



California Fair Political Practices Commission

February 24, 1987

Nestor Synadinos
Group United for Residential Rights
1217 E. Sycamore Ave.
El Segundo, CA 90245

Re: Your Request for Advice
Our File No. A-87-036

Dear Mr. Synadinos:

You have requested advice on behalf of the Group United for Residential Rights concerning the campaign disclosure provisions of the Political Reform Act.^{1/}

FACTS

The Group United for Residential Rights circulated a referendum petition in opposition to the El Segundo City Council's granting of a plan for the construction of an office building. The owner of the proposed office building filed a writ of mandate asking that the referendum be invalidated.

QUESTION

Are legal fees paid by the Group United for Residential Rights in connection with the lawsuit reportable on the Group's campaign disclosure reports?

CONCLUSION

The legal fees incurred are reportable.

ANALYSIS

Under the Political Reform Act, committees primarily formed to qualify a ballot measure are required to file campaign statements disclosing contributions received and expenditures made. (Sections 84200.5, 84211.) In regulation Section 18215, the Commission has further defined the term "contribution" as any payment for which full and adequate consideration is not paid, that is received by or made at the behest of:

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. 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.

An organization formed or existing for political purposes...

Section 18215(a)(2)(D).

In regulation Section 18225, the Commission defined the term "expenditure" in a similar manner. Expenditures include any payment made by:

An organization formed or existing for political purposes...

Section 18225(a)(2)(D).

Both regulations state that a payment is made for political purposes if it is for the purpose of influencing or attempting to influence the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Sections 18215(a)(1), 18225(a)(1).)

In an opinion issued to Douglas Buchanan, 5 FPPC Opinions 14 (No. 78-013, copy enclosed), the Commission stated that:

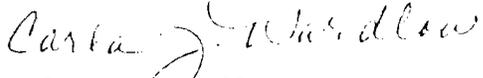
...When expenditures are made to support litigation aimed at gaining a place on the ballot for a candidate or measure, aimed at keeping a candidate or measure off the ballot, or challenging the results of an election, the expenditures are made for the purpose of influencing the outcome of the election in favor of or against a particular candidate or measure and should be reported....

Therefore, litigation expenses paid by the Group United for Residential Rights for the purpose of having the referendum placed on the ballot are reportable on its campaign disclosure statements.

Please do not hesitate to contact me at (916) 322-5662 if you have additional questions regarding the Group's reporting obligations.

Sincerely,

Diane M. Griffiths
General Counsel


By: Carla J. Wardlow
Political Reform Consultant



California Fair Political Practices Commission

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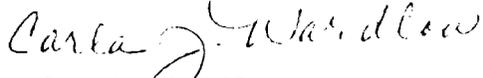
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Diane M. Griffiths
General Counsel


By: Carla J. Wardlow
Political Reform Consultant

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January 24 1987

Fair Political Practices Commission
Technical Services Division
428 J. Street
Sacramento, CA 95814

Re: A ruling on legal fees expended in supporting or
opposing a ballot measure

Dear Sirs:

Residents of El Segundo filed a referendum in opposition to an action of the El Segundo City Council granting a Specific or Precise Plan for the construction of an office building in excess of code requirements.

Continental Development Corp. (owner of the proposed office complex) filed a Writ of Mandate against the City Clerk asking that the referendum be invalidated. Although the lawsuit was directed against the City Clerk, the El Segundo City Attorney joined with Continental in opposing the referendum. The judge ruled in favor of the referendum. Since then both Continental and the City have filed an appeal to the judge's decision. In essence, the City of El Segundo has filed an appeal against a decision that the city won.

The Group United for Residential Rights (circulators of the petition) requested a ruling from the City Clerk whether they were required to include legal fees in the disclosure of campaign expenditures. The Clerk said he contacted the FPPC and obtained a ruling that legal fees had to be disclosed.

FPPC TECHNICAL SERVICES

The residents have complied with the Clerk's ruling, but with a copy of this letter, we are asking the FPPC Technical Services Division for a written opinion on this matter.

