



California Fair Political Practices Commission

November 7, 1989

Barbara L. Roberts
Attorney at Law
Schill & Roberts
5951-A Almond Street
Paradise, CA 95969

Re: Your Request for Informal
Assistance
Our File No. I-89-570

Dear Ms. Roberts:

You have requested advice on behalf of Paradise Councilmember Howard Johnson regarding the campaign provisions of the Political Reform Act.^{1/} Your letter states a general question; therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTION

What are the filing obligations of an elected officer who has raised \$1,000 or more to defend against a possible recall election.

CONCLUSION

An elected officer who has received contributions of \$1,000 or more to defend against a potential recall election qualifies as a controlled committee. Both the officeholder and the committee are subject to the Act's campaign disclosure requirements.

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 19329(c)(3).)

FACTS

You are the committee treasurer for Howard Johnson, a member of the Paradise Town Council. Mr. Johnson has received more than \$1,000 for the purpose of defending against a possible recall election. In addition, you indicated during recent telephone conversations that if the recall election does not take place, or there are leftover funds, Mr. Johnson would like to use the contributions he is currently raising for officeholder expenses and possibly for his reelection.

ANALYSIS

The Act requires elected officeholders and candidates to file semi-annual campaign statements each year disclosing contributions received and expenditures made. (Section 84200.) During election periods, additional pre-election campaign statements must be filed by candidates being voted upon in the election. (Section 84200.5.) An officeholder who is the subject of a recall is included in the definition of "candidate" contained in Section 82007 for purposes of filing pre-election campaign statements in connection with the recall.

In addition, the Act provides that any person, including a candidate, who receives contributions totaling \$1,000 or more in a calendar year qualifies as a "committee." (Section 82013(a).) Within 10 days of qualifying as a committee, a Statement of Organization (Form 410) must be filed with the Secretary of State. (Section 84101.) Thereafter, committees are also required to file semi-annual and pre-election campaign statements pursuant to Sections 84200 and 84200.5.

For purposes of when and where to file campaign statements, and application of the contribution limits, committees are divided into categories. A "controlled committee" is defined in the Act 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, emphasis added.)

The Commission has interpreted the definition of "controlled committee" very broadly to include any significant participation in the actions of a committee by a candidate, his or her agent, or representatives of any other committee he or she controls. (Forcier Advice Letter, No. I-89-058, copy enclosed.) Therefore,

when Councilmember Johnson received contributions of \$1,000 or more to defend against a potential recall to his current council seat, he was required to file a Statement of Organization (Form 410).

A committee qualified under Section 82013(a) may also be categorized as "primarily formed" to support or oppose a ballot measure (including a recall measure) or the qualification of a ballot measure. (Section 82047.5.) Certain committees, such as those formed by a candidate or officeholder to defend against a recall measure, can be both "controlled" and "primarily formed." Generally, however, such committees do not make expenditures aimed specifically at opposing the qualification of a recall measure and, therefore, usually are not required to file the 21-day post-qualification campaign statement referred to in Section G of the 1989 "Information Manual on Campaign Disclosure Provisions of the Political Reform Act."

Contributions made to or received by officeholders, candidates and their controlled committees are subject to contribution limits. (Sections 85301 and 85303.) Committees primarily formed to support or oppose ballot measures are not subject to the contribution limits.

With regard to officeholders who are the subject of a recall election, the Commission has advised that an officeholder may use contributions received in connection with a previous election to the office he or she holds to oppose the recall, may use contributions raised for a future election to the office held, or may establish a separate committee specifically to receive contributions in connection with the recall. (Hong Advice Letter, A-89-133, copy enclosed.) If the officeholder chooses to form a separate committee specifically to receive contributions in connection with the recall, contributions in excess of the limits may be received by that committee once the officeholder is served with the notice of intention to circulate a recall petition and the recall notice is filed and published or posted according to law. Such contributions may not be used to support or oppose other candidates, or for the officeholder's past or future election expenses other than the recall election. (Roberti Advice Letter, A-89-358, copy enclosed.)

