



California Fair Political Practices Commission

July 5, 1989

Henry J. Muller, Jr.
1730 Glen Oaks Drive
Santa Barbara, CA 93108

Re: Your Request for Advice
Our File No. A-89-305

Dear Mr. Muller:

This is in response to your letter requesting advice regarding your duties under the newly enacted provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

May a candidate for the Montecito Water Board also serve as cochairman for a citizens committee that was formed to support candidates and issues that are consistent with the views of the committee?

CONCLUSION

If a candidate serves as a cochairman for a political committee, the committee will be presumed to be the candidate's controlled committee and contributions to the committee will be attributed to the controlling candidate. Membership in the committee alone, however, will not make the committee a controlled committee of the candidate.

FACTS

You are a current officeholder and candidate for reelection to the Montecito Water Board. You are also cochairman of the Citizens Committee for Montecito (the "committee"), a registered political action committee. The committee was formed to support

^{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.

issues and political candidates for public office considered to be in the best interest of the community. The bylaws of the committee provide that "...support can be initiated in the form of public forums, publicity and financial aid when needed."

At this time you are contemplating the formation of a controlled committee for your campaign for water board. You also wish to continue serving as cochairman for the committee. However, you have become concerned about the status of the committee in relation to your campaign committee.

ANALYSIS

Section 85201 provides that all contributions or loans made to a candidate, or to the candidate's controlled committee shall be deposited in a single campaign bank account. The Commission has interpreted this to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each campaign. (Regulation 18521; Riddle Advice Letter, No. A-88-409, copies enclosed.)

Section 82016 defines controlled committee as follows:

"Controlled committee" means a committee which is controlled directly or indirectly by a candidate or state measure proponent or which acts jointly with a candidate, controlled committee or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee.

Section 82016 describes two ways in which a general purpose committee may become a controlled committee. First, the candidate might exert significant influence on the actions or decisions of the committee. Where a candidate is a voting member of a committee's leadership, such as the board of directors or chairmanship, he is presumed to be a controlling candidate since he probably exercises significant influence on the actions or decisions of the committee. (Ferguson Advice Letter, No. A-86-044, copy enclosed.)

Second, the candidate and the committee may act jointly in making expenditures. Section 82025 defines "expenditure" as any payment, forgiveness of a loan, payment of a loan by a third party, or any enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Regulation 18225, copy enclosed.)

You have asked whether your cochairmanship of the Citizens Committee for Montecito was sufficient control to cause the committee to be treated as your controlled committee under the Act. As cochairman, we presume you have significant control over the committee. (Ferguson Advice Letter, supra.) Thus, if you remain cochairman of the committee, it will be treated as your controlled committee unless you can show that you do not exercise significant control over the committee.

As a controlled committee, the Citizens Committee for Montecito will be able to receive from a person a maximum of \$1,000 per fiscal year. (Section 85301.) In addition, a controlled committee may not transfer any money to any other candidate. (Section 85304.) Finally, funds contributed to the committee would be held in trust for expenses associated with the controlling candidate's election or the expenses of holding office should the candidate be elected.

If the committee is in fact your controlled committee, your fundraising activities for your candidacy will be affected in two ways. First, contributions to you and your controlled committees will be cumulated to determine when a contributor has reached the contribution limits of the Act.^{2/} (Section 85301(a).) In addition, you may not establish more than one controlled campaign committee for the same election. (Regulation 18521.)

You may, however, remain a member of a committee without the committee becoming your controlled committee, provided you do not exert significant influence over the actions or decisions of the committee or act in concert with the committee to influence the voting public concerning any candidate or ballot measure. (Madden Advice Letter, No. A-85-197, copy enclosed.)

We also recommend that you exercise caution in your involvement with the committee's expenditure activity. As stated above, if you act jointly with the committee in making expenditures, the committee would become your controlled committee. (Section 82016.) Even if you do not control the committee, expenditures made by the committee may be considered contributions to you. Section 82015 provides that an "expenditure made at the behest of a candidate...is a contribution to a

^{2/} The amendments to the Act by Proposition 73 provide that contributions to candidates for elective office must comply with the contribution limits set forth in Sections 85301, 85303 and 85305. Contributions from a person to a candidate are limited to \$1,000 each fiscal year. (Section 85301.) Contributions from a political committee to a candidate are limited to \$2,500 each fiscal year, and contributions from a broad based political committee or political party to a candidate are limited to \$5,000 per fiscal year. (Section 85303.)

candidate, unless full and adequate consideration is received for making the expenditure." A payment is made at your behest if you control or direct the payment, or the payment is made in cooperation, consultation, coordination, or concert with you, or at your request or suggestion. (Regulation 18215(b).) Thus, even as a noncontrolling member of the committee, should a payment that benefits your candidacy be made in cooperation, consultation, coordination, or concert with you, or at your request or suggestion, it will be deemed a contribution to you.

