

BB&K has a client, Valencia Water Co. which had an interest in certain legislation introduced by Cathy Wright (AB 4175) at the request of the Castaic Lake Water Agency. The bill proposed to enlarge the Board by adding new members. As the attorneys for Valencia BB&K reviewed the legislation and pointed out certain problems with its provisions and drafted amendments to solve the problems by reason of the law of conflicts of interest for the new board members. These amendments were forwarded to Ms Wright and subsequently incorporated into the bill. I am advised that BB&K did not lobby the bill in any fashion but confined their activities to legal matters.

These amendments appeared late in the session as the bill was to go before the Senate Agriculture and Water Committee. In the committee analysis prepared by the staff consultant there were some very derogatory statements about the law firm which it said was trying to slip one past the members of the legislature. The firm viewed these comments very offensive.

BB&K has an outstanding reputation in California and felt obliged to respond. It asked me to appear on their behalf to make it clear they were not trying to mislead the legislature and assure the legislature their motives were honorable and were simply trying to make the bill workable.

Obviously in that process the bill (and Valencia's interests were benefited as I was able to convince the committee BB&K's language was proper. The bill was given approval by the committee. When I appeared before the committee I announced that I was representing BB&K and was there to clear their name and explain the reason for the amendments. The representative of Castaic Lake Water Agency and Valencia were also present and testified. Valencia's parent company has a lobbyist who worked the bill (Loren Smith).

Now the problem.

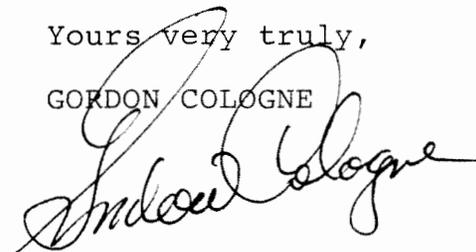
I billed BB&K for my work and the firm felt this was an expense that should be billed their client as an additional cost of serving the client. The details of my charges was forwarded to Valencia and they sent me a check. I refused the check as I was never registered to represent Valencia. The question we have is whether it is proper for BB&K to pay me and pass this expense along to their client. They are not a lobbyist and do not wish to register as one.

Understand BB&K has referred several clients to me but in all those instances I have registered the clients as the employer and billed them directly. San Bernardino County is one such client. BB&K receives no portion of my fees nor will they in this case.

Neither BB&K nor I feel we have violated the regulations but we do want to handle the payment for services I rendered in an appropriate manner. Your help in this regard would be appreciated.

Yours very truly,

GORDON COLOGNE

A handwritten signature in cursive script, appearing to read "Gordon Cologne", written over the typed name.