



# California Fair Political Practices Commission

October 5, 1987

Peter A. Bagatelos  
Bagatelos & Fadem  
601 California St., Ste. 1801  
San Francisco, CA 94108

Re: Your Request for Advice  
Our File No. I-87-234

Dear Mr. Bagatelos:

You have requested confirmation of telephone advice provided to you on September 4, 1987, concerning the campaign disclosure provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTIONS

1. Are fees paid by a major donor or independent expenditure committee to a law firm for advice with regard to compliance with the Act reportable?
2. Are payments made by a major donor or independent expenditure committee to a consulting firm for preparation of a plan outlining the committee's alternatives for participation in a ballot measure election reportable?

## ANSWERS

Neither payment is required to be reported on the major donor or independent expenditure committee campaign statement (Form 461).

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<sup>1/</sup>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.

Your letter states only a general question. Therefore, we consider it to be a request for informal advice pursuant to Regulation 18329(c). Informal assistance does not provide the requestor with immunity provided by an opinion or formal written advice (Section 84113; Regulation 18329(c)(3).)

ANALYSIS

The Act requires candidates and "committees" to file periodic reports disclosing money raised and spent for political purposes. (Sections 84200-84217.) In Section 82013, the term "committee" is defined as a person or a combination of persons which:

1. Receives contributions totaling \$500 or more in a calendar year. (Section 82013(a).) This type of committee is commonly referred to as a "recipient committee."
2. Makes independent expenditures totaling \$500 or more in a calendar year. (Section 82013(b).) This type of committee does not receive contributions and is commonly referred to as an "independent expenditure committee."
3. Makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees. (Section 82013(c).) This type of committee also does not receive contributions and is commonly referred to as a "major donor committee."

All committees must disclose payments made which are "contributions," as defined in Section 82015 and Regulation 18215, to or at the behest of candidates or recipient committees. They also must report payments made which are "expenditures," as defined in Section 82025 and Regulation 18225. (Section 84211.) However, with regard to independent expenditure and major donor committees, the term "expenditure" includes only those payments made in connection with communications which expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified measure. (Regulation 18225; Nielsen advice letter, No. A-76-520, copy enclosed.)

To the extent that no payment is made at the behest of a candidate or a recipient committee, the payments are not reportable on the Form 461 as "contributions." In addition, to the extent that the payments are not in connection with communications which expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified measure, they are not reportable on the Form 461 as "expenditures."

Please do not hesitate to call me at (916) 322-5662 if you have additional questions.

Sincerely,

Diane M. Griffiths  
General Counsel

By:

*Carla Wardlow*  
Carla Wardlow  
Political Reform Consultant

LAW OFFICES OF  
**BAGATELOS & FADEM**

A PROFESSIONAL CORPORATION

THE INTERNATIONAL BUILDING

601 CALIFORNIA STREET

SUITE 1801

SAN FRANCISCO, CALIFORNIA 94108

BARRY FADEM  
PETER A. BAGATELOS

TELEPHONE  
(415) 982-7100

September 9, 1987

Ms. Carla Wardlow  
Technical Assistance Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Dear Carla:

This will confirm our telephone conversation on September 4, 1987. We generally discussed the reporting requirements of major donor and independent expenditure committees on Form 461.

The general facts which I described to you were as follows: a company qualifies as a Form 461 filer either by making \$10,000 or more in contributions during a calendar year or by making independent expenditures of \$500 or more in connection with candidate and/or ballot measure elections at the state and/or local levels in California. Such a company also hires a consultant to advise the company regarding the effects that a particular ballot measure in a particular jurisdiction may have on the company's activities in that jurisdiction. The consultant is asked to prepare a plan for participation by the company in that jurisdiction's election. In addition, the company retains legal counsel to advise it regarding its reporting responsibilities in said jurisdiction, as well as generally as a Form 461 filer. The company may or may not use the consultant's plan in deciding whether or not to become involved in the ballot measure election in a particular jurisdiction. If a company does become involved, the expenditures that it will make in connection with communications which attempt to influence the voters for or against the measure will be separate and distinct from the fees and expenses which it will pay to the consultant to prepare the plan and for consulting advice. I asked you for your advice regarding whether payments made to the consultant to prepare a plan and/or payments made to legal counsel for compliance advice are reportable on the company's Form 461 or on any Form 465 that the company might be required to file.

