

State of California



Fair Political Practices Commission

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Technical Assistance Administration	• • •	Executive Legal	• • •	Enforcement	• • •	Conflict of Interest
(916) 322-5660		322-5901		322-6441		322-6444

May 31, 1978

A-78-285

Vigo G. Nielsen, Jr.
 Dobbs & Nielsen
 Suite 2500, The Alcoa Building
 One Maritime Plaza
 San Francisco, CA 94111

Dear Mr. Nielsen:

The Fair Political Practices Commission ("Commission") has received your letter dated May 12, 1978, requesting an opinion or advice. Since your letter raises no substantial questions requiring an interpretation of the Political Reform Act ("Act") a formal opinion will not be issued. I hope the following informal advice will be helpful.

Eller Outdoor Advertising ("Eller") is considering a directive to each employee encouraging political participation in state and local races and on behalf of or in opposition to ballot measures. That directive would prohibit any employee from spending over 10 percent of the employee's compensated time on such political activity. You have asked whether such a directive will permit Eller to consider all personnel costs as voluntary personal services and not non-monetary contributions.

As you know, the Commission adopted a regulation defining when payments for personal services are contributions and expenditures, 2 Cal. Adm. Code Section 18423. Under that regulation, the payment of salary by an employer to an employee who spends more than 10 percent of his compensated time in one calendar month rendering services for political purposes may be a contribution or expenditure by the employer. However, the employer has not made a contribution or expenditure if the employee spends 10 percent or less of his compensated time on political activities. Likewise, there is no reportable contribution or expenditure if the employee spends more than 10 percent of his compensated time to render the political services "pursuant to a uniform policy allowing employees to engage in political activity." 2 Cal. Adm. Code Section 18423(a)(2). This exception does not apply if the employee renders services at the request or direction of the employer.

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It appears from the facts you presented that Eller will not make reportable contributions or expenditures because the employees will be acting "pursuant to a uniform policy allowing employees to engage in political activity," and Eller will not be directing them to render services to certain campaigns or causes. If so, Eller has no obligation to report employee salaries, regardless of what percent of their time is devoted to political activity. Thus, it is not necessary to answer your question on the adequacy of Eller's record keeping procedures. However, the following comments may be helpful.

You indicated that Eller's present personnel procedures are capable of detecting "any substantial political activity by its employees." It is not clear what is meant by "any substantial political activity." Reasonable diligence is the criterion that must be used in preparing a campaign statement. Section 81004. The Commission requires that records be maintained as are reasonably necessary to comply with the reporting requirements. 2 Cal. Adm. Code Section 18401(a). Eller's records may provide it with sufficient information to ensure that its campaign statements are true and complete.

I hope this information is helpful. If you have any questions, please contact me.

Sincerely,



Barbara Campbell
Counsel
Legal Division

BC:plh

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May 12, 1978

Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804

Re: Request for Opinion or Advice

Dear Commissioners:

Eller Outdoor Advertising, a corporation headquartered in Berkeley, California, makes monetary contributions to California campaigns and sometimes makes independent expenditures. When required to file a Form 461 as a "committee" (as defined by Government Code Section 82013(b) or (c)), Eller has disclosed these contributions and direct expenditures.

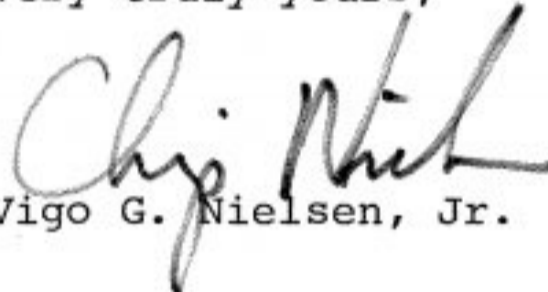
During this election year, Eller wishes to inform its employees that management encourages political participation in State and local races and on behalf of or in opposition to ballot measures. However, Eller does not wish to contribute the salaries or expenses of these persons to such committees as non-monetary campaign contributions. Pursuant to FPPC Regulation 18423, Eller is contemplating a directive to each employee encouraging political involvement but prohibiting the employee from spending over ten percent (10%) of his or her compensated time in a month on all such campaigning. Without modification Eller's personnel procedures are capable of detecting any substantial political activity by its employees, but modifications would be required to keep precise records of the actual amount of compensated timespent by each employee on political activity.

Would the circulation of such a directive to all employees and adoption of a corporate policy to generally ensure compliance with that directive, without actual individual time records, allow Eller to define all personnel costs as voluntary personal services and not non-monetary campaign contributions.

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Since campaign statements are required to be filed frequently this year, your expeditious response is sincerely requested.

Very truly yours,


Vigo G. Nielsen, Jr.

VGN:alh

cc: Eller Outdoor Advertising