



California Fair Political Practices Commission

June 9, 1988

Elwin C. Fuller
Chairman
Fallbrook Incorporation Coalition
1143 Knoll Park Lane
Fallbrook, CA 92028

Re: Your Request for Advice
Our File No. A-88-167

Dear Mr. Fuller:

This letter is in response to your request for advice regarding the reporting responsibilities of the Fallbrook Incorporation Coalition under the Political Reform Act.^{1/}

QUESTION

Is the Fallbrook Incorporation Coalition (the Coalition) required to report as a contribution the publication by The Enterprise newspaper of editorial pieces submitted by the Coalition?

CONCLUSION

The Coalition is not required to report the publication by the newspaper as a contribution.

FACTS

The Fallbrook Incorporation Coalition (the Coalition) is a political action committee organized to support incorporation of the town of Fallbrook. At the request of the local newspaper, The Enterprise, the Coalition has provided editorial columns under the heading "Fallbrook Incorporation Forum." The Enterprise also prints an opposing point of view under the heading "Fact Finders Forum". The organization submitting the editorial is clearly identified at the bottom of the piece. The newspaper also prints many letters to the editor on the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Elwin C. Fuller
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incorporation issue, the views of candidates for Fallbrook Town Council and general news about incorporation. All these columns and articles are printed without charge.

In addition, The Enterprise accepts paid political advertisements from those favoring and opposing incorporation, and from specific candidates.

Your legal counsel has advised you that the Commission has previously ruled that the Act's disclosure and reporting requirements do not apply to editorials in regularly published newspapers. However, he has suggested that you seek clarification regarding the applicability of this ruling to the Coalition situation because the editorial pieces are submitted by your volunteers for publication in the newspaper, rather than written by the staff of the newspaper.

ANALYSIS

Section 84200, et seq. requires that all candidates and committees supporting or opposing candidates and ballot measures, file disclosure statements listing their contributions and expenditures. Sections 82015 and 82025 provide definitions of "contribution" and "expenditure" respectively. Regulation 18225 (copy enclosed) further defines expenditure, and specifically excludes costs incurred for communications which expressly advocate the passage or defeat of a clearly identified measure by:

(A) A regularly published newspaper, magazine or other periodical of general circulation which routinely carries news, articles and commentary of general interest.

Regulation 18225(b)(4)(A)

The Commission's Christiansen Opinion (In re Christiansen (1975) 1 FPPC Ops. 170), which your counsel cited in his memorandum regarding this question, was the basis for the newspaper exemption found in Regulation 18225. The Commission made it clear in its opinion that newspaper editorials are "an integral part of American political life," and that mandating reporting requirements on newspapers "would not promote the purposes of the Act." (In re Christiansen, supra at 174.) Because of the possibility of inhibiting the free exercise of editorial opinion, the Commission held that there would have to be specific language in the Act requiring newspapers to file disclosure statements listing expenditures or contributions in order to justify such a duty.

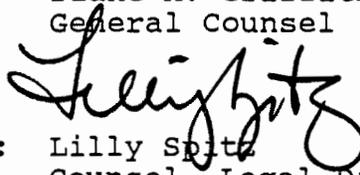
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In the current situation, The Enterprise is a regularly published newspaper which routinely carries news. The newspaper printed the articles submitted by the organized groups active on the issue of incorporation, as well as other articles and letters to the editor. The fact that the columns regarding incorporation were written by individuals from the support and opposition groups, and then submitted to the newspaper for publication, does not take them outside the exemption found in Regulation 18225.

We conclude that the Coalition has no duty to report contributions from The Enterprise for the publication of its articles in support of the incorporation measure. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh



FALLBROOK MAY 4 4 42 PM '88
INCORPORATION COALITION

April 28, 1988

Fair Political Practices Commission
Legal Department
428 J Street, Suite 850
Sacramento, Ca. 95814

Dear Sir/Ms:

At the June 7 election the voters of Fallbrook will vote aye or nay on a proposition for incorporation. The Fallbrook Incorporation Coalition, of which I am Chairman, has been actively supporting incorporation during the present campaign. Our I.D. number is 871612, and we have filed the required reports to date.

