



California Fair Political Practices Commission

December 26, 1989

Victor J. Westman
County Counsel
Contra Costa County
County Administration Building
P.O. Box 69
Martinez, CA 94553-0006

Re: Your Request for Informal Assistance
Our File No. I-89-675

Dear Mr. Westman:

You have requested advice on behalf of the Contra Costa County Board of Supervisors concerning their responsibilities under the Political Reform Act (the "Act").^{1/} Most of your questions involve the propriety of using public funds to prepare, qualify and support ballot measures. This question involves matters outside of the jurisdiction of the Commission and consequently, we can only provide the following informal guidelines with respect to the supervisors' duties under the Act.^{2/} (Section 83111.)

DISCUSSION

Although the appropriate use of public funds with respect to the preparation, qualification and support of ballot measures is not a subject covered by the Act,^{3/} where contributions or

^{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).)

^{3/} Please note, however, that the Act contains a provision that limits the use of public funds for the purpose of electing a candidate to office. Section 85300 of the Act, as added by Proposition 73, provides that no public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.

independent expenditures are in fact made from public funds, the Act requires disclosure of the payments by the recipient or the local government agency. Regulation 18420 (copy enclosed) provides:

(a) Any candidate or committee that receives contributions from a state or local government agency shall report receipt of those contributions.

* * *

(d) If a state or local government agency makes expenditures or contributions ... the state or local government agency shall file campaign statements required by Chapter 4 of the Political Reform Act if the agency qualifies as a committee under Government Code Section 82013.

Consequently, contributions made by a local government agency to a candidate or committee must be disclosed as contributions on the campaign disclosure statements of the recipient.^{4/} Further, if the contributions or independent expenditures made by the local government agency meet the thresholds of Section 82013, the agency will be a committee under the Act. As a committee, the local government agency will incur independent reporting obligations and will be required to comply with all the filing requirements applicable to committees.

With respect to the supervisors' responsibilities regarding the hypotheticals you posed, we cannot provide specific answers without knowing the facts surrounding each payment. However, we enclose some materials for your future reference.

1. A Guide to The Political Reform Act of 1974: California's Conflict of Interest Law for Public Officials.
2. The Political Reform Act.
3. Information Manual on Campaign Disclosure Provisions of the Political Reform Act.

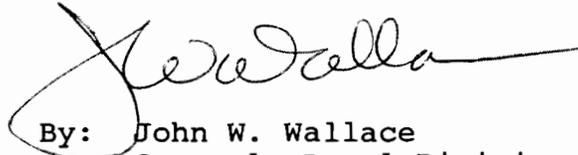
^{4/} The comment to Regulation 18420 provides: "Nothing in this regulation should be read as condoning or authorizing campaign-related activities by a state or local government agency. Under many circumstances, such activities may be illegal. See Penal Code Section 424; Stanson v. Mott, 17 Cal. 3d 206 (1976); People v. Sperl, 54 Cal. App. 3d 640 (1976); and People v. Battin, 77 Cal. App. 3d 635 (1978)."

4. Regulation 18215 and Regulation 18225.
5. Terry Advice Letter, No. A-84-155.

If any further questions regarding this matter or specific questions concerning the disclosure of contributions or expenditures by Contra Costa County, 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:plh

Enclosures

VICTOR J. WESTMAN
COUNTY COUNSEL

SILVANO B. MARCHESI
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CONTRA COSTA COUNTY

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November 21, 1989

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento CA 95814

Re: Opinion Requests, Public Funding of Referendum Petition
Signature Gathering

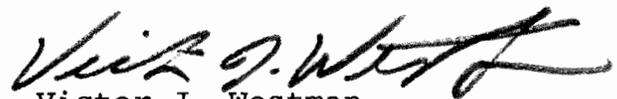
Dear Commission:

The Contra Costa County Board of Supervisors has asked that your opinion or views be obtained concerning the questions set forth on the attached copy of the Board's 11-14-89 order. In particular the County is concerned whether the expenditure of local public funds to collect signatures for a local referendum may violate any of the statutes or regulations administered by you.

