



California Fair Political Practices Commission

October 3, 1989

Jeanne C. Pavao
Thiessen, Gagen & McCoy
P.O. Box 218
Danville, CA 94526-0218

Re: Your Request for Advice
Our File No. A-89-524

Dear Ms. Pavao:

You have requested advice on behalf of Braddock & Logan Associates and North State Development Co. concerning the campaign provisions of the Political Reform Act of 1974.

QUESTION

Have Braddock & Logan Associates and North State Development Co. incurred a filing obligation under the Act by spending \$1,000 or more to send a letter to voters informing them that the companies will not be opposing a local ballot measure?

CONCLUSION

The costs related to producing and sending the letter are not reportable.

FACTS

On June 28, 1989, the Concord City Council passed a resolution amending its general plan to allow development of a residential area known as Crystyl Ranch. In response to this action, a citizens group formed to oppose the amendment to the plan by placing the issue on the ballot in the form of an initiative. After enough signatures were obtained, the city council passed a resolution placing the issue on the November 7, 1989, ballot as Measure E.

On August 30, 1989, Braddock & Logan Associates and North State Development Co., the developers of the Crystyl Ranch project, mailed a letter to residents of the City of Concord

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.

Jeanne C. Pavao
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advising them that they will not oppose the passage of Measure E.
A copy of the letter is enclosed.

ANALYSIS

Sections 84200-84226 impose various reporting obligations on entities and persons which receive contributions totaling \$1,000 or more in a calendar year or make independent expenditures totaling \$1,000 in a calendar year. (Section 82013.)

A contribution is defined 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**.

Section 82015.

A payment is made for political purposes if it is made:

...for the purpose of influencing or attempting to influence the actions of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure.

Regulation 18215.

In addition, Section 82031 states that:

An "independent expenditure" is an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

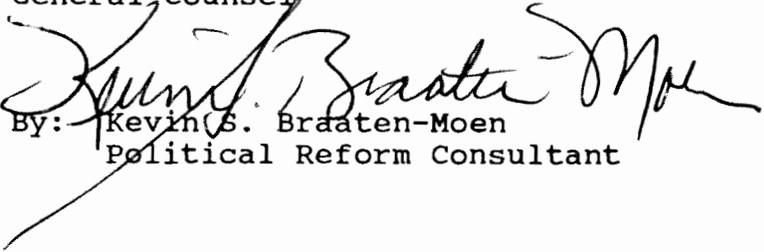
Generally, when two or more individuals or entities pool funds or make joint expenditures for political purposes which total \$1,000 in a calendar year, the funds are deemed to be "contributions," and the entities must file campaign disclosure reports as a recipient committee. (Section 82013(a).) However, because the enclosed letter merely states that the developers will not oppose Measure E and will withdraw their plans for Crystyl Ranch, the costs incurred for the mailing do not appear to be reportable contributions or expenditures under the Act.

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

Sincerely,

Kathryn E. Donovan
General Counsel


By: Kevin S. Braaten-Moen
Political Reform Consultant

Enclosure

LAW OFFICES OF
THIESSEN, GAGEN & McCOY
A PROFESSIONAL CORPORATION

BRIAN D. THIESSEN
WILLIAM E. GAGEN, JR.
GREGORY L. McCOY
PATRICK J. McMAHON
MARK L. ARMSTRONG
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STEPHEN W. THOMAS
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ROBERT M. FANUCCI
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RICHARD A. FRANKEL
BARBARA DUVAL JEWELL
CAROLE A. LAW
JEANNE C. PAVAO
RICHARD C. RAINES
EVELYN SPIROU
SUE GOUGE WILLIAMS

OF COUNSEL
WILLIAM W. BASSETT
JOHN B. CLAUSEN

August 30, 1989

Ms. Jeanne Pritchard
Division Chief
Technical Assistance & Analysis
Fair Political Practices Commission
Office of the General Counsel
428 "J" Street, Suite 800
Sacramento, CA 95814

Re: 1989 Consolidated Municipal Election - City of Concord -
Measure E

Dear Ms. Pritchard:

Please be advised that our office represents Braddock & Logan Associates and North State Development Co., who are the developers of the proposed 710 to 725 unit residential project in the City of Concord, California.

On June 28, 1989, the Concord City Council passed a resolution amending its General Plan to allow the development of the Crystyl Ranch project. In response thereto, a group called the "Referendum Committee Against Crystyl Ranch" prepared and began circulating a Referendum Petition against the General Plan Amendment Resolution adopted by the City Council.

On July 28, 1989, the Referendum Committee filed the Referendum Petition with the City of Concord's City Clerk who determined that the Petition was sufficient and contained the requisite number of signatures. Subsequent thereto, the Concord City Council adopted a resolution placing the Referendum on the November 7, 1989, election ballot. The Measure was subsequently designated as Measure E.