At the request of the local newspaper, and as a part of our efforts, we have provided informative columns each week under the heading "Fallbrook Incorporation Forum" (see attached). The Enterprise prints the Forum without charge to the Coalition, but it has not taken an editorial position to date favoring or opposing incorporation. The Enterprise also prints an opposing point of view under the heading "Fact Finders Forum" (see the attached), without charge to our opponents. The Enterprise also prints without charge many letters to The Editor on incorporation, the views of candidates for Town Council in response to a questionnaire composed by The Enterprise, and general news about incorporation and the activities of Council candidates. The Enterprise also accepts paid political advertisements from those favoring or opposing incorporation, and from specific candidates. The prospect of incorporation and the race for the Town Council is generally the biggest local news each week in our community.

Recently an issue has arisen as to whether the space made available by The Enterprise for the Fallbrook Incorporation Forum should be reported by the Coalition as a "contribution" under the Political Reform Act of 1974. Our legal counsel has analyzed the issue and concluded the Forum falls within the editorial exception to such reporting, recognized by the Commission in its opinion No. 75-082 of December 2, 1975. He recognizes, however, that authorship of the Forum by a Coalition volunteer rather than an employee of The Enterprise might distinguish our situation from that earlier opinion, and recommended that your opinion be sought.

(more)

Consequently, your opinion is requested as to whether authorship of the Forum by someone not an employee of The Enterprise requires that its publication without cost to the Coalition be listed as a "contribution" upon our campaign statements. For your reference I have enclosed a copy of our counsel's opinion.

Sincerely,

Elwin C. Fuller

Chairman

MR. ELWIN C. FULLER
3143 KNOLL PARK LN
FALLBROOK, CA 92028

ROBERT WAYNE GEHRING

ATTORNEY AT LAW

3142 VISTA WAY, SUITE 400
OCEANSIDE, CA 92056-3608

619/439-4998

19 February 1988

Elwin C. Fuller, Chairman
Fallbrook Incorporation Coalition
300 North Main Street, Suite 24
Fallbrook, California 92028

Dear Al:

In a letter to you Messrs. Chaney, Washburn and Wireman allege that the Fallbrook Incorporation Coalition has improperly failed to report as a "contribution" the space provided free by The Enterprise for the Fallbrook Incorporation Forum. You forwarded their letter to me requesting my opinion. You provided copies of the Forum as it has appeared weekly in The Enterprise since February 11, 1988.

As explained in the first Forum column written by the editor of The Enterprise, the Forum is intended as a weekly educational forum on incorporation issues, in recognition of the historic decision before the voters of Fallbrook. Questions were solicited from the readers and answers would be obtained from the Coalition. Readers with contrary points of view were invited to write letters to the Editor. In the weeks since, several contrary opinions have been published by The Enterprise.

The special protection accorded the print media under the U. S. Constitution is well recognized and requires no citation. The decision by The Enterprise to run the Forum is certainly an editorial decision. Consequently, the issue is whether the cost of running an editorial, if it favors one side or the other on a proposition in an upcoming election, is to be counted as a "contribution" to the favored side.

In the Political Reform Act of 1974 "contribution" is defined, in part, as: "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. [It] includes. . . the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office. . . ." (Gov. Code § 82015.)

No judicial decisions on the question posed have been found, but the question has been addressed by the Fair Political

Practices Commission. The Goleta Valley Today, a daily newspaper, ran a series of editorials opposing the annexation of Goleta Valley by Santa Barbara, a proposition on the ballot in a forthcoming election. The editorials were subsequently reprinted by the newspaper in a widely distributed shopping guide. The newspaper requested an opinion as to whether these editorials were an "expenditure" by the newspaper which must be reported under the Political Reform Act.

The Commission treated "expenditures" and "contributions" as mirror images for its analysis. Certainly any "contribution" totalling \$500 or more must be reported not only by the recipient committee, but also by the person making the expenditure. (Gov. Code § 84203.5 The Commission found that the cost of running the editorials was not reportable, but that the cost of reproducing and distributing the editorials in the shopping guide was reportable. (In re: Goleta Valley Today, Opinion No. 75-082 [Dec. 2, 1975].) The Commission's opinion placed such great emphasis upon the role of newspaper editorials in American political life that a lengthy excerpt would be useful.

Newspaper editorials are an integral part of American political life, and the free expression of editorial opinion is constitutionally protected. [Footnote 6 cites U.S. Const. Amend. I; Cal. Const. Art. I, Sec. 2.] Supporting certain candidates and measures through the expression of editorial opinion is an essential part of the functions traditionally performed by the press and one that consistently has been protected by the courts. See Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974); Mills v. Alabama, 384 U.S. 214 (1966).