Related to this subject, we enclose a copy of our recent letter to the Office of Attorney General for your information.

If you have any questions concerning this opinion request and its attachments, please feel free to contact the undersigned for further information and clarification.

Very truly yours,



Victor J. Westman
County Counsel

vjw:df

cc: All Board Members
Phil Batchelor, County Administrator
Sara Hoffman, Community Development Department
District Attorney

VICTOR J. WESTMAN
COUNTY COUNSEL

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DIANA J. SILVER

November 21, 1989

Office of the Attorney General
1515 K Street, Suite 511
Sacramento CA 95814

Re: Opinion Request, Public Funding of Political Activity

Dear Attorney General:

Request is hereby made for a formal opinion from the Attorney General's office on the hereinafter stated questions concerning the above-subject. In part, this office is requesting your legal opinion because of the interest of the Contra Costa County Board of Supervisors in this subject (see attached 11-14-89 Board order). Each question and this office's comments thereon are as follows:

1. Can public (city, county, etc.) funds be used to prepare ballot language for a referendum or an initiative? If so, what restrictions, if any, apply to the use of such public funds?

Comment. Attached is a copy of this office's 11-13-89 opinion memorandum in which we conclude that public funds may be used to develop and draft a state initiative. It could appear they could similarly be used to draft a referendum petition.

2. Can public (city, county, etc) funds be used to gather signatures for a referendum or an initiative? Is there a distinction in the law between such use of public funds for a referendum versus an initiative?

Comment. As indicated in this office's attached 7-22-80 opinion (see page 6), it is our view that public money cannot be spent to secure signatures for state initiatives or referendums (and by implication for similar local measures). Also attached are opinion letters from the law firms of Morrison & Foerster (Los Angeles) and McDonough, Holland & Allen (Sacramento) concluding that public funds cannot be spent to obtain signatures for state or local initiative or referendum efforts.

In part, this question has been occasioned by the recent expenditure of its funds by the City of Pittsburg to obtain signatures on a referendum petition to challenge Contra Costa County's adoption of general plan amendments concerning potential landfill sites (see attached 11-10-89 Contra Costa County Times

**COUNTY COUNSEL'S OFFICE
CONTRA COSTA COUNTY
MARTINEZ, CALIFORNIA**

Date: November 21, 1989

To: Gary T. Yancey, District Attorney

From: Victor J. Westman, County Counsel *VJW.*

Re: Use of Public Funds for Qualifying Referenda and Initiatives
for the Ballot

Attached is a copy of a 11-14-89 order adopted by the Contra Costa County Board of Supervisors concerning the above subject. Would you please review the questions contained in the Board Order and respond (as appropriate) to them.

In particular, the Board is concerned whether the use of public funds to fund the collection of signatures to qualify a local referendum may violate any of the statutes or regulations enforced by your office.

Attached for your information is a copy of a letter which this office has sent to the California Attorney General's Office concerning this subject.

VJW:df

cc: All Supervisors

Phil Batchelor, County Administrator

Sara Hoffman, Community Development Department

Fair Political Practices Commission

1.3
TO: BOARD OF SUPERVISORS

FROM: Sunne Wright McPeak

DATE: Introduced November 14, 1989

SUBJECT: Legal Opinion on Use of Public Funds for Qualifying
Referenda and Initiatives for the Ballot



SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATION:

Request County Administrator to seek legal opinions from County Counsel, District Attorney, Attorney General, and Fair Political Practices Commission regarding the appropriate use of public funds for qualifying referenda and initiatives for the ballot. In addition to a general briefing on this subject, the following questions should be answered:

