California
Fair Political
Practices Commission

November 20, 1986

Mrs. J. Webb
Tom Fallgatter for Assembly
1231 - 18th Street
Bakersfield, CA 93301

Re: Your Request for Advice
Our File No. A-86-301

Dear Mrs. Webb:

You have requested advice on behalf of the campaign committee for Assembly candidate Tom Fallgatter ("A Lot of People Who Want Tom Fallgatter in the Assembly," hereafter referred to as the "Fallgatter Committee"), concerning the campaign reporting provisions of the Political Reform Act (the "Act").[1/] As I have previously informed you, your letter of September 22, 1986, did not arrive at our office until October 24, 1986, due to an incomplete mailing address. On October 30, 1986, I called the Tom Fallgatter for Assembly office about your letter. This letter will confirm the telephone advice I provided to Allison in the Tom Fallgatter for Assembly office on that date.

When I spoke with Allison about how to report certain transactions, I also advised her that the previous Fallgatter Committee statements should be reviewed, and that any amendments required to comply with my advice should be filed before the November 4 election. Allison indicated that she would relay this message to the accountants who prepare the campaign statements. The amendments were received by the Secretary of State on November 4, 1986.

FACTS

The Fallgatter Committee began a house building fundraiser project in May 1986. This project was planned to involve local business and tradesmen in donating labor and materials for the

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

construction of a single-family house. The proceeds from the sale of the house would be used to finance Mr. Fallgatter's campaign.

Mr. Fallgatter obtained a construction line of credit from his bank in order to fund the initial expenses of the project and to finance labor and materials not donated. As equity developed in the property and funds were made available through the line of credit, the Fallgatter Committee has drawn on this line of credit to pay for campaign expenses.

QUESTIONS

(1) How should the Fallgatter Committee report the following transactions in connection with the house building fundraiser project?

(a) The construction line of credit provided to Mr. Fallgatter by the bank;

(b) Repayment of the construction loan Mr. Fallgatter received from the bank.

(c) Donated labor and materials;

(d) Payments to subcontractors for construction labor and materials not donated; and

(e) Payments received for the sale of the house.

(2) Can all transactions in connection with the house building fundraiser project be reported separately from other campaign transactions?

CONCLUSIONS

(1)(a) As it is made available for Mr. Fallgatter's use, the construction line of credit must be reported as a loan from the bank on Part 1 of Schedule B of the Form 490 (copy enclosed).

(1)(b) Repayment of the construction loan from the bank must be reported on Part 2 of Schedule B of the Form 490. The interest paid on the loan is reported on Part 2 of Schedule B and also on the summary section of Schedule E.

(1)(c) Donated labor and materials must be reported as "in-kind" contributions on Schedule C.

(1)(d) Payments to subcontractors for construction labor and materials not donated must be reported as expenditures on Schedule E.

(1)(e) Payments received for the sale of the house must be reported as an increase to cash on Schedule G, except that if the house is sold for more than fair market value, the difference between the price paid and the fair market value must be reported as a contribution on Schedule A.

(2) The transactions in connection with the house building fundraiser project could have been reported separately only if a separate committee had been established at the commencement of the project. Since no separate committee was established, the transactions cannot be reported separately from other campaign transactions.

ANALYSIS

(1) Each candidate and committee must comply with the campaign reporting provisions of the Act. The campaign reporting provisions require disclosure of all contributions received by the candidate or committee, including loans and non-monetary contributions, and all expenditures made by the candidate or committee. (Section 84211.) The method of reporting specific contributions and expenditures in connection with the house building fundraiser project is discussed below.

(a) The construction line of credit provided to Mr. Fallgatter by the bank.

A line of credit provided to Mr. Fallgatter is treated as a loan from the bank for campaign disclosure purposes. A loan is considered a contribution unless it 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. (Section 84216(a).) However, even if a loan is not considered a contribution, a loan received by a candidate must be reported on campaign statements if it is used for political purposes. (Section 84216(b)(3).) Loans received are reported on Part 1 of Schedule B.

In your letter, you stated that Mr. Fallgatter established the construction line of credit through his bank. Assuming that the line of credit was extended by the bank in the ordinary course of business, it is not a contribution. However, Mr. Fallgatter used the loan for campaign purposes; therefore, the loan must be reported on Part 1 of Schedule B.

On Schedule B, the bank should be listed as the lender. The date received and the interest rate must be reported. The loan amount to be reported on a given statement is the amount made available to Mr. Fallgatter during the reporting period. The cumulative amount received to date must also be reported.

(b) Repayment of the construction loan from the bank.

Repayment of loans received by a candidate and used for political purposes are reported on Part 2 of Schedule B. The total amount of interest paid during the period covered by the statement is carried over to line 3 of the summary section of Schedule E (Payments and Contributions (Other Than Loans) Made).

(c) Donated labor and materials.

Labor and materials donated to the house building fundraiser are nonmonetary ("in-kind") contributions. (Section 82015.) These contributions are reported on Schedule C. The value reported is the fair market value of the goods or services received. (Section 82025.5.) All nonmonetary contributions of $100 or more must be itemized. (Section 84211.)

