



California Fair Political Practices Commission

July 28, 1989

Patrick Merloe
Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104-2878

Re: Your Request for Informal Assistance
Our File No. I-89-114

Dear Mr. Merloe:

You have requested advice regarding the campaign reporting obligations of the Sierra Club Committee on Political Education (SCOPE) under the Political Reform Act.^{1/} Because of the general nature of your questions, we are treating your request as one for informal assistance.^{2/}

QUESTIONS

1. SCOPE's sponsor, the San Francisco Bay Chapter of the Sierra Club (the "Club"), publishes a monthly newsletter using its general funds. Immediately preceding an election, the newsletter contains a list of candidates and ballot measures endorsed by the Club. Does this make the Club a "slate mailer organization?"

2. The Club occasionally publishes additional copies of the endorsement issue of its newsletter and distributes these by mail and otherwise to the general public. Does this make it a "slate mailer organization?"

3. If SCOPE produces and mails a slate card to the general public, will it become a "slate mailer organization?"

^{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. (Section 83114; Regulation 18329 (c)(3).)

4. If SCCOPE contributes funds to a slate mailer organization to assist with the cost of a slate mailer, does it become a "slate mailer organization?"

CONCLUSION

The Club and SCCOPE become slate mailer organizations only if they receive \$500 or more specifically "for the purpose of producing one or more slate mailers."

FACTS

You have provided the following facts regarding your questions:

1. The Club publishes a monthly newsletter. The normal length of the newsletter is approximately twenty pages. The Club mails the newsletter to its approximately 38,000 members. The Club hand delivers a number of additional copies of the newsletter to certain libraries, retail outdoor equipment stores and to the Club's bookstore and office. The newsletter for the month prior to an election normally includes an election supplement which lists the Club's endorsements of candidates and the Club's positions supporting or opposing ballot measures (the "endorsement issues"). The newsletter is produced and mailed using the Club's general funds.

2. Additional copies of the endorsement issues have been distributed in the same manner as other issues of the newsletter. The Club plans to continue this practice in the future. The Club is considering the possibility of also mailing copies of the endorsement issues in the future to members of the general public, pending advice from the Commission.

3. In future elections, SCCOPE is considering producing and mailing a slate card to the general public. SCCOPE would pay for the expenses of the mailer and report the expenses on its campaign statements.

4. SCCOPE was involved with the East Bay League of Conservation Voters (the "League") in the preparation of a slate card for the November 1988 election. The card set forth Club and League endorsements of a number of candidates and support or opposition for a number of ballot measures. The slate card also stated that the League endorsed Michael Dukakis for President.

The slate card stated that it was prepared by the League and gave the League's return address. The production and mailing of the slate card were controlled by the League. The League has registered as a slate mailer organization and has filed statements regarding the slate card.

No payments were made to SCCOPE, the Club or any Sierra Club entity specifically for the production of the slate card. SCCOPE contributed funds, which it received as general contributions from the Club's members, to the League for the purpose of producing the slate card. The expenditures were reported in SCCOPE's campaign statements. The state and national Sierra Club political education committees also made contributions to the League for the purpose of producing the slate card. The total payments from all Sierra Club entities accounted for approximately 25% of the funds paid to the League for production of the slate card. A member of SCCOPE placed telephone calls to several candidate controlled committees and individuals soliciting their contributions to the League for the purpose of producing the slate card. SCCOPE plans to conduct future activities similar in nature to its activities regarding the slate card.

ANALYSIS

The Act imposes registration, reporting and disclosure requirements on any "slate mailer organization." (Sections 84108, 84218, 84219, 84220, 84221 and 84305.5.) With certain exceptions which are not applicable here, a "slate mailer organization" includes any person who, directly or indirectly, does all of the following:

- (1) Is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers.
- (2) Receives or is promised payments totaling five hundred dollars (\$500) or more in a calendar year for the production of one or more slate mailers.

Section 82048.4(a).

A "slate mailer" is a mass mailing which supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.)

Your first two questions involve including in the Club's newsletter a list of candidates and ballot measures which the Club has endorsed. The funds used for publishing the newsletter are the Club's general funds. In order to qualify as a slate mailer organization, the Club must receive \$500 or more "for the production of one or more slate mailers." (Section 82048.4(a)(2).) This occurs only if it has received payments of \$500 or more which are made for the specific purpose of producing a slate mailer. For example, if a candidate, a committee or a third party made a payment to the Club in order to have a specific candidate or measure included in the slate mailer, the payments would be received "for the

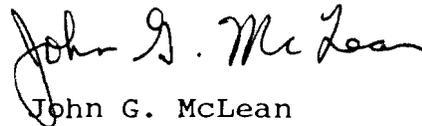
production of one or more slate mailers." Here, the funds used for the newsletter are received by the Club for general Club activities. Accordingly, production and distribution of the newsletter does not qualify the Club as a slate mailer organization. However, you should note that distribution of the newsletter to individuals other than members may constitute an "expenditure" which may subject the Club to registration and reporting obligations. (Section 82013(a); Regulation 18225, copy enclosed.)

As with the Club, SCCOPE would not qualify as a slate mailer organization unless it received funds for the purpose of producing a slate mailer as described above. With regard to the specific factual situation you have raised, we would point out that if SCCOPE has final decisionmaking authority as to which candidates or measures will be supported in the League's slate cards, this must be disclosed in the statement of organization for the League's slate mailer committee. (Section 84108 (b)(3).) Furthermore, you have indicated that the card listed Club (and presumably SCCOPE) endorsements. Since SCCOPE's payments appear to have been made in order to have specific candidates or measures listed on the slate card, those payments qualify either as independent expenditures by SCCOPE on behalf of those candidates or measures or, if they are made at the behest of those candidates or committees, as in-kind contributions to those candidates or committees. (Regulation 18215, copy enclosed.)

