BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	)	
	)	
Opinion Requested by:	)	No. 89-001
Ross Johnson, Assembly	)	July 12, 1989
Member	)	
	)	

BY THE COMMISSION: We have been asked the following question by Ross Johnson, Minority Leader of the California Assembly. The opinion request is on behalf of Assembly Member Curt Pringle.

QUESTION

Are funds raised by Assembly Member Curt Pringle to defend a lawsuit challenging his election considered contributions, and thus subject to the contribution limits of Proposition 73?

CONCLUSION

Funds raised by Assembly Member Pringle to defend a lawsuit challenging his election are contributions, and thus are subject to the contribution limits of Proposition 73.

FACTS

Assembly Member Pringle was elected to the Assembly in the November 1988 general election. Some voters in Mr. Pringle's district are challenging the outcome of the election in federal court. The plaintiffs allege that unlawful conduct occurred at the polls.

Assembly Member Pringle is a named defendant in this action. Mr. Pringle will incur considerable legal expenses in defending the action. He is unable to personally afford these expenses. Consequently, he is contemplating establishing a fund for the purpose of financing his legal defense.

ANALYSIS

The Political Reform Act (the "Act"),[1/] as amended by Proposition 73, imposes limits on the amount of contributions which a candidate may accept from a particular source in a single fiscal year. (Sections 85301, 85303 and 85305.) The question before us is whether funds received by Assembly Member Pringle to defend a lawsuit challenging his election constitute "contributions" within the meaning of those provisions.

While it did include definitions of several terms, Proposition 73 did not include a definition of the term "contribution." Thus, we look for guidance to the definition of "contribution" as contained in the Act prior to the passage of Proposition 73. Section 82015 provides that a contribution includes a payment[2/] for which full and adequate consideration is not received, unless it is clear from the surrounding circumstances that the payment is not made for political purposes. Commission regulations further define a contribution as a payment received by or made at the behest of:

> A candidate, unless it is clear from surrounding circumstances that the payment was received or made at his behest for personal purposes unrelated to his candidacy or status as an officeholder....
>
> (Regulation 18215(b)(1).)

The Commission's opinion in In re Buchanan (1979) 5 FPPC Ops. 14, provides guidance on whether funds received for litigation constitute contributions under these provisions. Mr. Buchanan was the attorney for Roger Glidden, a candidate for supervisor in Inyo County. Mr. Glidden had received enough votes in the June 1978 primary to qualify along with two other candidates to be on the general election ballot. One of Mr. Glidden's opponents brought a lawsuit seeking to remove Mr. Glidden from the general election ballot on the ground that Mr. Glidden had not, in fact, received sufficient votes to qualify for that ballot. Mr. Glidden paid the cost of the litigation from his own funds and his attorney asked whether these funds were required

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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/ "Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.)

to be reported as contributions on Mr. Glidden's campaign statements.

The Commission held based upon the above mentioned provisions that the funds were contributions and were thus reportable on the candidate's campaign statements. The Commission stated:

> Although payments for the costs of litigation are not generally thought of as having any connection with political campaigns, in the circumstances presented here and in similar circumstances, the litigation costs are just as key to the success of the campaign as traditional campaign costs such as mailings and media advertisements. When expenditures are made to support litigation aimed at gaining a place on the ballot for a candidate or measure, aimed at keeping a candidate or measure off the ballot, <u>or challenging the results of an election,</u> the expenditures are made for the purpose of influencing the outcome of the election in favor of or against a particular candidate or measure and should be reported. (Emphasis added.)

<u>In re Buchanan</u>, <u>supra</u>, at 15-16.

Thus, based on <u>Buchanan</u>, funds raised by Assembly Member Pringle to <u>defend litigation challenging the results of the election</u> would be considered "contributions." The expenditures are made for the purpose of influencing the outcome of the election in favor of or against a particular candidate.

Case law supports the <u>Buchanan</u> opinion. In <u>Thirteen Committee</u> v. <u>Weinreb</u> (1985) 168 Cal. App. 3d 528, the First District Court of Appeal, citing <u>Buchanan</u>, held that contributions received and expenditures made to pay attorney fees incurred by a candidate in a local election in prosecuting a defamation action against an opponent were reportable under the Act. In reaching its conclusion, the court rejected the argument that the statutory phrase "political purposes," was ambiguous noting that any ambiguity is cured by the Commission's regulations. (<u>Thirteen Committee</u> v. <u>Weinreb</u>, <u>supra</u>, at p. 532.) The court also rejected the argument that the term "contribution," was not intended to cover expenditures for private litigation. The court stated:

> Under the administrative guidelines adopted by the Commission, the statutory term is interpreted to mean "for the purpose of attempting to influence the action of the voters for or against the nomination or election of a candidate...." (Cal. Admin. Code tit. 2, §18225, subd. (a).) Although the

> guideline exempt payments made for personal purposes "unrelated to his candidacy" (Cal. Admin. Code, tit. 2 §18225, subd. (b)(1)), the Commission has officially interpreted the proviso to include litigation expenses of a candidate seeking to remove an opponent from the ballot as a reportable expenditure noting in part that "when expenditures are made during the course of a campaign for litigation designed to protect or vindicate the personal reputation of a candidate, those expenditures generally are made to forward the fortunes of the candidate in the election and should also be reported." (In re Request of Buchanan (1979) 5 Ops. Cal. Fair Political Practices Com. 14, 16.) Such official interpretation of governing statutes and regulations is entitled to deference by the courts.
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> (Thirteen Committee v. Weinreb, supra, at p. 532.)