1. Can public funds be used to prepare ballot language for a referendum or an initiative? If so, what restrictions, if any, apply to the use of public funds?
2. Can public funds be used to gather signatures for a referendum or an initiative? Is there a distinction in law between the use of public funds for a referendum versus an initiative?
3. Can public funds be used to promote a referendum or an initiative that has qualified for ballot? Can a public agency or official use public funds to provide educational information to the public about a ballot measure? If so, how is a distinction made between "educational materials" and "campaign literature"?
4. Is there a difference in the legality of expending public funds between a public agency using public funds to qualify (gather signatures) a referendum on a general plan amendment regarding landfills and a public agency using public funds to qualify (gather signatures) an initiative regarding an alcohol tax

50,000 petitions filed against dump plans

By Michael Hytha

CC-Times 11-10-89

MARTINEZ — Opponents of two proposed garbage landfills near Pittsburg dumped nine boxes of petitions on Contra Costa County Thursday.

If about half of the nearly 50,000 signatures are valid, the county Board of Supervisors will be forced to either reverse its decision allowing general plan amendments for the proposed Keller Canyon and Kirker Pass landfills, or to put the issue on the ballot next year.

The petitions were delivered by Pittsburg Mayor Nancy Parent and leaders of Citizens United, a group of about 300 Pittsburg residents. Opponents say the proposed landfills will increase pollution and traffic, blight their scenic views and lower their property values.

"To drop a dump into an existing neighborhood is ludicrous," said Jeff McNeal, who lives about 300 feet from the boundary of the Keller Canyon site off Bailey Road. "By locating a dump that close to our homes, they're basically condemning our property."

Supervisor Nancy Fahden of Martinez is the board's staunchest advocate for Keller Canyon, proposed by Brown & Ferris Industries. She said the canyon remains the best of the five sites approved by the board in October.

Fahden said the board cannot rescind the general plan amendments without

jeopardizing pending agreements to take Contra Costa's waste to Alameda and Solano counties once the three existing Contra Costa dumps fill up. Those agreements are needed to bridge the gap between when the old dumps close and one or more new dumps open.

Kimball Petition Management of Los Angeles collected all but a few hundred of the 49,600 petition signatures. The city paid the firm \$85,000, which includes the \$1 per signature paid to petition circulators.

For the measure to appear on the ballot, 25,231 of the signatures must be verified by the county elections office.

Less than a fourth of the signatures came from Pittsburg. The rest are from residents as far away as Richmond and San Ramon, which indicates countywide opposition to the dumps, Mayor Parent said.

She justified using public funds to petition for the ballot measure. A city must take political action if the welfare of its citizens is in danger, she said. The city has spent \$350,000 so far fighting unwanted landfills, according to Parent.

A similar petition drive by Antioch residents yielded 40,000 signatures in opposition to the proposed Garaventa dump site south of Antioch. Those petitions were delivered to the clerk of the Board of Supervisors Tuesday and are now being counted.



PITTSBURG MAYOR Nancy Parent and J. United deliver petitions opposing dump s

McDONOUGH, HOLLAND & ALLEN

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December 16, 1988

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MARTIN McDONOUGH
1915 - 1987

VIA HAND DELIVERY

Larry Naake, Executive Director
County Supervisors Association of California
1100 K Street, Suite 101
Sacramento, California 95814

Re: CSAC and County Support of Proposed Initiative

Dear Larry:

You have asked us for an opinion regarding the extent to which the County Supervisors Association of California and its member counties can participate in efforts to draft and secure passage of an initiative measure addressing funding of state-mandated local costs and providing for a 1/2¢ transfer of sales tax revenues from the State to counties.

The activities contemplated are summarized in the December 6, 1988 memorandum from Don Perata, the chair of the CSAC Steering Committee on the proposed initiative, to the CSAC Executive Committee, a copy of which is attached.

Mr. Perata's memo segregates the various tasks into three phases. The first phase will include "a statewide poll to test public support for key issues", drafting the initiative, and an assessment of the "likely statewide coalition support" for the measure.

The second phase will be limited to gathering signatures to qualify the measure for the ballot.

The third phase includes the election campaign to secure passage of the initiative.

