



California Fair Political Practices Commission

December 23, 1987

Raymond Bunt, Treasurer
Citizens for Cochrane Plaza
15760 Railroad Ave.
Morgan Hill, CA 95037

RE: Your Request for Advice
Our File No. A-87-301

Dear Mr. Bunt:

You have requested advice concerning the campaign reporting provisions of the Political Reform Act of 1974.^{1/}

QUESTION

Is an expenditure made by an outside organization to pay for legal expenses incurred to defend your ballot argument considered a contribution to your committee?

ANSWER

If an expenditure made to pay legal expenses incurred to defend your ballot argument was made at the behest of your committee, the payment is considered an in-kind contribution and must be reported as such on your committee's campaign disclosure statement (Form 420).

However, if the payment was not made at the behest of your committee, then the payor has made an "independent expenditure," and your committee is not required to report the payment.

FACTS

Citizens for Cochrane Plaza, a recipient committee as defined by Section 82013(a), was the proponent of Measure B which qualified for the City of Morgan Hill election. The intent of the initiative was to allow for the development of a shopping center in the City of Morgan Hill.

^{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.

Prior to the election, the committee was named as a party in interest in a legal action aimed at modifying the ballot argument language which favored passage of Measure B. Your committee did not retain legal counsel for defending your ballot argument in court.

However, Parkland Properties, the developer of the proposed shopping center, did retain the services of a law firm in order to defend the ballot argument language, even though it was not named in the legal action. Consequently, the expenses incurred as a result of attorneys' fees, \$5,456, were billed to and paid by Parkland Properties.

You do not specify in your letter whether or not there was any consultation between your committee and Parkland Properties concerning the hiring of the law firm.

ANALYSIS

For purposes of interpreting the Act, an expenditure is defined, in part, as any monetary or non-monetary payment made for the purpose of influencing or attempting to influence the action of the voters for or against the passage of a measure. (Section 82025 and Regulation 18225.) Since ballot arguments are clearly attempts to influence the action of the voters, any costs associated with the argument's defense would be considered "expenditures."

Even though the expenditure was not made directly to the committee, the Act addresses the receiving of non-monetary payments, as well. (Section 82015.) An in-kind contribution is received by a committee if an expenditure is made at its behest and to the extent that full and adequate consideration is not made. (Section 82015 and Regulation 18215.) Regulation 18215(b) provides that a payment is "made at the behest" of a candidate or committee if it is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate, controlled committee, official committee of a political party, or organization formed or existing primarily for political purposes." However, if the expenditure was not made at your committee's behest, no contribution was received.

Assuming consultation regarding retention of legal counsel occurred between your committee and the developer, the developer's expenditures are considered an in-kind contribution, and therefore must be reported as a contribution received by the committee. (Section 84211.)

If Parkland Properties made the expenditure without consulting your committee, then an "independent expenditure" was made by Parkland Properties. (Sections 82031 and 84203.5.)

Bunt, Raymond
Page Three

If you have additional questions, please contact me at
(916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel

By:


Kevin S. Braaten-Moen
Political Reform Consultant

CITIZENS FOR COCHRANE PLAZA

ID#870219

Nov 24 1987

Nov 23 3 55 PM '87

Mr. Kevin Braaten-Moen
Fair Political Practices Commission
488 J St. Suite #700
Sacramento, Ca. 95814

RE: Reporting of legal expenses related too an initiative campaign by a Recipient Committee, as per our conversation on Nov. 20, 1987

Dear Kevin:

As treasurer of the Citizens for Cochrane Plaza, a Recipient Committee ID# 870219, I am requesting clarification of a filing requirement, specifically, legal expenses.

The committee was formed as proponents, to put an initiative petition, concerning a shopping center, on the ballot for for a special election, Measure B in the city of Morgan Hill, Ca.

On or about July 20th, 1987 The Citizens for Cochrane Plaza were named as parties in interest in a legal action filed against our ballot argument in an attempt to force us to either amend or delete certain statements in that argument. As a committee we did not request legal representation from anyone to defend our argument in court.

Parkland Properties, the developer of the proposed shopping center, decided it would be in their best interest to have the ballot argument defended professionally and retained the services of a law firm for that purpose. Subsequently, the expenses incurred as a result of the attorneys services, \$5,456.40, were billed too and paid for by, Parkland Properties the development company.

As treasurer of the committee I would like a decision from the F.P.P.C. concerning the disposition of this expense. Is it considered an "In-Kind Contribution" to the committee and declared as such in a 420 disclosure form or is it merely an expense of the developer who obviously had a vested interest in a sucessful outcome of the special election.

A timely decision from your department would be appreciated. If you have any questions please call me at 408-779-8441.

Sincerely



Raymond Bunt
Treasurer

Citizens for Cochrane Plaza

ID# 870219

15760 Railroad Ave.

Morgan Hill, Ca. 95037

CITIZENS FOR COCHRANE PLAZA

87-301

ID#870219

F. P. P. C.

Nov. 24 1987

Nov 25 3 55 PM '87

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Fair Political Practices Commission
488 J St. Suite #700
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Raymond Bunt
Treasurer

Citizens for Cochrane Plaza
ID# 870219
15760 Railroad Ave
Morgan Hill, Ca. 95037



California Fair Political Practices Commission

December 1, 1987

Raymond Bunt, Treasurer
Citizens for Cochrane Plaza
15760 Railroad Avenue
Morgan Hill, CA 95037

Re: 87-301

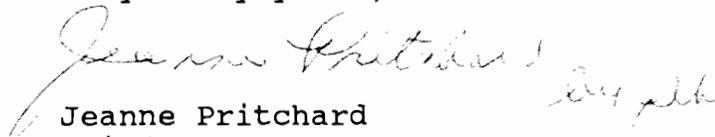
Dear Mr. Bunt:

Your letter requesting advice under the Political Reform Act was received on November 25, 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,


Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh