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State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Toll-free Advisory • Administration • • • Executive Equal • • • Enforcement • • • Conflict of Interest
1216 122420 122590 122640 122644

January 31, 1978

A-78-01-003

Leesa Speer
1136 Vanderbilt Way
Sacramento, CA 95825

Dear Ms. Speer:

In response to your letter dated January 12, 1978, the staff is providing you with the following informal advice.

As a general matter, volunteer personal services donated to a campaign committee do not constitute a "contribution." Government Code Section 82015.^{1/} However, expenditures include payments and enforceable promises to make payments. Section 82025. Therefore, non-volunteer services would be reportable expenditures. Volunteer services by definition involve no payment or promise of payment and therefore are not expenditures.

As you have explained your situation with Watkins and Shaffer, it is apparent that you believe that you have no obligation to pay for the services of Ms. Watkins in connection with your campaign and that, therefore, her services were volunteer and not reportable either as a contribution or expenditure. Watkins apparently believes that you owe approximately \$2,000 for the services his wife provided and that, therefore, the value of those services is reportable as an expenditure. As I understand it, the dispute arises largely out of a lack of consensus as to what it was you agreed to pay when agreeing to reimburse Shaffer's and Watkins' "out of pocket" costs.

Under the Political Reform Act, a filer is required to use "reasonable diligence" in the preparation of a campaign statement. Section 81004. In the case of a dispute concerning whether

^{1/} All statutory references are to the Government Code unless otherwise noted.

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an amount is owing a vendor or provider of services, the "reasonable diligence" standard requires the filer to make a good faith assessment of the validity of the claimed debt. If the filer believes he has no obligation to the creditor, he is justified in not including the disputed amount as an expenditure. Of course, if there is no obligation to pay for services, they are "volunteer" and therefore not reportable as a contribution.^{2/}

From the facts you have provided us, it appears that you have made a good faith effort to determine what was owed to Shaffer and Watkins and were justified in not including the additional \$2,000 for services rendered as an expenditure. However, in order to avoid confusion and possible controversy, we would recommend that your campaign statement, in addition to listing the \$528 expenditure, should also contain an explanation to the effect that there is a dispute with the vendor and that the vendor claims \$2,000 additional is owing.

When a creditor agrees to accept a lesser amount in satisfaction of his claim, the amount of the expenditure is only the amount paid. However, as your letter explains, in this case, it is not clear that the creditors, Watkins and Shaffer, have agreed to accept a lesser amount. Under those circumstances, the "reasonable diligence" standard described above is applicable.

Because the events which you have described have already occurred and the filing deadline passed, this advice cannot confer any immunity from Commission prosecution under Section 83114(b). I have talked with Neil Hamilton of the Sacramento District Attorney's Office who informed me that his office will take no action in this matter. In light of our analysis of the facts you have presented, the staff of the Commission has also decided that this matter does not warrant any action.

I hope that my explanation of the law has been helpful to you. If you have any questions, please do not hesitate to call me.

Sincerely,

Lee C. Rosenthal
Lee C. Rosenthal
Acting Chief
Legal Division

LCR:jt

^{2/} If the creditor voluntarily provided tangible items to the campaign, receipt of those items must be reported as contributions.

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Leesa Speer
1136 Vanderbilt Way
Sacramento, California 95825
January 12, 1978

Daniel H. Lowenstein, Chairman
Fair Political Practices Commission
1100 K Street
P. O. Box 807
Sacramento, CA 95814

Dear Mr. Lowenstein:

I am writing to seek the advice of the staff of the Commission, or, if necessary, an Opinion of the Commission, with respect to an interpretation of the Political Reform Act, particularly Government Code §§ 82015 and 82025, which define the terms "contribution" and "expenditure" respectively.

During 1977, I was a candidate for election to the Sacramento City Council, Third District. On September 27, 1977, I placed second in a field of 9 candidates, 51 votes short of the first place candidate, Douglas N. Pope. Therefore, Mr. Pope and I were the candidates in the November 8, 1977 runoff election, in which Mr. Pope ultimately prevailed.

Prior to the September 27, 1977 primary, my campaign manager, Joe Shaffer, told me that he and Charles Watkins were planning to go into the direct mail advertising business seeking both commercial and political campaign business, but with an emphasis on the latter. Watkins was going to purchase upwards of 8 of IBM's newest computer-operated typewriters, the "System Six"; Watkins would provide the capital and Shaffer, who is a full-time professional campaign manager, would bring in much of the business. They said that if any of the machines were delivered by IBM sufficiently early, they would like to use the campaign to do a test run of the machine in order to "work the bugs out" and for the promotional value that would accrue to them by its use in a political campaign. The machine would be used to type letters, individually addressed, to the 13,000 - 14,000 households in the District which contained registered voters. Watkins agreed to charge my campaign only for out-of-pocket costs which were assumed by he and Shaffer to be \$400 - \$600. On the basis of this explanation, I agreed to the arrangement.

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In preparing my campaign statement covering the period of September 18 to October 29, 1977, my husband, my campaign manager and my campaign treasurer concluded that I was not required to report Jane Watkins', i.e., EMI Associates', "donated personal services" of \$2,301. Government Code § 82012 defines the term "contribution" and states that "the term does not include volunteer personal services." I believe that I was clearly correct in not reporting this claimed "contribution."

This campaign report was filed with the City Clerk on Tuesday, November 1, 1977. On the following day, Charles Watkins complained to the Clerk that I had failed to report his wife's "contribution" and that I had failed to report an outstanding debt to her of \$2,062.76. On November 2, 1977, Charles Watkins mailed a demand to me that I pay this sum within 24 hours. This was the debt that I had believed was resolved when he accepted the payment of \$528.10 on October 12, 1977. Based upon Charles Watkins' complaint, the City Clerk on November 4, 1977 referred the matter to the District Attorney for Sacramento County for investigation.

I would appreciate an advice letter from the Commission's staff, or, if necessary, an Opinion of the Commission, with respect to two questions. First, does EMI Associates' statement for volunteer personal services represent a reportable contribution within the meaning of Government Code § 82015? Secondly, when a creditor of a political candidate accepts a lesser amount than that previously claimed in satisfaction of the previous claim, is the difference reportable as an "expenditure" within the meaning of that term in Government Code § 82025 ("an enforceable promise to make a payment")? Alternatively, because I believe that Mr. Watkins may not admit that he had agreed to accept the \$528.10 in full satisfaction of the higher claim, is a disputed debt an "expenditure", within the meaning of Government Code § 82025, at the amount claimed by the debtor political candidate or the creditor?

As you can see from the attached article, Watkins' allegations, and the City Clerk's belief that she had a ministerial duty to transmit those allegations to the District Attorney, prompted a highly adverse newspaper article just three days before election day. I believe that clarification by the Commission of the questions raised by the request will, for future candidates, prevent such scurrilous election-eve tactics.

Sincerely,

Leesa Speer
LEESA SPEER