On the telephone, I mentioned that volunteer personal services provided to the fundraiser project are not reportable contributions. (Section 82015.) Thus, if an individual provides construction services for the fundraiser project in a purely personal capacity, those volunteer services would not be reportable. However, if the construction services are provided through a business, such as by donating employee time, the services must be reported as nonmonetary contributions from the business as provided in Regulation 18423 (copy enclosed). Regulation 18423 states that an employer makes a contribution when the employer pays salary and other compensation to an employee who spends 10% or more of his or her compensated time in any one month engaged in political activities.

(d) Payments to subcontractors for construction labor and materials not donated.

Payments to subcontractors for construction labor and materials not donated must be reported as expenditures on Schedule E. (Section 82025.) For each expenditure of $100 or more, the name and address of the payee, a description of the payment, and the amount paid must be reported. (Section 84211(j).)

(e) Payments received for the sale of the house.

The gross payment for the sale of the house is reported on the campaign statement for the period during which payment was received. If the house is sold at or below fair market value, the entire sale price is reported as an increase to cash on Schedule G. If the house is sold for more than fair market value, the fair market value is reported as an increase to cash on Schedule G. The amount in excess of fair market value is reported as a contribution on Schedule A. (See, Section 82015.)

(2) Your last question concerns reporting the house building fundraiser transactions separately from other campaign transactions. While not required, a separate committee could have been established to handle the project. All receipts and expenditures in connection with the project could then have been reported separately. However, the separate committee had to be established at the time the project was commenced. Since no separate committee was established, there is no method of separately reporting the receipts and expenditures in connection with the project.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

KED:km

TOM FALLGATTER
FOR ASSEMBLY

F P P C

OCT 24 3 10 PM '86

September 22, 1986

Ms. Diane Griffiths
428 J Street
Sacramento, CA 95814

Dear Ms. Griffiths,

Per my telephone conversation with Helen Areola, the FPPC Consultant in Los Angeles, I am writing to explain to you the house building fundraiser project that the Fallgatter Campaign is doing. We need to have your clarification as to how the information regarding the house and the various financial transactions should be reported on our FPPC reports. Our next report is to be completed by September 30, so your response is needed immediately.

Mr. Fallgatter began a house building project in May 1986 to involve local business and tradesmen in constructing a single-family house which would then be sold and the profits used to help finance the various campaign expenses. A construction line of credit was established with his bank in order to fund the initial expenses of the project and to serve as a backup to pay for the portions of the construction labor and materials not donated.

As the work began and equity developed in the property, we began to use the funds available to us through the bank to pay for our campaign expenses. We have reported the donated labor and materials on our FPPC report. (See attached copy Schedule C.)

All of the finances of this project are being handled through a general contractor who is maintaining the accounting separate from our campaign accounts. A separate bank account was established to handle the payments to subcontractors for the various expenses of the project. The equity funding we receive for our campaign expenses are also handled entirely through this separate account.

Our concern at present is how to report all of this on our upcoming FPPC report. Under what category do we list the income that we have received from this project and do we need to show all of the payments that have been made to the sub-contractors from the construction account? We will continue to list all of the donated labor and materials on our FPPC report as non-monetary contributions unless you indicate that this is incorrect. Can we report the project separately in a supplemental statement showing the entire project so that it will be clearer as to what was done, who did it, and the financial aspects? I think that would be the clearest way of handling it.

Please respond immediately so that we may provide the FPPC with the needed information by the deadline date. If you need any additional information or clarification on this matter, please do not hesitate to contact me directly at the phone number listed below.

Thank you for your immediate attention.

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Administrative Assistant

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By: Kathryn E. Donovan
Counsel, Legal Division

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Thank you for your immediate attention.

Sincerely,

Mrs. J. Webb

Mrs. J. Webb
Administrative Assistant

Golden Rain Foundation

Rossmoor

WALNUT CREEK

AUG 2 ~ 1986

COUNSEL
SECRETARY OF THE ...

August 29, 1986

Board of Directors
Contra Costa County Central Sanitary District
5019 Imhoff Place
Martinez, California 94553-4392

Mr. President and Members of the Board:

We have been advised that the District has proposed a substantial increase in the fixture fee charged for new homes in Rossmoor. We believe that this level of increase, approximately five times those fees now paid, is unwarranted, and potentially will have an impact on the sales rate of new homes. Rossmoor's 7,800 residents rely on funds from new home sales to 1.) retire a several million dollar debt on existing community facilities, 2.) provide funds for essential new facilities, and 3.) increase the resident base that shares fixed operating costs. We must be assured that our responsibility to Rossmoor's residents will not be imperiled by the fee increase.

We support the position of UDC Homes, and believe the provisions of the 1963 Agreement between the District and Rossmoor Corporation are enforceable. The Golden Rain Foundation would be obligated, under joint defense provisions outlined in an existing agreement between the Foundation and UDC, to support any legal action on this issue. We hope no such action will be necessary.

We recommend that the Board defer action on the increase in the Rossmoor fixture fees. We recommend that the Board establish a six-month period in which the District and UDC Homes negotiate a permanent solution to the long-standing impasse on fees. We would support the negotiation of a new agreement if it protected Rossmoor's interests and provided an agreed fee structure for the approximately 1,200 units that remain to be built. In the interim, we believe strongly that the existing fee structure should remain in place. Since it is our understanding that only one project, the 72-unit Mutual 53, will need permits in that period, we believe that to be a fair request.

Sincerely,

Mauser

Robert R. Mauser
President

RRM:ea
cc: General Manager
Bell, Rosenberg and Hughes
UDC Homes Limited Partnership