



California Fair Political Practices Commission

March 14, 1989

Darren J. Warner
Law Offices of Van Camp & Johnson
555 Capitol Mall, Suite 400
Sacramento, CA 95814

Re: Your Request for Informal
Assistance
Our File No. I-89-051

Dear Mr. Warner:

Your office has requested guidance on behalf of the Brian Van Camp for Mayor Campaign with respect to debt forgiveness under the provisions of the Political Reform Act (the "Act").^{1/} Since your letter states only a general question, we are treating your question as a request for informal assistance pursuant to Regulations 18329(c) (copy enclosed).^{2/}

QUESTION

What, if anything, can the campaign committee do in order to allow its creditors to forgive campaign debts without the creditors violating the contribution limits of the Act?

CONCLUSION

If the creditors of the campaign committee forgive campaign debts, they will be deemed to have made

^{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.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

contributions equal to the amount of debt forgiven unless it is determined that the decision was the result of a bona fide business judgment that all or part of the debt is uncollectable. Any such contributions must be within the contribution limits imposed by the Act.

FACTS

The Brian Van Camp for Mayor Campaign committee was organized to operate the campaign efforts of Brian Van Camp in the Sacramento mayoral election of 1987. The committee has been closed. Upon closure, the committee still owed debts to certain creditors (approximately three individuals and two political action committees). These debts were created by the provision of goods and services to the campaign.

Because the campaign is insolvent, all creditors are willing to write off these debts as uncollectable accounts receivable. The debts owed the creditors are in excess of current campaign contribution limits. You are concerned that the forgiven debts would constitute campaign contributions, thereby causing the creditors to violate the Act. You are requesting guidance with respect to what the campaign may do in order to allow the creditors to forgive the debts without violating the Act.

ANALYSIS

Your request for guidance does not indicate that you are acting as an authorized representative of the creditors, nor are such creditors identified. Under these circumstances, we are limiting our assistance to an explanation, in general terms, of the requirements of the Act. (Section 18329(c)(4).)

Proposition 73 established limits on campaign contributions made in any fiscal year: (1) by persons to candidates or candidate-controlled committees (Section 85301), (2) by persons to other political committees (Section 85302), and (3) by political committees to candidates or candidate-controlled committees (Section 85303).

The Act defines a contribution, in part, as "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." (Section 82015.) "Payment" includes the "rendering of...property, services or anything else of value, whether tangible or intangible." (Section 82044.)

Here, the creditors have provided goods and services to the campaign, thereby making a "payment" within the Act. The forgiveness of debt owed for such goods and services would

mean that the payments were made to the campaign without full and adequate consideration. Thus, the portion of the debt so forgiven would constitute a contribution by the creditor to the campaign unless the decision to forgive the debt is not made for political purposes. (See, Steinberg Advice Letter, No. A-86-344, and Summers Advice Letter, No. A-77-014, copies enclosed.)

If the decision to forgive or reduce the debt is a product of a bona fide business judgment that all or part of the debt is uncollectable, the forgiveness or reduction will not be considered a contribution by the creditor. However, if the circumstances surrounding the debt forgiveness indicate that the creditor intended to bestow a political benefit on the debtor or that the creditor did not take reasonable steps to collect the debt, then the amount of debt forgiven will be considered a contribution. (See, Steinberg, supra.) If the forgiveness of debt is deemed to be a contribution, and the amount so forgiven is in excess of permissible contribution limits, a violation of the Act would occur.

You indicate that the committee has closed. Presumably this means that the committee wants to or has formally terminated its status as a committee pursuant to Section 84214 and Regulation 18404 (copy enclosed). The statement of termination filed in accordance with this regulation includes a declaration under penalty of perjury that the committee filing has "eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations..." (Regulation 18404(b)(2).)

However, Regulation 18404(d) provides that "a committee which has terminated remains subject to all civil and criminal penalties and remedies for any violations of this title or any other provision of law." Thus, the mere termination of status as a committee would not make the debt uncollectable.

Currently, the following guidelines are provided to creditors who request guidance in evaluating a possible bad debt:

1. When the contract was executed, was it the creditor's understanding that the candidate or committee would not be held liable unless the candidate or committee won?
2. How long was the debt outstanding?
3. Was it the creditor's usual business practice to treat a non-political business debt similarly?

Basically, all circumstances surrounding the debt will be evaluated to determine if the creditor has pursued its

Darren J. Warner
March 14, 1989
Page 4

remedies in the same manner as it would pursue a non-political debtor, including the filing of lawsuits if filed in similar circumstances.

Although this advice is consistent with past letters of the Commission, we anticipate that the Commission will re-examine this issue within the next year and possibly adopt regulations regarding debt forgiveness. Should similar situations arise in the future, we suggest that you contact us again to determine if we have changed our advice as a result of Commission hearings on the subject. We would appreciate any input that you may have on this subject.

If you have any further questions regarding this matter please contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

DMG:MWE:aa

Enclosures

F.P.P.C.
JAN 26 2 40 PM '89

LAW OFFICES
VAN CAMP & JOHNSON

HUGH JOHNSON, P.C.
BRIAN R. VAN CAMP, P.C.
BRIAN M. ENGLUND
JANE LUECKE JOHNSON
DONALD E. BRODEUR
ROGER D. LINN
THOMAS D. PHILLIPS
JAMES O. MOSES
JEFFREY W. CURCIO
STEPHEN CRAIG HUNTER

555 CAPITOL MALL, SUITE 400
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 448-1155
FACSIMILE (916) 448-2792

LOS ANGELES OFFICE
2049 CENTURY PARK EAST, SUITE 3100
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 277-0200

OF COUNSEL
FRITZ-HOWARD CLAPP

January 25, 1989

OUR FILE NO. _____

Fair Political Practices Commission
Legal Department
428 "J" Street, Ste. 800
Sacramento, California 95814

Pursuant to California Government Code, Section 83114, this letter seeks guidance on a question regarding the Brian Van Camp for Mayor Campaign, which was organized to operate the campaign efforts of Mr. Brian Van Camp in the Sacramento mayoral election in 1987. The question concerns the impact of California Government Code Section 85301, which sets a cap on campaign contributions from political action committees at \$5,000.

The Campaign has no money in its accounts, although debts are still owed. The Campaign has creditors who are willing to forgive certain debts, however, such action would cause the contributions (forgiven debts) by such creditors to exceed the Government Code limit. If this results in a violation by the creditors, the question is what should the Campaign do in order to allow these creditors to forgive the campaign debts without the creditors violating the Government Code?

I would sincerely appreciate any guidance you can offer to help solve this problem. If you have any questions, please feel free to call me.

Very truly yours,
Darren J. Warner
Darren J. Warner
For
VAN CAMP & JOHNSON

DJW/ch

(Regulations of the Fair Political Practices Commission
Title 2, Division 6 of the California Code of Regulations)

18329. Formal Written Advice and Informal Assistance

(a) The Commission will assist persons in complying with the Political Reform Act. The Commission will make every reasonable effort to provide formal written advice pursuant to Government Code Section 83114(b) or informal assistance without unnecessary delay and in sufficient time to facilitate compliance with the Act.

(b) Formal Written Advice

(1) Formal written advice may be requested in writing pursuant to Government Code Section 83114(b) by any person whose duties under the Act are in question or by that persons's authorized representative.

(2) Requests for formal written advice will not be acted upon unless the following requirements are met:

(A) The name, title or position, and mailing address of the person whose duties are in question are provided. In addition, if the request is submitted by an authorized representative, it shall contain a specific statement that such authorization has been made.

(B) All the facts material to the consideration of the question or questions

(6) With the exception of advice that a person need not disclose specific private economic interests, copies of the advice request and the formal written advice shall be public records. Summaries of the advice provided may be published from time to time in the Commission's Bulletin newsletter.

(7) Formal written advice provided pursuant to Government Code Section 83114(b) does not constitute an Opinion of the Commission issued pursuant to Government Code Section 83114(a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code Section 83114(b) is limited to the requestor and to the specific facts contained in the formal written advice.

(8) Subsection (a) notwithstanding, the Commission may decline to give formal written advice. The requestor shall be notified if the request for formal written advice is declined. Formal written advice may be declined in any of the following circumstances:

(A) The requestor is seeking advice relating to past conduct.

addition, informal assistance may be requested by any person with a duty to advise other persons relating to their duties or actions under the Act. Informal assistance may also be requested by any agency whose members or employees are subject to the provisions of the Act.

(2) Informal assistance may be requested or rendered orally or in writing.

(3) Informal assistance rendered pursuant to this regulation does not provide the requestor with the immunity set forth in either Government Code Section 83114(a) or (b).

(4) The Commission may decline to provide informal assistance or may limit such assistance to the explanation, in general terms, of the requirements of the Act in any of the following circumstances:

(A) Assistance or advice is being sought regarding past conduct, unless the advice or assistance sought is related to possible amendment of previous reports filed by the person requesting the advice.

(B) The requestor is seeking advice anonymously.

(C) Assistance or advice is being sought regarding the duties of another person and the

(Regulations of the Fair Political Practices Commission
Title 2, Division 6 of the California Administrative Code

18404. Termination of Candidate's and Committees' Filing Requirements

(a) The filing obligations of a committee which qualifies pursuant to Government Code Section 82013(b) or (c) terminate at the end of the calendar year in which the committee qualified, except to the extent that additional campaign statements are required by Government Code Sections 84200, 84203, 84203.5 and 84204. If additional campaign statements are filed after the beginning of a new calendar year because the committee files a statement in connection with the qualification of a measure or a semiannual statement covering activity for the period July 1 through December 31, the committee's filing obligations terminate when such statements have been filed.

(b) A candidate may terminate his or her status as a candidate, and a treasurer of a committee which qualifies pursuant to Government Code Section 82013(a) may terminate the committee's status as a committee, only by filing a Statement of Termination declaring, under penalty of perjury, that the candidate or committee:

(1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

ARNOLD STEINBERG
AND ASSOCIATES INC.
SURVEY RESEARCH AND MARKETING

3719 Meadville Drive, Sherman Oaks, California 91404
(818) 995-7775

DEC 26 9 35 AM '86

Diane Griffiths
General Counsel
FPPC
P.O. Box 807
Sacramento, California 95804

Dear Ms. Griffiths:

Referencing my conversation this week with Carla Wardlow of the FPPC, who suggested a letter to you:

My firm is making the business decision to negotiate payment of some long overdue debts owed to us by campaigns for state legislative office. Obviously, I would much prefer to be paid in full. However, given the uncertainty of ever getting paid by losing candidates, the difficulty and costs in repeatedly trying to collect these debts (with or without legal action), the time value of money, our need for funds, our accrual method of accounting, and general desire to maintain good working relationships within the political community that comprises my chief source of business, I am settling these debts for a fraction of what is owed, if payment is made within 30 days, and I am working my accountant to make the appropriate adjustments to my corporate financial statement and profit and loss statement.

I am making my best business decision, as I see it, for my company, to get something soon, rather than something much later, if at all. I am offering an incentive to settlement to badly delinquent accounts.

It goes without saying that it is hardly my intent to make a contribution, in money or in-kind, to these political campaigns, nor do I consider that I am making a contribution. This is a *business* decision, within my general business practice, just as I am certain there are vendors such as printers or mailhouses which negotiate partial payment in full settlement in order to close out accounts and get on with their business.

I am writing to confirm that I am *not* making a contribution to any campaign, and I do not consider myself a major donor, even if the amounts "written-off" are, collectively, over \$5,000. Moreover, any such classification by the FPPC is not simply inaccurate and, I believe, inconsistent, but it contradicts Federal corporate tax law and accounting practice, in that any "write-downs" or bad debts are subtracted from accounts receivable and accrued income, whereas "political contributions" are not deductible. Indeed, if my business write-downs were instead considered political contributions (which are not deductible from corporate income), merely because my client is a political committee, and the corporate tax law were perverted to serve state law, which it supersedes, then this corporation would be in the rather untenable position of paying taxes on (accrued) income which it never received and will not receive.

I hope this letter helps you understand my unequivocal position that I do not consider myself a donor, major or otherwise.

Thank you very much for your courtesy.

Best wishes for the new year.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Steinberg". The signature is written in black ink and is positioned above the typed name.

Arnold Steinberg



California Fair Political Practices Commission

February 6, 1987

Arnold Steinberg
3719 Meadville Drive
Sherman Oaks, CA 91403

Re: Your Request for Advice
Our File No. A-86-344

Dear Mr. Steinberg:

You have requested advice concerning your duties under the campaign reporting provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Will debts owed to your public opinion polling firm which are forgiven by the firm constitute "contributions" within the meaning of the Act?

CONCLUSION

The portion of the debt which is forgiven will not be a "contribution" if the decision to forgive the debt is a product of a bona fide business judgment that the debt is uncollectable. However, if forgiveness of the debt was intended to bestow a political benefit or if reasonable steps were not taken to collect the debt, forgiveness of the debt will be considered a "contribution."

FACTS

You own a business which does public opinion polling, primarily for political campaigns. There are some long overdue debts owed to your business by campaigns for state legislative office. You have made a business decision to settle these debts for a fraction of what is owed, if payment is made within 30 days. The remainder of any such debt will be "written-off" for income tax purposes.

^{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.

Arnold Steinberg
February 6, 1987
Page Two

ANALYSIS

The term "contribution" includes 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." (Section 82015.) The term "payment" includes the "rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.) In the present situation, you have rendered services to campaigns for state legislative office and have not received "full and adequate consideration." Accordingly, the portions of these debts which you forgive will be contributions unless it is clear from surrounding circumstances that the decision to forgive the debts is not made for political purposes.

We have previously advised in similar circumstances that a creditor has not made a contribution if the decision to forgive or reduce the debt is a product of a bona fide business judgment that all or part of the debt is uncollectable. However, when circumstances suggest that the creditor intended to bestow a political benefit on the debtor or that reasonable steps were not taken to collect the debt, forgiveness of the debt will be considered a "contribution." (See, Summers Advice Letter (No. A-77-014), copy enclosed.) You should review each of the debts which you have forgiven to determine how they fit within these criteria.

If you have any questions, please contact me at (916) 322-5901.

Sincerely,



John G. McLean
Counsel, Legal Division

JGM:km
Enclosure

82013

State of California



Fair Political Practices Commission

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

June 28, 1977

A-77-06-014

Robert C. Summers
Chief, Political Reform Audit Division
Franchise Tax Board
P. O. Box 1468
Sacramento, CA 95807

Dear Mr. Summers:

This letter will confirm the telephone advice which I provided to you several weeks ago. In your memorandum of April 21, 1977, you provided the following facts: A campaign committee contracts with an advertising agency for services. During the campaign the agency performs political services for which it bills the committee. At the end of the campaign when it becomes clear that the committee will be unable to pay the full costs of the services rendered, the advertising agency reduces the debt to an amount which the committee can afford. You ask whether such forgiveness or reduction of a debt is the type of payment which could subject the advertising agency to filing requirements pursuant to Government Code Section 82013(b).^{1/}

Section 82013(b) provides that a person who makes contributions or expenditures is a committee if "[e]xpenditures and contributions made, other than contributions described in subsection (c), total five hundred dollars (\$500) or more in a calendar year..." Subsection (c) refers to "[c]ontributions of cash, checks and other cash equivalents paid directly to candidates and committees..." and provides that persons who make contributions in this form do not become committees until they contribute \$5,000 or more in a calendar year.

The circumstances surrounding the forgiveness or reduction in the debt determine whether such acts constitute the making of a contribution. We think the creditor has not made a contribution if the decision to forgive or reduce the debt is a product of a bona fide business judgment that all or part of the debt is uncollectable. However, when circumstances suggest that the creditor intended to bestow a political benefit on the debtor or that reasonable steps were not taken by the

^{1/} All statutory references are to the Government Code unless otherwise noted.

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Robert C. Summer
Page two
June 28, 1977

creditor to collect the debt, we reach the opposite result.

Whenever circumstances suggest that a contribution has been made in these circumstances, we think the contribution is properly characterized as non-monetary in nature within the meaning of Section 82013(b). This is because the forgiveness or reduction of the debt is tantamount to performing all or part of the contracted services for free, and it would be improper, therefore, to characterize such contributions as "cash, checks and other cash equivalents" within the meaning of Section 82013(c). Accordingly, if the amount of such non-monetary contribution equals or exceeds \$500 in value in a calendar year, the creditor would be required to file campaign statements as a committee pursuant to Section 82013(b).

If you have any further questions, please do not hesitate to call me.

Sincerely,

Ted Prim
Staff Counsel
Legal Division

TP:jo

Memorandum

F P P C
APR 22 10 55 AM '77

To : Michael Bennett
Executive Director
Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Date : April 21, 1977

File No.:

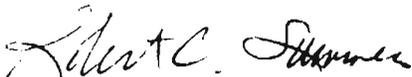
From : Robert C. Summers

Subject: Forgiveness of Campaign Debts

We are becoming aware of a fairly common practice in political campaigns where a committee functions primarily through the use of an advertising agency and is billed for total services rendered by that advertising agency. At the end of a campaign when it is apparent that there will be insufficient funds for the committee to pay the entire bill, the advertising agency will reduce the accounts receivable, through forgiveness, by the amount of the unpaid liability.