You advised me as follows:

(1) Fees paid by a Form 461 filer to a legal firm for compliance advice are not reportable by the filer on either the Form 461 or on a Form 465;

Ms. Carla Wardlow  
September 9, 1987  
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(2) Payments made by the company to a consulting firm for preparation of a plan in connection with a ballot measure election in a particular jurisdiction are not reportable by a Form 461 or Form 465 filer. Such payments are not reportable even if the filer subsequently implements the plan and makes other expenditures to implement the plan in connection with communications to the the public intended to influence them regarding the ballot measure.

(3) Expenditures made in connection with direct communications to the public would be reportable by the filer on the Form 461 and/or Form 465, as appropriate.

I believe that the foregoing correctly summarizes our discussion. However, I would appreciate your confirmation that the advice you gave me is as stated herein. Thank you very much for your assistance.

Very truly yours,

  
Peter A. Bagatelos

PAB/mlq

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

July 13, 1976

A-76-520

Vigo Nielsen, Jr.  
Suite 2500, The Alcoa Building  
One Maritime Plaza  
San Francisco, CA 94111

Re: Request for Opinion  
No. 75-194

Dear Mr. Nielsen:

This letter is to advise you that in its July meeting the Fair Political Practices Commission instructed the staff to send you this letter in lieu of the formal opinion which you requested on October 17, 1975 (No. 75-194). Since accepting your request for a formal opinion, the Commission has promulgated Regulation 2 Cal. Adm. Code Section 18225 defining the term "expenditure." This regulation would seem to resolve the questions you asked and obviate the need for an opinion.

In your opinion request letter, you described several different types of payments which a committee might make and asked whether each is a reportable expenditure by three types of committees. 2 Cal. Adm. Code Section 18225 states that a controlled committee, official committee of a political party, or committee formed or existing primarily for political purposes must report all payments which it makes as expenditures. Accordingly, all the costs described in your letter which are incurred by these types of committees are reportable expenditures. However, with respect to all other types of committees, only those payments made in connection with communications which expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified measure are expenditures. Thus, none of the costs described in your letter are reportable expenditures by these types of committees.

In your letter of February 20, 1976, supplementing your letter of October 17, 1975, you asked the Commission to address several problems which you believe exist with respect to political action committees. The Commission has concluded that these questions of general applicability, to the extent that they are resolvable, can best be addressed in the context of a regulation rather than an opinion. Accordingly, the staff has been instructed to consider the possibility of drafting a regulation which would address the problems which you have outlined. Your opinion request, therefore, is dismissed; but, in the event the staff and/or Commission conclude that a regulation is unwarranted, it may be resubmitted.

If you have further questions, please contact Ted Prim, an attorney on the Commission staff.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Michael Bennett'.

Michael Bennett  
Executive Director

MB:pvp

LAW OFFICES OF  
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BARRY FADEM  
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September 9, 1987

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Technical Assistance Division  
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428 J Street, Suite 800  
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Very truly yours,

  
Peter A. Bagatelos

PAB/mlq



# California Fair Political Practices Commission

September 16, 1987

Peter Bagatelos  
Bagatelos & Faden  
The International Building  
601 California Street, Suite 1801  
San Francisco, CA 94108

Re: 87-234

Dear Mr. Bagatelos:

Your letter requesting advice under the Political Reform Act was received on September 11, 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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

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 that reads "Jeanne Pritchard".

Jeanne Pritchard  
Chief  
Technical Assistance and Analysis  
Division

JP:jaj