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Larry Naake, Executive Director
County Supervisors Association of California
Re: CSAC and County Support of Proposed Initiative
December 16, 1988

Page 3

have purported to contain only relevant factual information, and which have refrained from exhorting voters to "Vote Yes," have nevertheless been found to constitute improper campaign literature. [Citations omitted.] In such cases, the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case. (17 Cal.3d at 221-222.)

The most recent California decision on this subject is League of Women Voters v. Countywide Criminal Justice Coordination Committee (1988) 203 Cal.App.3d 529, review den. In this case, the court of appeal reviewed activities of certain Los Angeles County employees that were quite similar to the activities proposed here.

In League of Women Voters, the County's Countywide Criminal Justice Coordination Committee decided to seek certain amendments to the State constitution through the initiative process. Members of the committee and other employees held meetings over a five month period to develop ideas for an initiative and draft it. Thereafter, they drafted a proposed initiative, circulated it within the County for comment, revised it, and performed certain research and investigation - including computerized statistical sampling on a County-owned computer system.

The committee considered direct mail solicitation of financial support for the measure, discussed at least two methods of gathering the requisite signatures to qualify it for the ballot, reviewed a proposal from a campaign consultant and identified two proponents who were willing to carry the measure to election. All of these activities were performed by county employees, on the job, at county expense.

After identifying the proponents, the committee turned the rest of the work over to them.

The court held that "development and drafting of a proposed initiative was not akin to partisan campaign activity, but was more closely akin to the proper exercise

Larry Naake, Executive Director
County Supervisors Association of California
Re: CSAC and County Support of Proposed Initiative
December 16, 1988

Page 5

It can be argued that the "persuasion" implicit in qualifying an initiative is not directed at "voters" because the initiative is not yet on the ballot. Perhaps government ought to be treated as just another player and be allowed the opportunity to pay to have its issues brought before the electorate.

However, we believe the contrary conclusion is more consistent with the existing authorities. The process of qualifying an initiative for the ballot through signature gathering is essentially an effort in advocacy. The people who circulate petitions are not hired to disseminate objective information that presents both sides of the issue. They are hired to promote a single point of view.

The rationale underlying the Supreme Court's neutrality rule as expressed in Mines v. Del Valle and Stanson v. Mott applies with equal force here. Many members of the public have ideas they would like to see on the ballot. Public funds ought not be spent to qualify only the ones favored by government.

Consequently, we do not believe public funds can be spent for the Phase II activities. In an opinion dated September 18, 1980, to Senator John T. Knox, the Legislative Counsel reached the same conclusion.

Existing case law is clear that public funds cannot be spent on campaign activities. A campaign is a partisan contest that tries to convince voters to vote a certain way. Public funds have no role in such an activity. As stated by the Supreme Court in Mines v. Del Valle (1927) 201 Cal. 273, 287:

"It must be conceded that the electors . . . opposing said bond issue had an equal right to and interest in the funds in said power fund as those who favored said bonds. To use said public funds to advocate the adoption of a proposition which was opposed by a large number of said electors would be manifestly unfair and unjust to the rights of said last named electors in the action of the Board of Public Service Commissioners and in so doing cannot be sustained unless the power to do so is given to said board in clear and un mistakeable language."

COUNTY COUNSEL'S OFFICE
CONTRA COSTA COUNTY
MARTINEZ, CALIFORNIA

Date: July 22, 1980

CONFIDENTIAL

To: Sunne McPeak, Chair
County Water Committee

From: John B. Clausen, County Counsel

Re: Expenditure of public funds (County or Agency) to change
state legislation (SB-200) by initiative or referendum

Summary: It is unlawful to use county or agency funds to promote a referendum petition or election on a state statute.

Question: You asked whether public funds (County or C.C.C. Water Agency) may be expended to acquire the necessary signatures for a statewide initiative or referendum measure or to promote the passage of such a measure once it has qualified.