Importantly, the court also held that the obligation to disclose included contributions and expenditures which occurred after the election. The court stated:

> Moreover, the lawsuit retained its political purpose even after the election insofar as the attorney fees could be properly characterized as political "expenditures."...The evidence suggests that Weinreb sought to deter the Howells from preparing future "hit pieces" and to protect her reputation against similar attacks in future political contests. Even such subordinate aims bear some reasonable relationship to her "status as an officeholder" within the requirement for reportable expenditures....Additionally, section 82007 broadly defines "candidate" as any person seeking nomination or election whether the specific elective office is known. The trial court found that Weinreb was a candidate; and the evidence established that Weinreb eventually sought another elective term as mayor. Thus, she remained a "candidate" under a duty to report her

> expenditures, including legal expenses incurred and paid in prosecuting the defamation lawsuit.
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> Thirteen Committee v. Weinreb, supra at 536.

However, Buchanan and Weinreb were decided prior to the passage of Proposition 73, when the conclusion that certain payments were contributions merely required reporting of the contributions. The question is whether, in light of Proposition 73's contribution limits, that conclusion should change.

Assemblyman Johnson suggests that application of the contribution limits to the present situation would allow a group of individuals to tie up a candidate in litigation. He suggests that this would deny a candidate the ability to raise contributions for future elections. On the other hand, the purpose of the contribution limitations, like the reporting provisions, is to prevent at least the appearance of corruption which occurs when a public official receives excessive amounts of contributions from one or more contributors. Typically, such defense funds are raised from the same persons who provide campaign contributions to the candidate. Clearly, such funds are no less corrupting simply because of their usage for litigation rather than normal campaign expenses.

Furthermore, there is nothing in Proposition 73 or in the ballot materials for Proposition 73 to indicate that consideration of what is a "contribution" was to be modified in any way by Proposition 73. On the contrary, the ballot argument in favor of Proposition 73 stated:

> Currently in California there is NO LIMIT on the amount that any one DONOR can CONTRIBUTE to a CANDIDATE for office. Contributions of $10,000, $20,000 or $30,000 are routine. $100,000 contributions are becoming commonplace. Proposition 73 will place a reasonable contribution limit on how much any one donor can give to a candidate. (Emphasis added.)
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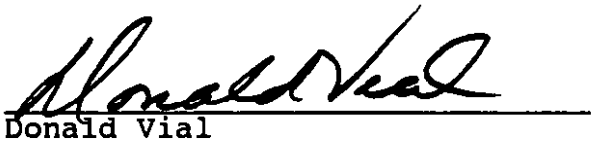
> Ballot pamphlet, June 1988 Primary Election at 34.

Prior to Proposition 73, the Commission would have considered funds raised for litigation to defend a lawsuit challenging the outcome of an election to be contributions. Absent any indication that the term "contribution" has been modified by the initiative, and given the similar purposes of the contribution reporting and limitation requirements, we believe the

funds must be considered contributions within the meaning of the contribution limits of Proposition 73.[3/] Once Assembly Member Pringle raises funds for the litigation in an amount equal to the applicable contribution limit for a fiscal year from a single source, he may not accept other contributions for his election from the same source in that same fiscal year.[4/] (Regulation 18520(c).)

Approved by the Commission on July 12, 1989.
Concurring: Commissioners Vial, Fenimore and Rattigan.
Dissenting: Chairman Larson and Commissioner Aparicio.



Donald Vial
Commissioner

3/ Assembly Member Pringle is also the subject of a recall effort. We have advised Assembly Member Pringle that funds raised to defend that effort are not subject to the contribution limitations of Proposition 73 because the recall campaign is a ballot measure. (Pringle Advice Letter, No. A-89-155; copy attached.) That advice is distinguishable from the present situation because the term "measure" specifically includes a "recall procedure whether or not it qualifies for the ballot." (Section 82043.)

4/ Assembly Member Johnson has also asked whether the plaintiffs in the lawsuit are subject to the Act's reporting and contribution limitation provisions. Since that portion of his request involves application of the Act to a third party, we are treating it as a request for informal assistance pursuant to Regulation 18329(c), and limiting our advice to a general explanation of the requirements of the Act.

If the plaintiffs in the lawsuit raise sufficient funds to qualify as a committee, their activities become subject to the Act's reporting provisions. (Section 82013 and 82015.) If that committee is controlled by a candidate, it will be subject to the contribution limitations applicable to candidate controlled committees. If the committee is not candidate controlled, it will, as with other non-candidate controlled committees, be subject to the contribution limitations only with respect to funds to be used to make contributions directly to candidates for elective office. (Section 85303(c).)