

Memorandum

To : File No. T-87-092

Date : April 17, 1987

From : FAIR POLITICAL PRACTICES COMMISSION

Kathy Donovan 

Subject : Advice to David Beatty--Campaign Reporting

On April 17, 1987, I advised Mr. Beatty as follows:

1. Fees paid to his law firm for drafting a proposed local initiative measure and providing related procedural advice are not "expenditures" if they are incurred prior to circulation of the petitions to qualify the measure.

2. His firm's client is not required to report reimbursements for the legal fees as "contributions" if the reimbursements are clearly separated from campaign funds.

This advice is based on the Fontana Opinion, in which the Commission stated, in dicta, that an initiative, referendum or recall becomes a measure when the proponents begin to circulate signature petitions to qualify the measure for the ballot. (Fontana Opinion, 6 FPPC Ops. 25, 27.) Once the proposed initiative becomes a "measure," payments made to influence the action of the voters for or against the qualification or passage of the initiative are considered "expenditures." Similarly, when the proposed initiative becomes a "measure," payments received by the proponents for influencing the action of the voters for or against the qualification or passage of the initiative are considered "contributions." However, under the facts Mr. Beatty presented in the attached letter, legal expenses incurred prior to the time the petitions are circulated, and subsequent payments to reimburse his client for those expenses, are neither expenditures nor contributions.

KED:km



California Fair Political Practices Commission

March 24, 1987

David F. Beatty
McDonough, Holland & Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814

Re: 87-092

Dear Mr. Beatty:

Your letter requesting advice under the Political Reform Act was received on March 23, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, 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,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

2. Twenty-one days after the publication a petition may be circulated for signatures by voters of the city. The petition requests the City Council to either enact the ordinance attached to the petition or put it on the ballot. (Section 4005)

3. The City Clerk determines if there are sufficient signatures. (Section 4008)

4. If there are sufficient signatures, the measure is brought to the City Council which can either: (a) adopt the ordinance or (b) order that the ordinance be submitted to the voters at an election. (Section 4010)

I am familiar with the Fontana opinion (2 FPPC Opinions 25) the May 22, 1985 advice letter to Jonathan Wiltshire and the January 16, 1987 advice letter to David Winkler. I have concluded that the legal fees to draft the petition and ordinance and provide advice, all of which are incurred prior to the publication of the intention to circulate, which is the first step in the process which I described above, and which precedes actual circulation of the petition and ordinance, are not campaign expenditures and would therefore not be campaign contributions because the expenditures would have been incurred prior to the time "...the proponents begin to circulate signature petitions to qualify the measure for the ballot." (See third sentence in the second paragraph of page 3 of the Fontana opinion.)

Unlike the state initiative process, where if the required signatures are obtained, the measure is automatically on the ballot, in the city initiative procedure, the proposed ordinance is first presented to the City Council which has the ability to adopt the ordinance, in which case it is never placed on the ballot. Note, however, that in order to get the proposed ordinance to the City Council, sufficient signatures would have to have been obtained, and unlike the measure in Fontana the proposed ordinance is an initiative. I would assume that expenses between the commencement of circulation of the petition and ordinance and consideration by a City Council would still be campaign expenditures.

I also understand that if under the rationale discussed above (in short, how can there be campaign expenditures on a measure prior to the existence of a measure?) the legal fees are not expenditures and the client subsequently seeks to be reimbursed, these reimbursements would have to be clearly separate from the receipts of campaign contributions.

Ms. Diane Griffiths
March 23, 1987
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Please give me a call if you have any questions, or
with your opinion on the question.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dave", written in dark ink.

David F. Beatty

DFB:ln