



California Fair Political Practices Commission

December 26, 1989

Nancy Burnett
Citizens to Save Cupertino Recreation
729 Stendhal Lane
Cupertino, CA 95014

Re: Your Request for Advice
Our File No. A-89-653

Dear Ms. Burnett:

You have requested advice concerning the campaign provisions of the Political Reform Act.^{1/}

QUESTION

Has Citizens to Save Cupertino Recreation qualified as a "committee" under the Act?

FACTS

The Citizens To Save Cupertino Recreation ("Citizens") is an organization formed primarily for purposes other than making campaign contributions or independent expenditures. Citizens has not received funds "earmarked" for the purpose of making contributions. Citizens has made contributions totaling less than \$1,000 to candidates in the 1989 calendar year.

CONCLUSION

According to the facts presented in your letter of November 11, 1989, Citizens has not qualified as a committee under the Act. However, please carefully review the following analysis to determine if future activities by Citizens would qualify it as a recipient committee.

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.

ANALYSIS

Section 82015 defines "contribution." Regulation 18215 further clarifies the definition:

(c) "Contribution" includes any monetary or non-monetary payment for which full and adequate consideration is not made to the donor that is received by any person or organization other than a candidate, controlled committee, official committee of a political party, or organization formed or existing primarily for political purposes if the payment is "earmarked" for the making of contributions or expenditures. A payment is "earmarked" when, at the time of making the payment, the donor knows or has reason to know that the payment or funds with which the payment will be commingled will be used to make contributions...

(Emphasis added.)

Section 82031 defines "independent expenditure" as:

...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 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.

An organization qualifies as a "committee" as defined in Section 82013 if it makes or receives contributions or makes independent expenditures:

"Committee" means any person or combination of persons who directly or indirectly does any of the following:

- (a) Receives contributions totaling \$1,000 or more in a calendar year;
- (b) Makes independent expenditures totaling \$1,000 or more in a calendar year;
- (c) Makes contributions of \$10,000 or more in a calendar year to or at the behest of candidates or committees.

In addition, the definition of committee is further clarified for organizations which receive funds for purposes other than making contributions or independent expenditures. Such an organization meets the definition of a "recipient committee" if the organization meets either of the following criteria:

1. The organization receives \$1,000 in a calendar year which is "earmarked" for making contributions or independent expenditures; or

2. The organization makes contributions or independent expenditures of \$1,000 or more in a calendar year and the organization's donors or members know or have reason to know that some or all of their payments will be used to make contributions or independent expenditures. The donors or members will have "reason to know" if the organization has established a history of making such expenditures, i.e., it has during a previous calendar year made contributions or independent expenditures.

According to the facts presented in your letter of November 11, 1989, the activities of Citizens have not resulted in it qualifying as a committee under the Act. However, because Citizens has established a history of using members' funds for the purpose of making contributions, its members now have "reason to know" that some or all of their payments may be used to make contributions or independent expenditures. If in a future calendar year Citizens makes contributions or independent expenditures of \$1,000 or more in a calendar year, Citizens will qualify as a recipient committee. Please note a Statement of Organization, Form 410, must be filed with the Secretary of State within 10 days of qualifying as a recipient committee. (Section 84101.)

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: Lynda Cassady
Political Reform Consultant



CITIZENS TO SAVE CUPERTINO RECREATION

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 F P P O

Executive Committee Officers:

Chuck Jacobson, Chairman
 Darwin Throne, Acting Co-Chairman
 Nancy Burnett, Secretary

November 11, 1989

Linda Cassidy
 California Fair Political Practices Commission
 428 J Street, Ste. 800
 P. O. Box 807
 Sacramento, California 95804-0807

Dear Ms. Cassidy:

Thank you for all your help. We conversed via telephone, on October 27, October 30, and November 3, 1989, regarding our group's immunity from "committee" status and regarding suggestions about handling non-monetary "in-kind" political contributions. From you I have received copies of the 1989 Information Manual, the March 1989 Interim Information Manual on Proposition 68 and Proposition 73, and Organizations which receive funds for purposes Other than making contributions to or expenditures on behalf of California State and Local Candidates, Ballot Measures or Committees, 7/88 revision. As a result of all this, I certainly know a lot more about how our group should act, politically. We want to be sure we do things legally to protect ourselves and the others whom we support.

Please tell me if I am correct in the following assumptions which keep our group from having campaign-disclosure requirements. (As I understand it, we are immune because we are not a "committee," in the legal sense. Those would include "recipient committee", "political committee", "independent expenditure committee" and "broad-based political committee", among others.)

1. We do not exist primarily to support candidates, ballot measures, nor other committees.
2. We have supported fewer than five candidates during the current fiscal year (July 1 through June 30, 1989) and the two preceding fiscal years.
3. We received less than \$1,000 "earmarked" for support of candidates. (Actually, we received no money for this purpose!)
4. Our contribution had a value of less than \$1,000.

Your response to this letter will help us in our future behavior. Thank you, once again, for your assistance.

Sincerely yours,

Nancy Burnett

Nancy Burnett, Secretary
 (408) 253-6953

729 Stendhal Lane
 Cupertino, CA 95014
 408/996-9989





California Fair Political Practices Commission

November 17, 1989

Nancy Burnett
Secretary, Citizens to Save
Cupertino Recreation
729 Standhal Lane
Cupertino, CA 95014

Re: Letter No. 89-653

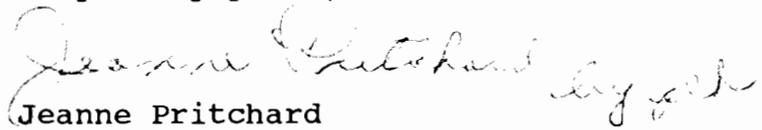
Dear Ms. Burnett:

Your letter requesting advice under the Political Reform Act was received on November 15, 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