California
Fair Political
Practices Commission

February 6, 1987

Arnold Steinberg
3719 Meadville Drive
Sherman Oaks, CA 91403

Re: Your Request for Advice
Our File No. A-86-344

Dear Mr. Steinberg:

You have requested advice concerning your duties under the campaign reporting provisions of the Political Reform Act (the "Act").1/

QUESTION

Will debts owed to your public opinion polling firm which are forgiven by the firm constitute "contributions" within the meaning of the Act?

CONCLUSION

The portion of the debt which is forgiven will not be a "contribution" if the decision to forgive the debt is a product of a bona fide business judgment that the debt is uncollectable. However, if forgiveness of the debt was intended to bestow a political benefit or if reasonable steps were not taken to collect the debt, forgiveness of the debt will be considered a "contribution."

FACTS

You own a business which does public opinion polling, primarily for political campaigns. There are some long overdue debts owed to your business by campaigns for state legislative office. You have made a business decision to settle these debts for a fraction of what is owed, if payment is made within 30 days. The remainder of any such debt will be "written-off" for income tax purposes.

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

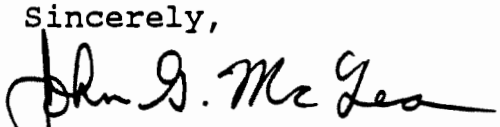
ANALYSIS

The term "contribution" includes a "payment ... except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes." (Section 82015.) The term "payment" includes the "rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.) In the present situation, you have rendered services to campaigns for state legislative office and have not received "full and adequate consideration." Accordingly, the portions of these debts which you forgive will be contributions unless it is clear from surrounding circumstances that the decision to forgive the debts is not made for political purposes.

We have previously advised in similar circumstances that a creditor has not made a contribution if the decision to forgive or reduce the debt is a product of a bona fide business judgment that all or part of the debt is uncollectable. However, when circumstances suggest that the creditor intended to bestow a political benefit on the debtor or that reasonable steps were not taken to collect the debt, forgiveness of the debt will be considered a "contribution." (See, Summers Advice Letter (No. A-77-014), copy enclosed.) You should review each of the debts which you have forgiven to determine how they fit within these criteria.

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

Sincerely,



John G. McLean
Counsel, Legal Division

JGM:km
Enclosure

ARNOLD STEINBERG
AND ASSOCIATES INC.
SURVEY RESEARCH AND MARKETING

3719 Meadville Drive, Sherman Oaks, California 91403
(818) 995-7775

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Diane Griffiths
General Counsel
FPPC
P.O. Box 807
Sacramento, California 95804

Dear Ms. Griffiths:

Referencing my conversation this week with Carla Wardlow of the FPPC, who suggested a letter to you:

My firm is making the business decision to negotiate payment of some long overdue debts owed to us by campaigns for state legislative office. Obviously, I would much prefer to be paid in full. However, given the uncertainty of ever getting paid by losing candidates, the difficulty and costs in repeatedly trying to collect these debts (with or without legal action), the time value of money, our need for funds, our accrual method of accounting, and general desire to maintain good working, relationships within the political community that comprises my chief source of business, I am settling these debts for a fraction of what is owed, if payment is made within 30 days, and I am working my accountant to make the appropriate adjustments to my corporate financial statement and profit and loss statement.

I am making my best business decision, as I see it, for my company, to get something soon, rather than something much later, if at all. I am offering an incentive to settlement to badly delinquent accounts.

It goes without saying that it is hardly my intent to make a contribution, in money or in-kind, to these political campaigns, nor do I consider that I am making a contribution. This is a *business* decision, within my general business practice, just as I am certain there are vendors such as printers or mailhouses which negotiate partial payment in full settlement in order to close out accounts and get on with their business.

I am writing to confirm that I am *not* making a contribution to any campaign, and I do not consider myself a major donor, even if the amounts "written-off" are, collectively, over $5,000. Moreover, any such classification by the FPPC is not simply inaccurate and, I believe, inconsistent, but it contradicts Federal corporate tax law and accounting practice, in that any "write-downs" or bad debts are subtracted from accounts receivable and accrued income, whereas "political contributions" are not deductible. Indeed, if my business write-downs were instead considered political contributions (which are not deductible from corporate income), merely because my client is a political committee, and the corporate tax law were perverted to serve state law, which it supersedes, then this corporation would be in the rather untenable position of paying taxes on (accrued) income which it never received and will not receive.

I hope this letter helps you understand my unequivocal position that I do not consider myself a donor, major or otherwise.

Thank you very much for your courtesy.

Best wishes for the new year.

Sincerely,

Arnold Steinberg

California
Fair Political
Practices Commission

January 2, 1987

Arnold Steinberg
Arnold Steinberg & Associates, Inc.
3719 Meadville Drive
Sherman Oaks, CA 91403

Re: 86-344

Dear Mr. Steinberg:

Your letter requesting advice under the Political Reform Act was received on December 26, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths

Diane M. Griffiths
General Counsel

DMG:km

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