During a telephone conversation with Lynda Cassady of this office, you indicated that Mr. Johnson only wants to establish one committee to receive contributions for current officeholder expenses, for his future reelection campaign, and to oppose the recall. This means that all contributions received are subject to the contribution limits. Mr. Johnson should indicate on the Statement of Organization (Form 410) that this is a "controlled" committee for his town council seat and should not indicate that the committee is formed primarily in connection with the recall.

We are also in receipt of Mr. Johnson's Candidate Intention notice (Form 501) on which he indicates that he intends to solicit

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and receive contributions for the recall with an election date of June 1989, and the Campaign Bank Account notice (Form 502) on which he indicates that he is a recall candidate for an election in November 1988. Both of these notices should be amended to indicate only that the "specific office" for which he is soliciting funds and opening an account is the town council. He should indicate that the "date of election" is the date of his next reelection for town council. Enclosed are blank Forms 501 and 502 to be used for making these amendments.

Please do not hesitate to call me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla Wardlow

By: Carla Wardlow
Assistant Chief, Technical
Assistance & Analysis Division

Enclosures

LAW OFFICES OF
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September 27, 1989

Secretary of State
Political Reform Division
P. O. Box 1467
Sacramento, CA 95812-1467

To Whom it May Concern:

Enclosed please find the original and two copies of the Statement of Organization for the recipient committee named "The Retain Howard Johnson Committee". Please file these and send me an endorsed filed copy in the enclosed envelope.

I have recently been informed that this statement is necessary inasmuch as we have collected over \$1,000 for the benefit of fighting a potential recall. I have also been informed that there may be an assessment of fines because of a late filing, however, I am requesting that any fine be waived as I was unaware that this filing was required.

In addition, I am seeking clarification from the Fair Political Practices Commission, Technical Services Division, as to whether this Statement is necessary at this time or not. It is somewhat confusing from the literature I received from the Department as to whether this is a committee to represent a "candidate" as defined in the literature as a city counsel member who is subject to a recall or whether this is a committee to advocate a "measure" as defined in the September 18, 1989, interpretation of the code that a recall campaign is to be defined as a measure. Howard Johnson is a Town Counsel member of the Town of Paradise and there has been a petition for recall filed against him but the twenty percent of the registered voters' signatures have not been acquired. Therefore, he really is not subject to a recall election at this time and thus I do not think he qualifies as a "candidate subject to a recall". If this is to be defined as a measure, then I need a further clarification as to whether we are a committee primarily formed to oppose the qualifications of a ballot measure or a committee primarily formed to oppose the ballot measure. I am referring specifically to Section G and H on Page 23 of the State of California Campaign Disclosure Information Manual dated 1989.

Secretary of State
Political Reform Division
September 27, 1989
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I need that clarification so that I know whether we have to form a new committee and start this process all over again once the measure has qualified for the ballot. It also makes a difference as to whether Mr. Johnson is required to file a Campaign Statement and operate a separate bank account and notify the State of that fact also. If he is not a "candidate" then those filings will not be required. However, that is completely contrary to the definition of candidate set forth on Page 6 which says a candidate includes an office holder who is the subject of a recall election. Does it mean that once the recall has qualified for the ballot he then becomes a candidate and must file a Campaign Disclosure Statement or is he a candidate immediately?

In any event, I am filing a copy of this Statement should it be determined that the filing is necessary with the Town Clerk's office in Paradise. Please do not hesitate to contact me if you need any additional information or if you are unclear as to my confusion in the filing requirements.

Thanking you in advance for your cooperation.

Very truly yours,

SCHILL & ROBERTS

Barbara L. Roberts
Attorney at Law

BLR:kls

cc: Howard Johnson
Linda Cassidy, FPFC, Technical Assistance Division



California Fair Political Practices Commission

October 2, 1989

Barbara L. Roberts
Schill & Roberts
5951-A Almond Street
Paradise, CA 95969

Re: Letter No. 89-570

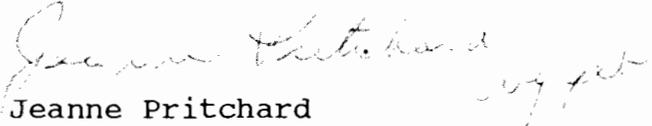
Dear Ms. Roberts:

Your letter requesting advice under the Political Reform Act was received on September 29, 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
Chief Technical Assistance
and Analysis Division

JP:plh