Of course, the disclosure provisions of the Act do not prohibit expenditures of money and the inclusion of expenditures incidental to publishing newspaper editorials, therefore, would not necessarily constitute a direct infringement on the freedom of the press. However, treating incidental costs of publishing editorials as "expenditures" could inhibit the publication of political news and opinions. Such an inclusion would impose an administrative burden on newspaper publishers, particularly if the publisher had to make a judgment regarding each news editorial and item of commentary relative to whether it favored one side in an election campaign or was made for "political purposes." Furthermore, reporting incidental costs of publication as campaign "expenditures" might create the erroneous impression that the newspaper is providing financial support to a campaign rather than mere editorial support, and this might cast doubt on the independence of the newspaper.

Because disclosure might inhibit the free exercise of editorial opinion, we conclude that editorials would

have been specifically mentioned if intended to fall within the definition of expenditure. In the absence of express inclusion in the Act, we decline to interpret the reporting requirements of Chapter 4 to include newspaper editorials.
(FPPC Opinion No. 75-092, pp. 4-5.)

The administrative burden which would be forced upon The Enterprise if it were forced to analyze the content of each commentary or letter to the editor it published is obvious. In view of the The Enterprise's present position of not taking an editorial stand either favoring or opposing incorporation, to be listed as a contributor for each side and, if its costs exceeded the threshold, to be required to file reports of its expenditures on each side would frustrate its editorial freedom. As pointed out by the Commission, the disclosure provisions of the Political Reform Act were to ensure all relevant information of support for either side was available to the public. The purpose of publishing editorials or commentary in a newspaper is their availability to the public. Consequently, no additional purpose would be served by including such costs within the Act's definitions of "expenditures" and "contributions." (FPPC Opinion No. 75-082, pp. 5-6.)

It must be noted that the content published in the Forum, except for the first issue on February 11, 1988, have not been written by employees of The Enterprise. That was announced by the editor in the first installment. It is also true of every letter to the editor accepted by The Enterprise for publication. The publication of such material, whether it be the Forum or a letter to the editor, remains an editorial decision by The Enterprise. That material published need not originate with an employee of the newspaper is evident both from the omission of any such requirement in the FPPC Opinion and from that Opinion's reference to "commentary" as well as editorial. In our present situation, I believe the decision by The Enterprise to publish the Forum is more significant legally than its authorship by a Coalition volunteer.

While I do not believe that authorship is legally significant for the reporting requirements of the Political Reform Act of 1974, no clear FPPC opinion on that precise point has been found. Consequently, I recommend requesting the FPPC for an opinion on our case. Should you concur, a letter seeking an FPPC opinion has been attached for your signature.

Sincerely,



Robert Wayne Gehring



California Fair Political Practices Commission

May 4, 1988

Elwin C. Fuller
Fallbrook Incorporation Coalition
1143 Knoll Park Lane
Fallbrook, CA 92028

Re: 88-167

Dear Mr. Fuller:

Your letter requesting advice under the Political Reform Act was received on May 2, 1988 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. Code of Regs. 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
Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh



FALLBROOK

MAY 2 2 40 PM '88

INCORPORATION COALITION

April 28, 1988

Fair Political Practices Commission
Legal Department
428 J Street, Suite 850
Sacramento, Ca. 95814

Dear Sir/Ms:

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(more)

Consequently, your opinion is requested as to whether authorship of the Forum by someone not an employee of The Enterprise requires that its publication without cost to the Coalition be listed as a "contribution" upon our campaign statements. For your reference I have enclosed a copy of our counsel's opinion.

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Elwin C. Fuller

Chairman

 MR. ELWIN C. FULLER
1143 KNOLL PARK LN
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ROBERT WAYNE GEHRING

ATTORNEY AT LAW

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619/439-4998

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Sincerely,



Robert Wayne Gehring



California Fair Political Practices Commission

May 10, 1988

Elwin C. Fuller
Fallbrook Incorporation Coalition
1143 Knoll Park Lane
Fallbrook, CA 92028

Re: Advice Letter No. 88-167

Dear Mr. Fuller:

Your letter received by the Fair Political Practices Commission on May 2, 1988 has been reassigned to Lilly Spitz, an attorney in the Legal Division.

Sincerely,

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

Diane M. Griffiths
General Counsel

DMG:plh