This practice raises the following question: when the act of forgiveness occurs, does the advertising agency become a "B" committee with a filing responsibility to report the forgiveness as a non-monetary contribution?

Since we are currently involved in campaign audits, an early response to the above question would be appreciated.



Chief, Political Reform Audit Division

cc: Dan Converse
Doug Dick
Norman L. Fuller
Jim Turrini
John Pavalasky

F P P C

Mar 3 2 16 PM '89

LAW OFFICES

VAN CAMP & JOHNSON

555 CAPITOL MALL, SUITE 400

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 448-1155

FACSIMILE (916) 448-2792

HUGH JOHNSON, P.C.
BRIAN R. VAN CAMP, P.C.
BRIAN M. ENGLUND
JANE LUECKE JOHNSON
DONALD E. BRODEUR
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JEFFREY W. CURCIO
STEPHEN CRAIG HUNTER

LOS ANGELES OFFICE
2049 CENTURY PARK EAST, SUITE 3100
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 277-0200

OF COUNSEL
FRITZ-HOWARD CLAPP

March 2, 1989

OUR FILE NO. _____

Margaret Ellison
California Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

**RE: Brian Van Camp for Mayor Campaign-
Request for Further Information**

Dear Ms. Ellison:

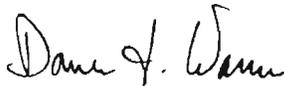
In response to your request for further information with regard to the Brian Van Camp for Mayor Campaign, I submit to you the following information.

The Campaign has been closed. Upon closure of the Campaign, certain debts were still owed to certain creditors (approximately 3 individuals and 2 Political Action Committees). Because the Campaign is insolvent, all creditors are willing to write off these debts as uncollectible accounts receivable. These debts were created by the provision of goods and services to the Campaign.

To reiterate the question posed in my letter to you on January 25, 1989, if a creditor makes a legitimate business decision to write off an uncollectible debt which arose from expenses for goods and services toward a political campaign, can such creditor escape potential liability for illegal campaign contributions?

Any advice or guidance that you may have would be very much appreciated.

Very truly yours,



Darren J. Warner
for

VAN CAMP & JOHNSON

DJW/ch

FPPO

Jan 26 2 40 PM '89

LAW OFFICES

VAN CAMP & JOHNSON

555 CAPITOL MALL, SUITE 400
SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 448-1155

FACSIMILE (916) 448-2792

LOS ANGELES OFFICE
2049 CENTURY PARK EAST, SUITE 3100
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 277-0200

OF COUNSEL
FRITZ-HOWARD CLAPP

HUGH JOHNSON, PC.
BRIAN R. VAN CAMP, PC.
BRIAN M. ENGLUND
JANE LUECKE JOHNSON
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STEPHEN CRAIG HUNTER

January 25, 1989

OUR FILE NO. _____

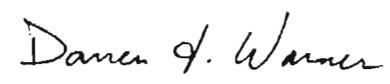
Fair Political Practices Commission
Legal Department
428 "J" Street, Ste. 800
Sacramento, California 95814

Pursuant to California Government Code, Section 83114, this letter seeks guidance on a question regarding the Brian Van Camp for Mayor Campaign, which was organized to operate the campaign efforts of Mr. Brian Van Camp in the Sacramento mayoral election in 1987. The question concerns the impact of California Government Code Section 85301, which sets a cap on campaign contributions from political action committees at \$5,000.

The Campaign has no money in its accounts, although debts are still owed. The Campaign has creditors who are willing to forgive certain debts, however, such action would cause the contributions (forgiven debts) by such creditors to exceed the Government Code limit. If this results in a violation by the creditors, the question is what should the Campaign do in order to allow these creditors to forgive the campaign debts without the creditors violating the Government Code?

I would sincerely appreciate any guidance you can offer to help solve this problem. If you have any questions, please feel free to call me.

Very truly yours,



Darren J. Warner
For
VAN CAMP & JOHNSON

DJW/ch



California Fair Political Practices Commission

January 27, 1989

Darren J. Warner
Van Camp & Johnson
555 Capitol Mall, Suite 400
Sacramento, CA 95814

Re: Letter No. 89-051

Dear Mr. Warner:

Your letter requesting advice under the Political Reform Act was received on January 26, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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 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 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,

Diane M. Griffiths
by *Ked*
Diane M. Griffiths
General Counsel

DMG:plh