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: John G. McLean
Counsel, Legal Division

KED:JGM:aa

Enclosures

HELLER, EHRMAN, WHITE & McAULIFFE
ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
FACSIMILE (415) 324-0638
TELEPHONE (415) 326-7600

333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW · TELEX 184-996 · FACSIMILE (415) 772-6268
TELEPHONE (415) 772-6000

701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
FACSIMILE (206) 447-0849
TELEPHONE (206) 447-0900

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2306
FACSIMILE (213) 614-1868
TELEPHONE (213) 689-0200

1300 S. W. FIFTH AVENUE
PORTLAND, OREGON 97201-5696
FACSIMILE (503) 241-0950
TELEPHONE (503) 227-7400

February 10, 1989

WRITER'S DIRECT DIAL NUMBER

(415) 772-6613

98268-0001

John McLean, Esq.
California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95804-0807

Sierra Club Committee on Political Education -
S.F. Bay Chapter (FPPC #871601) ("SCCOPE")

Dear John:

Thank you for calling me on Friday, February 3, 1989, regarding the slate mailer questions presented to you in SCCOPE's letter of October 5, 1988 (the "October 5th letter"). I am sorry that you had some difficulty when you attempted to reach Tom Hagler. Following Tom's amicable departure, my attention was focused upon filing an amended Form 410 and semi-annual statement on Form 420 before I contacted you regarding SCCOPE's slate mailer questions.

You requested in our telephone conversation that I set forth in writing some of the facts we discussed as background to the questions presented in the October 5th letter. I will do so in the order in which the questions were originally submitted. As a matter of formality, I have been authorized by SCCOPE and its sponsor, the San Francisco Bay Chapter of the Sierra Club (the "Sponsor"), to pursue the questions raised on their behalf in the October 5th letter. The Sponsor's and SCCOPE's address are both 6014 College Avenue, Oakland, California 94618.

Concerning question number one, there are very few additional facts to present. The Sponsor publishes a monthly newsletter (the "Newsletter"). The Newsletter's normal length is approximately twenty pages. The Sponsor mails the Newsletter to its approximately 38,000 members. The Sponsor hand delivers a number of additional copies of the Newsletter to certain libraries, retail outdoor equipment stores and to the Sponsor's bookstore and office. The issue of the Newsletter for the month prior to an

election normally includes an election supplement which lists the Sierra Club's endorsements of candidates and the Sierra Club's positions supporting or opposing ballot measures (the "Endorsement Issues"). The Newsletter is produced and mailed using the Sponsor's general funds.

Concerning question number two, additional copies of the Endorsement Issues have been distributed in the same manner as other issues of the Newsletter. The Sponsor plans to continue this practice in the future. The Sponsor is considering the possibility of also mailing copies of the Endorsement Issues in the future to members of the general public, pending advice from the FPPC.

Concerning question number three, SCCOPE has not produced or mailed a slate card endorsing candidates and/or measures to the general public; however, SCCOPE is considering such activity for future elections, pending advice from the FPPC.

Concerning question number four, SCCOPE was involved in the preparation of a slate card for the November 1988 election (the "Slate Card") together with the East Bay League of Conservation Voters (the "League"). The Slate Card set forth Sierra Club and League endorsements of a number of candidates and support for or opposition to a number of ballot measures. The Slate Card also stated that the League endorsed Dukakis for President.

The Slate Card stated that it was prepared by the League and gave the League's return address. The production and mailing of the Slate Card were controlled by the League. All funds for the Slate Card were contributed to the League. The League has registered with the FPPC as a slate mailer organization and has filed statements with the FPPC regarding the Slate Card.

No funds were contributed to SCCOPE, the Sponsor or any Sierra Club entity for the production of the Slate Card. SCCOPE contributed funds, which it received as general contributions from the Sponsor's members, to the League for the purpose of producing the Slate Card and reported these contributions to the FPPC on Form 420 for the period of October 1 through October 22, 1988. The state and national Sierra Club political education committees also made contributions to the League for the purpose of producing the Slate Card and have reported their contributions as well. The total contributions from all Sierra Club entities accounted for approximately twenty-five percent (25%) of the funds contributed to the League for the production of the Slate Card. A member of SCCOPE placed telephone calls to several candidate controlled committees and individuals soliciting their contributions to the

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League for the purpose of producing the Slate Card. SCCOPE plans to conduct future activities similar in nature to its activities regarding the Slate Card.

SCCOPE and its Sponsor would like formal written advice concerning the questions presented in the October 5th letter and supplemented by this letter in order to confirm their understanding that none of the activities described therein or herein, in light of the facts and circumstances presented, made or would make SCCOPE or its Sponsor a slate mailer organization within the meaning of Section 82048.4 of the Government Code of the State of California. If you need additional information or wish to discuss the issues further, please do not hesitate to call me.

Very truly yours,


Patrick Merloe

cc: Ms. Gayle Eads
Mr. Barry Epstein
Mr. Brian Woodworth



California Fair Political Practices Commission

February 22, 1989

Patrick Merloe
Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104-2878

Re: Letter No. 89-114

Dear Mr. Merloe:

Your letter requesting advice under the Political Reform Act was received on February 14, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean 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
General Counsel

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