In summation, if you continue as the cochairman of the committee, the committee probably will be treated as your controlled committee. However, you may remain a member of the committee provided you do not exert significant influence over the actions of the committee, you do not act in concert with the committee in making expenditures, and you do not suggest that the committee make expenditures on your behalf.

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: John W. Wallace
Counsel, Legal Division

KED:JWW:aa

Enclosure

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MAY 19 8 33 AM '89

HENRY J. MULLER, JR.
1730 GLEN OAKS DRIVE
SANTA BARBARA, CALIFORNIA 93108

May 16, 1989

Mrs. Kathryn E. Donovan
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95819

Dear Mrs. Donovan:

Enclosed, per our telecom, is a copy of objectives and policies of the Citizens Committee for Montecito.

I am the co-chairman of the Committee and am also an office holder and candidate for reelection to the Montecito Water Board.

The candidates for the Water Board will have their own controlled committee for this years election. We will not request nor accept financial support from the Citizens' Committee for Montecito.

The Citizens' Committee is not supporting any candidate for any office this year. They understand that we will not accept their support.

I will be grateful if you will advise me whether or not my position as co-chairman of the Citizens' Committee for Montecito is in conflict with the provisions of the Political Reform Act.

Very truly yours,


Henry J. Muller, Jr.

HJM/cc

CITIZENS' COMMITTEE FOR MONTECITO
1482 East Valley Road, B-245
Montecito, CA 93108

ORGANIZATION

The Committee will be composed of public minded citizens of Montecito residence.

Officers will be elected annually by voice vote at a meeting of the Committee. A chairman, vice chairman and secretary-treasurer will be elected to perform customary duties of such officers and provide spokesmen on subjects of concern and interest to the committee. A legal counsel will be appointed to make certain that the organization complies with government codes and regulations governing its conduct and reporting requirements.

Standing committees will include membership, political analysis and publicity. Ad hoc committees will be appointed as required.

A minimal membership fee will be assessed annually to the members in the amount of \$50.00. Funds will be used to defray costs of the Committee as well as support causes to which it is committed. All funds will be handled by a certified public accountant.

OBJECTIVES AND POLICIES

A - The Committee will support those issues and political candidates for public office considered to be in the best interests of the community. This support can be initiated in the form of public forums, publicity and financial aid when needed.

B - Membership and the community will be kept informed of the issues and activities of public servants that affect the interests of Montecito either positively or negatively.

C - Committee policies will be politically moderate and in opposition to extremist policies which affect Montecito adversely. The Committee is equally opposed to insensitive developers who threaten the unique character of our community and militant environmentalists who disregard the rights of private citizens.

D - The Committee supports only carefully controlled limited growth. Until some other form of government regulation or control is adopted by the citizens of Montecito, the best way to supplement this policy is by strict adherence to the General Plan for Montecito and the Special Montecito Zoning Ordinance, both of which were reviewed and approved by the Montecito Association at public hearings.

E - The support for the independence of our Service Districts - Fire, Water and Sanitation is essential. These districts have served our community effectively since 1913, 1931 and 1960 respectively. The Director of these services must be directly responsible to the Montecito electorate. The Committee will resist any attempt to incorporate them into consolidated county units under the control of non-resident public officials.

F - The Committee recognizes that the eventual incorporation of Montecito is probably inevitable but believes the interests of the community at this time would be best served by widespread dissemination of factual information regarding the advantages and disadvantages of cityhood. The decision on incorporation, at the proper time, should be based on an advisory vote by the entire community.

G - The Committee recognizes that the exceptionally high value of real estate in Montecito is an inescapable fact. We believe that imposing "affordable" or "low cost" housing on this community is financially impractical and can only be accomplished through what amounts to confiscation of private property. We would support practical alternative solutions for complying with state mandated "affordable" housing requirements as well as other social engineering programs.

H - The Committee believes that the special charm of Montecito, in addition to its favorable climate and location, is the direct result of the separate and distinct ordinance which applies exclusively to our community. The ordinance was enacted in 1931 and has been carefully overwatched by the Montecito Association for more than 50 years. We would oppose any attempt to eliminate our separate ordinance or erode its effectiveness. We would similarly oppose any move to diminish the Montecito Association's traditional role of participating in the application of the ordinance. The Citizens Committee will not be involved in details of land use, zoning or area beautification.

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Fair Political Practices Commission
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California Fair Political Practices Commission

May 23, 1989

Henry J. Muller, Jr.
1739 Glen Oaks Drive
Santa Barbara, CA 93108

Re: Letter No. 89-305

Dear Mr. Muller:

Your letter requesting advice under the Political Reform Act was received on May 19, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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,

Kathryn E. Donovan
General Counsel

KED:plh