Discussion:

Article IV §1 of the California Constitution provides that: "The legislative power of this state is vested in the California Legislature which consists of the Senate and the Assembly, but the people reserve to themselves the powers of initiative and referendum." Please note that these powers are reserved to the people not to the local governmental agencies serving the people. California Constitution Article II §1 provides that "... all political power is inherent in the people, government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require it." Section 8 (a) provides that the initiative is the power of the electors to propose statutes and amendments to the Constitution and adopt or reject them. Section 9 of the same article provides in part (a) the referendum is the power of the electors to approve or reject statutes or parts of statutes except emergency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the state. Other subsections of these two sections quoted above provide certain procedural matters that are not pertinent to our discussion.

Although the Constitution and statutes provide referendum on local (county) measures (Election Code §3750), that is not helpful in our analysis of our authority as to statewide initiative or referendum matters.

The authority for a county to support or oppose state and federal legislation is authorized and limited by the provisions of Government Code §50023.

On September 8, 1976, we sent a memo to all county officers, department heads, agencies, and special districts, warning of the restrictions on expending public funds for political activities. A copy of that memorandum is attached (Opn. #76-106).

The general legal principles applicable to election campaigns in light of the relatively recent People v. Sperl (1976) 54 C.A.3d 640, 126 C.R. 907, rehrg.den., hrg.den., and California Supreme Court case of Stanson v. Mott (1976) 17 Cal.3d 206, 130 C.R. 697, 551 P.2d 1, are set forth in that memo.

The case of Stanson v. Mott, supra, reaffirmed the general rule that the use of public funds to influence voters in a pending election is prohibited. Specifically, the Court dealt with the propriety of the expenditure of department funds by the State Department of Parks and Recreation to promote the passage of a park bond issue. The California Supreme Court stated:

"... . A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions... ." Stanson v. Mott (1976) 17 Cal.3d 206, at p. 217.

The very recent case of Miller v. Miller (1978) 87 Cal.App.3d 762, 151 C.R. 197, rehrg.den., hrg.den., extends the rationale of Stanson v. Mott to expenditures of public funds for the purpose of influencing members of the public to lobby their Legislature in support of the public agency's point of view. The Court held that while the public agency might be expressly authorized to expend its public funds for the purpose of directly presenting the agency's views to the Legislature (Government Code §§50023 and 53060.5, supra), the agency could not expend its funds for the purpose of "legislative lobbying" indirectly by urging the voters to contact members of the Legislature to present the public agency's point of view. The Court held that the real issue in determining whether a public agency is engaged in authorized "legislative lobbying" or unauthorized "election campaigning" is not the objective of the promotional activity but the audience to which it is directed.

In Miller v. Miller, supra, a commission of the State of California, the California Commission on the Status of Women, was openly and actively involved in the promotion nationally of ratification of the Equal Rights Amendment to the United States Constitution and in opposition to the rescision of the amendment in those states which had previously ratified it. While the Commission received a grant from the Rockefeller Foundation, the Commission was also publicly funded. The Commission printed a newsletter urging the public to attend a rally at the State Capitol Building and to visit legislators to ask for legislation and to oppose rescision of ratification of the Equal Rights Amendment. The

Thus, it did not matter to the California Supreme Court that the cost of printing the promotional campaign literature was borne by private individuals. So long as the dissemination of such literature is done at public expense, such dissemination is forbidden.

In Stern v. Kramarsky (1975) 84 Misc.2d 447, 375 N.Y.S.2d 235, cited by the Court in both Stanson v. Mott, supra, and Miller v. Miller, supra, taxpayers sought and obtained a preliminary injunction against the Commissioner and the Division of Human Rights of the State of New York to enjoin their activities in promoting the ratification by the State of New York of the Equal Rights Amendment. Part of the alleged misconduct involved the dissemination of flyers and pamphlets prepared by private groups (i.e., League of Women Voters) supporting the Equal Rights Amendment. At page 237 the Supreme Court of New York County stated as follows:

"... . It should be noted that by lending their support to the campaign underway for the passage of the Equal Rights Amendment, defendants not only provide certain promotional and advertising assistance, but they endow that campaign with all of the prestige and influence naturally arising from any endorsement of a governmental authority."

Again, the following language from Stern v. Kramarsky was quoted by the California Court of Appeal in Miller v. Miller, 87 Cal.App.3d 762 at page 769:

"The spectacle of state agencies campaigning for or against propositions or proposed constitutional amendments to be voted on by the public, albeit perhaps well-motivated, can only demean the democratic process. As a State Agency supported by public funds they cannot advocate their favored position on any issue or for any candidates, as such. So long as they are an arm of the state government they must maintain a position of neutrality and impartiality."

"It would be establishing a dangerous and untenable precedent to permit the government or any agency thereof, to use public funds to disseminate propaganda in favor of or against any issue or candidate. This may be done by totalitarian, dictatorial or autocratic governments but cannot be tolerated, directly or indirectly, in these democratic United States of America. This is true even if the position advocated is believed to be in the best interests of our country."

**COUNTY COUNSEL'S OFFICE
CONTRA COSTA COUNTY
MARTINEZ, CALIFORNIA**

Date: November 13, 1989 .
To: Board of Supervisors
From: Victor J. Westman, County Counsel
By: Mary Ann McNett, Deputy County Counsel
Re: Use of Public Resources to Support or Oppose
Local Ballot Measures

Mary Ann McNett

County Counsel has been asked to advise as to the extent to which a public agency (e.g., cities and counties) can expend public funds to support or oppose local ballot measures (e.g., referenda).

SUMMARY: Public agencies may not lawfully use public resources to support or oppose political campaigns concerning local ballot measures. Public officials are subject to civil and criminal penalties for unlawful use of public funds. During the course of a regular meeting, a public body may endorse a local ballot measure.

DISCUSSION: As a general rule, absent specific statutory authorization, expenditure of public funds to promote a partisan position in an election campaign, including a campaign for a local ballot measure, is unlawful. Courts have repeatedly disapproved the use of public funds in support of political campaigns on the grounds that such expenditures are unauthorized by law and have expressed serious reservations as to the constitutionality of such expenditures in any event. (See, e.g., Stanson v. Mott (1976) 17 Cal.3d 206; Mines v. Del Valle (1927) 201 Cal. 273; Miller v. Miller (1978) 87 Cal.App.3d 762. County Counsel Opinions 89-109; 88-98; 84-103; 80-98.) The prohibition extends to the use of public funds for the purpose of influencing members of the public to lobby their legislators in support of a public agency's position on a given ballot measure. (See Miller v. Miller, *supra*, 87 Cal.App.3d at 768-769.) As the State Supreme Court stated in the seminal case, Stanson v. Mott:

"A fundamental precept of this nation's democratic electoral process is that the government may not "take sides" in election contests or bestow an unfair advantage on one of several competing factions." (Stanson v. Mott (1976) 17 Cal.3d 206, 217.)

Public officials lack statutory authority to expend public funds on political campaigns. (People v. Battin (1978) 77 Cal.App.3d 635, 654; County Counsel Opinion 84-103.) Under the general rule expressed above, such expenditures are unlawful. (We note that unlike city and county officials governing boards of school districts have statutory authority to urge the passage or defeat of school measures; e.g., issuance of bonds for the school district, Ed. Code, § 35174.)

Under certain circumstances, the use of public resources to form a policy proposal that may result in a local ballot measure is permissible. A recent case, League of Women Voters v. Countywide Crim. Justice Coordination Committee (1988) 203 Cal.App.3d 529, held that a duly authorized and appointed county committee's expenditure of public funds to develop and draft a state initiative and identify and approach a sponsor for that measure was not unlawful. The court ruled that the development and drafting of a proposed initiative was not akin to partisan campaign activity, but was more closely akin to the proper exercise of legislative authority. Moreover, the power to draft a proposed initiative includes the power to seek a proponent. Securing a proponent does not entail public advocacy directed at the electorate. (League of Women Voters, supra 203 Cal.App.3d at 550, 554.)

Sometimes a public agency can spend public funds to provide neutral, relevant information about a local ballot measure. (Stanson v. Mott, supra, 17 Cal.3d at 221 N. 6; see also League of Women Voters, supra 203 Cal.App.3d at 559, 560.) We caution that the line between unauthorized campaign expenditures and authorized information activities often will be unclear. (Stanson v. Mott, supra, 17 Cal.3d at 221-222; County Counsel Opinion 88-98.)

Public officials may be subject to criminal and civil penalties for the unlawful expenditure of public funds. At the very least, the officials authorizing the expenditure may be personally liable for the amounts unlawfully expended if in doing so they do not exercise due care (Stanson v. Mott, supra, 17 Cal.3d at 226-227) and the Grand Jury may order suit to collect. In addition, courts have upheld felony convictions for public officials' misappropriation and unauthorized expenditure of public funds. (See People v. Battin (1978) 77 Cal.App.3d 635; People v. Sperl (1976) 54 Cal.App.3d 640.; Gov. Code, §§ 26525, 24054, 25062; Pen. Code, §§ 424, 932; Code Civ. Proc., § 526(a); County Counsel Opinion 80-98.)

During a regularly scheduled meeting, a public body may vote to endorse a local ballot measure. Such an endorsement is not an effort to persuade the electorate and does not entail an improper expenditure of public funds. (League of Women Voters, supra, 203

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REC'D
JUN 23 1989

June 22, 1989

(213) 621-9423

Mr. John A. De Luca
President
Wine Institute
165 Post Street
San Francisco, CA 94108

Re: Use of County Resources to Support the
Qualification of a Ballot Initiative

Dear John:

Having learned that various county supervisors, officers, employees, and organizations funded by counties have embarked upon a concerted campaign to promote the qualification of a proposed ballot initiative that would have a significant adverse affect on the California wine industry, you have asked whether these actions violate any applicable laws. I am writing in response to your inquiry.

Reportedly, county supervisors throughout the State are permitting the use of county funds and resources to underwrite, assist, and promote the qualification and passage of a proposed ballot initiative that would enact certain new taxes on wine, beer, and distilled spirits products. The county supervisors' actions have been undertaken in a series of non-public meetings held under the auspices of the publicly-funded County Supervisors Association of California (C.S.A.C.) and, more recently, through non-public communications among county officials. Moreover, it appears that county officials and employees whose operations might reap some of the revenues generated by the tax proposal are also actively supporting the measure, apparently using county time and resources to do so.

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Mr. John A. De Luca
President
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November 1990 statewide ballot. Further, request each county to designate a signature collection coordinator no later than June 16, and to inform CSAC of the selections as soon as possible.

....

9. Inform Assemblymember Connelly of the counties' intent to provide 250,000 signatures and \$500,000 from county based constituencies in support of the proposed Alcohol Tax and Health Protection Act of 1990, conditioned, however, upon the counties' approval of the final text of the initiative submitted to the State Attorney General and Secretary of State for placement on the November 1990 statewide ballot."

On May 22, 1989, a County Supervisors Association of California meeting notice was sent to all members of the C.S.A.C. board, and to all county supervisors and administrative officers, calling for a non-public directors and general membership meeting to discuss a specific initiative proposal. According to that meeting notice, a C.S.A.C. committee recommendation was to:

"commit us to full involvement in an alcohol tax initiative and commit us to raise substantial signatures for the initiative campaign" (emphasis added).

More recently, a June 14, 1989 letter from Alameda County Supervisor Donald Perata invited California county supervisors and administrative officers to participate in a separate coalition. That letter stated that

"[i]t remains for individual supervisors and counties to decide if they are interested in 'buying into' the initiative coalition. This will require a commitment to raise campaign funds to secure signatures on a pro-rata basis. Enough counties are interested, and confident we can make the initiative successful...Our expressed determination to bring our share of resources to the campaign will ensure a heavy revenue position for county services." (emphasis added).

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President
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In a similar vein, the Court of Appeal in Miller v. Miller, 87 Cal.App. 3d 762, 769, 151 Cal. Rptr 197 (1978) stated that:

"[t]he spectacle of state agencies campaigning for or against propositions or proposed constitutional amendments to be voted on by the public, albeit perhaps well motivated, can only demean the democratic process...It would be establishing a dangerous and untenable precedent to permit the government or an agency thereof, to use public funds to disseminate propaganda in favor of or against any issue or candidate. This may be done by totalitarian, dictatorial or autocratic governments, but cannot be tolerated, directly or indirectly, in these democratic United States of America."

The cases and commentators from California and throughout the nation are in accord. See e.g. Mines v. Del Valle, 201 Cal. 273 (1927) (public funds improperly expended to influence voter approval of a bond issue, since voters and taxpayers opposing the proposal had rights to the expenditure of public funds equal to those voters who supported it); Miller v. Miller 87 Cal.App. 3d 762, 151 Cal.Rptr. 197 (1978) (In the absence of clear and explicit legislative authorization, efforts by the California Commission on the Status of Women to promote ratification of the proposed Equal Rights Amendment constituted an illegal expenditure of public funds to promote a partisan position in an election campaign). Accord Palm Beach County v Hudspeth, 540 So. 2d 147 (Fla. App., 1989) ("The appropriate function of government in connection with an issue placed before the electorate is to enlighten, NOT to proselytize."); Citizens to Protect Public Funds v. Board of Education, 13 N.J. 172, 98 A. 2d 673 (N.J. 1953) ("public funds ... belong equally to the proponents and opponents of the proposition...the use of the funds to finance...arguments to persuade the voters...gives ...just cause for complaint."). See also Note, "The Use of Public Funds for Legislative Lobbying and Electoral Campaigning" 37 Vanderbilt Law Review 433 (1984) ("...virtually every case addressing the issue of electoral campaigning by governmental entities has found such campaigning improper).

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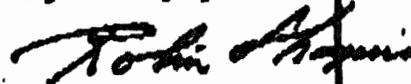
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President
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As Justice Tobriner concluded in Stanson v. Mott, supra, the issue is not whether the government's intervention and support on behalf of a given proposed initiative is well-intentioned. As the cases demonstrate, one can support the E.R.A., yet oppose the use of public funds to promote its passage. See Miller v. Miller, supra. Similarly, one can support the notion of bond issues to fund parks, yet oppose the use of public funds to promote such a bond issue's passage. See Stanson v. Mott, supra.

Simply stated, "use of public funds to finance an election campaign in favor of [a given] issue may, at first blush, seem like a quite innocuous, and perhaps even salutary, practice. But ... 'unconstitutional practices often get their first footing' in their 'mildest and least repulsive form.' ... In our polity, the constitutional commitment to 'free elections' guarantees an electoral process free of partisan intervention by the current holders of governmental authority or the current trustees of the public treasury." 17 Cal. 3d. at 227.

C.B.A.C., its members, various supervisors, counties, and county employees have embarked upon a coordinated campaign to bring their substantial governmental resources to bear in an effort to support a proposed ballot initiative. Since their actions are admittedly directed towards promoting qualification and passage of an initiative (and not the mere formulation of a proposal that others would sponsor and promote), we would conclude that their efforts violate State law barring the use of public funds and resources in support of ballot initiatives.

Very truly yours,



Robin M. Shapiro

RMS/pke



California Fair Political Practices Commission

November 30, 1989

Victor J. Westman
County Counsel
County of Contra Costa
P.O. Box 69
Martinez, CA 94553-0006

Re: Letter No. 89-675

Dear Mr. Westman:

Your letter requesting advice under the Political Reform Act was received on November 27, 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