

May 6, 1977

117-323

James M. Cramer
District Attorney
County of San Bernardino
Room 200, Court House
351 North Arrowhead Avenue
San Bernardino, California 92415

Dear Mr. Cramer:

Thank you for your letter dated April 25, 1977, containing suggestions on possible regulatory and legislative actions to facilitate meaningful enforcement of the Political Reform Act.

With regard to your recommendation that accounts and records required to be kept by candidates, treasurers and elected officials be defined by regulation, on August 4, 1976, the Fair Political Practices Commission adopted a regulation, 2 Cal. Adm. Code Section 18401, clarifying Government Code Section 84100. That regulation was effective August 20, 1976. On February 1, 1977, the regulation was amended, a copy of which is enclosed. The amended regulation became effective on March 31, 1977. Subsection (a) of the regulation, the pertinent section, reads as follows:

It shall be the duty of each candidate, treasurer and elected officer to keep such detailed accounts, records, bills and receipts as shall be reasonably necessary to comply with the provisions of Chapter 4, Government Code Section 84100, et seq.

The Commission is beginning to develop a more specific amendment to 2 Cal. Adm. Code Section 18401 to meet auditors' and prosecutors' concerns. The concerns raised in your letter will hopefully be addressed in any proposed amendment. We will send you a copy of the draft amendment when it is available.

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With regard to your recommendation that information on the location of maintained bank accounts and a written authorization for access to the records be contained on campaign statements, there will have to be further staff discussion of that proposal to determine whether it should be presented as a legislative proposal.

I very much appreciated your taking the time to write me with your suggestions. Your comments were most helpful.

Sincerely,

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Frederic M. Hanelt
Director
Enforcement Division

Enclosure

cc: Mike Baker
John Gordnier
Jim Willis

JAMES M. CRAMER
District Attorney

A. REX VICTOR
Assistant District Attorney

COUNTY OF
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OFFICE OF THE DISTRICT ATTORNEY

April 25, 1977

Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Attention: Fred Hanelt, Chief, Enforcement Division

re: Suggested Regulatory and Legislative Changes

This letter is to urge regulatory and legislative action with respect to Chapter 4 of the Political Reform Act of 1974 in order to facilitate meaningful enforcement of its provisions. At the present time, the commitment of investigative and prosecutorial resources required to obtain and marshal evidence necessary for successful prosecution of a violation is such that some agencies will be reluctant to undertake the venture. Thus, enforcement will suffer and the achievement of the legislative objectives will to some extent be frustrated.

It is therefore suggested that the following action be taken:

- (1) The accounts and records required to be kept by candidates, treasurers and elected officials should be defined by regulation.

Section 84100(a) of the California Government Code requires candidates, treasurers, and elected officials "to keep such detailed accounts, records, bills and receipts as shall be required by regulations adopted by the Commission to expedite the performance of all obligations imposed by this chapter." (emphasis added) To date, no regulations have been promulgated defining what records are to be maintained. Unless the Commission implements the mandate of Section 84100(a), it will be difficult to obtain by legal process the records necessary to conduct meaningful audits of campaign statements, even if good cause exists, because of the specificity requirements of both subpoena duces tecum and search warrants. The affidavit accompanying subpoena duces tecum must specify the exact matters of things to be provided (Cal. Code Civ. Proc. §1985). Both the United States and California

TO Fred Hanelt

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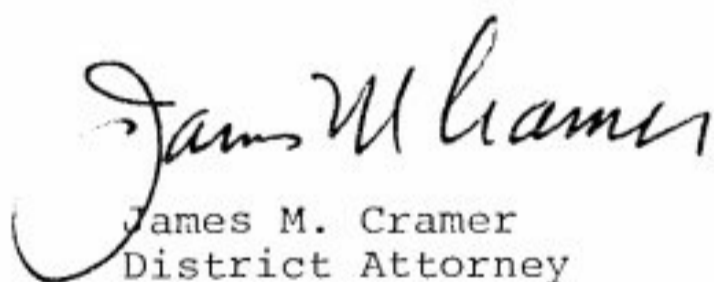
DATE April 25, 1977

Constitutions require that a search warrant must particularly describe the things to be seized (Burrows v. Superior Court, 13 Cal. 3d 238, 118 Cal. Rptr. 166 (1974))

- (2) Campaign statements should contain information of the location of bank accounts maintained by the filer and written authorization for enforcement agencies to have access to the records relating thereto.

Governmental agencies may obtain information contained in bank records of depositor's accounts only by subpoena, search warrant, or written authorization of the depositor (Cal. Gov't Code §7470). Because of the required specificity and probable cause attendant to the legal processes it is extremely difficult for agencies charged with enforcement of the Political Reform Act to obtain these documents without the cooperation of the person being investigated. Those engaged in other occupations and professions licensed by State boards and agencies are required to authorize access to the financial records relating to their business or profession (lawyers, Cal. Bus. & Prof. Code §6069; real estate brokers, Cal. Bus. & Prof. Code §10146; trading stamp companies, Cal. Bus. & Prof. Code §17766.5; security salesman Cal. Corp Code §25134; investment brokers and advisors, Cal. Corp. Code §25241; commodity advisors and brokers, Cal. Corp. Code §29535). It would not seem unreasonable to require similar authorization from those seeking offices of public trust.

Very truly yours,


James M. Cramer
District Attorney

JMC:dc

cc - John Gordiner, Attorney General's Office
Michael J. Baker, Counsel F.P.P.C.
James Willis, Enforcement Division F.P.P.C.