



California Fair Political Practices Commission

May 29, 1987

David E. Ross
6477 East Bayberry Street
Oak Park
Agoura, CA 91301

Re: Your Request for Assistance
Our File No. I-87-129

Dear Mr. Ross:

We have received your request for advice regarding the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/} Your letter states only a general question; it does not seek advice concerning your duties under the Act. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

Would characterization of a candidate as supporting a particular position (e.g., pro-union or anti-union) in a published profile, while not expressly advocating that candidate's election, trigger a reporting requirement for payments received to produce the profile?^{3/}

^{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.

^{2/} Informal assistance is rendered pursuant to 2 California Administrative Code Section 18329 (copy enclosed). Informal assistance does not provide the requestor with the immunities provided for in Section 83114(b).

^{3/} On May 7, 1987, you contacted me by phone to clarify your request. You are interested in receiving a copy of the Llewellyn Advice Letter, No. A-86-322. A copy is enclosed. You have asked if we would reconsider our advice based on the concerns raised by your letter. I informed you that the Commission will issue advice only to those persons whose duties under the Act are at issue. We do not issue advice to one person regarding the duties of another person. (Regulation 18329(b)(8)(B).)

CONCLUSION

Publication of such a profile, which implies that a person is qualified for a particular office, may constitute an "expenditure" as defined in the Political Reform Act.

ANALYSIS

The campaign disclosure provisions of the Act require that all candidates and committees file campaign statements at specified times and places. (Section 84200, et seq.) A committee is any person or combination of persons who, among other things, directly or indirectly makes independent expenditures totaling five hundred dollars (\$500) or more in a calendar year. (Section 82013(b).)

An "independent expenditure" is an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, but which is not made to or at the behest of the affected candidate or committee. (Section 82031.)

Regulation 18225(b) provides that the term "expenditure," as used in the Political Reform Act, includes any monetary or nonmonetary payment made by any person that is used for communications which expressly advocate the election or defeat of a clearly identified candidate. A candidate is "clearly identified" if the communication states his name, makes unambiguous reference to his office, or unambiguously describes him in any manner. A communication "expressly advocates" the election or defeat of a candidate if it contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," or "sign petitions for". A person who makes \$500 or more of such payments qualifies as an "independent expenditure committee" and must comply with the Act's filing requirements.

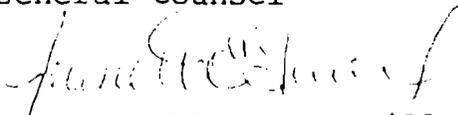
The Commission has held in certain circumstances that if an individual or entity (other than a candidate or a committee as defined by the Act) engages in the taking of a poll or a survey and lists a candidate's qualifications or implies that the person is qualified for a particular office, that payments made in connection with the poll or survey are deemed to be "expenditures". (Powell Advice Letter, No. A-85-241, copy enclosed.)

David E. Ross
May 29, 1987
Page 3

I hope this discussion has provided guidance in determining when a payment for a survey or "profile" may meet the definition of a reportable expenditure under the Act. Should you have any questions concerning a voter guide which you have produced, please feel free to contact the Commission for advice.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanette E. Turvill
Legal Assistant
Legal Division

JET:km

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26 April 1987

Fair Political Practices Commission
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I am seeking some details in expansion of the brief description of File # A-86-322 presented in your April 1987 Bulletin (Vol. 13 #4). Without any details, the one sentence given in the Bulletin can create significant concern.

Before elections (especially major elections for national and state offices and for municipal elections in very large cities), various groups asserting a religious affiliation of some kind publish profiles of the candidates. The candidates are characterized in these profiles as "good Christians", "bad Christians", and "not Christians". Recently, the characterization "anti-Christian" has been applied to Jewish candidates. These published profiles do not advocate votes for any candidate, but they have a very clearly implied advocacy. This is especially alarming when it is discovered that political criteria rather than religious dogma have been used to judge the purity of the candidates' religious beliefs.

I question whether the Republican Party would have received the same response as the Christian Resource Press for a voter guide that indicated for each candidate whether that person was a Republican or a non-Republican without an explicit advocacy to vote for the Republicans only. (I question this because I do not know the form or content of the voter guide that was published by the Christian Resource Press.) Likewise, would a Democrat club receive the same ruling if it published a voter guide listing some candidates (Democrats) as friendly to workers and others (Republicans) as anti-union without explicitly advocating votes for the Democrats?

If you wish to call me about this inquiry, my office phone number is 805/987-6811 x7547.

Sincerely,

David E. Ross