On August 30, 1989, the developers of the Crystyl Ranch project, Braddock & Logan Associates and North State Development Co., mailed a letter to residents of the City of Concord advising them that the developers will not be opposing the passage of Measure E. We attach a copy of the letter which basically states that the developers will withdraw all development applications and go back

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Page Two

to the drawing board with a new development application.

Assuming the cost of mailing the letters to the Concord residents exceeds the amount of \$1,000, we request written advice from your office as to whether the sums expended by the developers in doing such a mailing must be reported under the Political Reform Act. As you will note in reviewing the letter, it neither advocates the passage or defeat of Measure E but basically states that the developers will not contest the election and are therefore conceding.

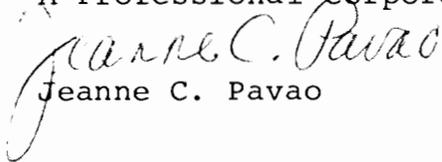
We have been advised by Kevin Braaten-mon of your office that, in his opinion, the funds expended by the developers in sending out the letter need not be reported since they do not fall under the definition of an "independent expenditure" under the Political Reform Act. He advised us that his opinion is based on the fact that the letter does not expressly advocate the passage or defeat of the particular measure.

We hereby request written advice from your office as to whether the funds referenced above must be reported.

Should you have any questions or require additional information from the developers, please do not hesitate to contact the undersigned.

Sincerely,

THIESSEN, GAGEN & McCOY
A Professional Corporation


Jeanne C. Pavao

JCP/lcb
15-19487

Enclosure

cc: Braddock & Logan Associates
Attn: Joe Raphael
North State Development Co.
Attn: Robert J. Rossi, Jr.
Miller, Starr & Regalia
Attn: Wilson F. Wendt, Esq.



Braddock & Logan
Associates
Thomas A. Seeno
North State

Dear Concord Citizen,

We build homes for a living. We built our first homes in Concord over 40 years ago.

Times are changing. The political climate is changing. We survive by recognizing those changes and adapting to them, not by fighting them.

That's why we are writing to you.

During the last couple of years we have worked to win approvals to allow us to build more homes on our Crystyl Ranch Site than the Concord General Plan specified.

We acted in good faith. We went through all of the steps that are called for. And after much work we won approval from the City Council for 710 to 725 homes and a golf course.

During the public hearings we saw that folks were concerned about traffic, and hillside preservation, and schools. So we worked to develop a plan that allowed for a lot of open space, significant funding for public services such as schools and fire protection and major expenditures to improve roads.

We figured that with these improvements and the approval of your elected representatives we had a "Green Light."

Wrong!

In just a little more than a month local citizens collected more than 10,000 signatures opposing this change in the General Plan!

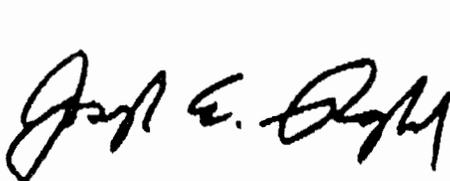
We don't want a fight. We pride ourselves on being good neighbors; constructive members of the community; and men of good will.

This letter is to inform you that we are withdrawing our plans and will make no effort to oppose the November Referendum. We see no positive benefit to engaging in a divisive political campaign over the number of homes to be built at Crystyl Ranch.

We respect your judgment and apologize for the misunderstanding. You are our neighbors and our customers. Losing you would be far worse than losing an election.

We will go back to the drawing board to come up with a plan we hope will reflect what Concord citizens want.

Sincerely,



Joe Raphael
Braddock & Logan
Associates



Thomas A. Seeno
North State

89-524

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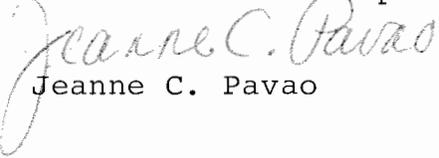
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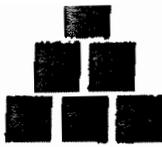
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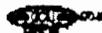
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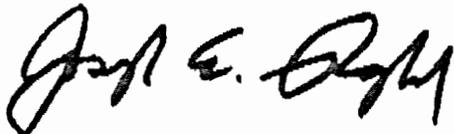
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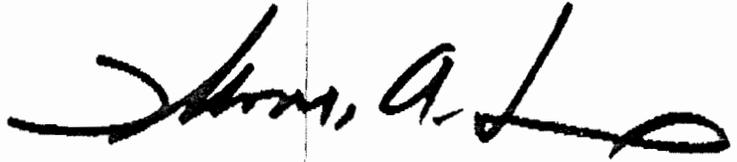
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Joe Raphael
Braddock & Logan
Associates



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North State



California Fair Political Practices Commission

September 12, 1989

Jeanne C. Pavao
Thiessen, Gagen & McCoy
P.O. Box 218
Danville, CA 94526-0218

Re: Letter No. 89-524

Dear Ms. Pavao:

Your letter requesting advice under the Political Reform Act was received on September 7, 1989 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

by plh

JP:plh