FPPC ENFORCEMENT

While the public was told that the City's position was "neutral" and/or "ministerial", the initial court case will show that the City Attorney supported Continental and opposed his own client's (the City Clerk) position. The Clerk obtained permission from the court to represent himself in the initial writ, and has since obtained permission to employ an outside attorney. The City Attorney has since filed an appeal to the initial decision, thus disproving the claim that the City's position was "neutral" or "ministerial".

Financial disclosure forms were filed in January, although the election code required an earlier filing date. Continental disclosed spending something over \$93,000 (or more than \$30 a vote so far), but had not filed major donor forms with the County Clerk as of mid January.

While the City Clerk required legal fees to be included in disclosure forms submitted by the residents and Continental, there has been no such requirement applied to the City Council. The amount spent to date would also place the city into the major donor category.

If legal fees to support or oppose a ballot measure are considered expenditures that must be reported for the residents and Continental, it would be reasonable to assume that the City Council must also disclose what they have spent.

ATTORNEY GENERAL

With a copy of this letter, we are requesting the FPPC Enforcement Division and the Attorney General's office to investigate and require uniform application of law to all parties.

This past Tuesday the City Council met in closed session. Immediately following the meeting the City Attorney filed a writ in opposition to the ballot arguments filed by the residents. We must assume that the City Council, in closed session, approved the most recent court action taken to challenge the ballot arguments submitted by the residents. We would like to ask the Attorney General's office and the District Attorney to investigate and determine if the City Attorney's budget can be increased in secret session. We are told by the Finance Department that such expenditures are included in a list of warrants that are approved at a public meeting after the services have been contracted and performed.

Are campaign expenditures a legitimate use of public funds or are the City Councilmen who approved the campaign contribution obligated to pay from their personal funds? Would this be a misappropriation of public funds?

City Council complaints against the resident's ballot argument were approved in secret session and signed by four members of the City Council. This signed complaint, approved in closed session was later filed with the City Clerk and has now become a matter of public record. We are requesting an investigation as to whether these actions constitute a violation of the Brown Act?

A previous complaint was filed with the L.A. County District Attorney's office concerning a similar incident, although we are given to understand that the L.A. County D.A. does not prosecute "political" cases.

Although state law requires an ordinance subjected to referendum to be "suspended" until the measure is approved or rejected by the electorate, Continental has been given permission to continue to process all applications and permits. The permission was granted, circumventing state law, by the City Manager after polling the City Council privately. The District Attorney has not responded to a complaint filed regarding the processing of the plan.

BAR ASSOCIATION

While the City Attorney, presumably under the direction of the City Council, has assumed an advocacy position and filed various court actions against the residents, he has also been employed (in public) to write the "Impartial" Ballot Analysis.

With a copy of this letter to the Bar Association, we are asking for an evaluation as to whether an attorney can accept payment for writing the Impartial Ballot Analysis and at the same time file a court action challenging the proponents of the same ballot measure? All approvals for funds used to oppose the residents was done in secret session. Since the City Attorney has already exceeded the budget approved for his office, we believe that the City Council has been amending the budget in secret session.

We would appreciate any information that could be provided on these matters. If any additional information or documentation is needed, please contact the undersigned.

Sincerely,



Nestor Synadinos for
Group United for Residential
Rights
1217 E. Sycamore Ave.
El Segundo, CA 90245
(213) 640-8013

cc: FPPC, Technical Services Division
FPPC, Enforcement Division
L.A. County District Attorney
Bar Association - Attn: Robert Fellmeth
City Clerk
Daily Breeze
L.A. Times
El Segundo Herald
Beach Reporter
Easy Reader



California Fair Political Practices Commission

January 30, 1987

Nestor Synadinos
Group United for Residential
Rights
1217 E. Sycamore Avenue
El Segundo, CA 90245

Re: 87-036

Dear Mr. Synadinos:

Your letter requesting advice under the Political Reform Act was received on January 28, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

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,

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh