

State of California



Fair Political Practices Commission

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

Technical Assistance	•••	Administration	•••	Executive/Legal	•••	Enforcement	•••	Conflict of Interest
(916) 322-5662		322-5660		322-5901		322-6441		322-6444

April 12, 1979

Gerald A. Sperry
 Office of the City Attorney
 City Hall
 Stockton, California 95202

A 79-030

Dear Mr. Sperry:

In response to your letter of March 27, 1979, I am providing you with the following advice.

You asked whether failure of the city council to collect for the costs of printing and mailing a candidate's statement of qualifications would be reportable by the candidate under the campaign finance disclosure provisions of the Political Reform Act. In the Opinion Requested by H. L. Masini, 2 FPFC Ops. 38 (No. 78-171B, February 4, 1976), the Commission dealt with a similar question. In that opinion the Commission concluded that when a special district, on an equal basis, pays or offers to pay for the publication of all candidates' statement of qualifications it would not qualify as a political committee required to file campaign statements. This conclusion was reached because the district was paying for the statements in order to provide a forum to all candidates on an equal basis and to serve an educational function by publicizing the qualifications of all candidates. The district could not be said to be making expenditures or contributions for the purpose of influencing any particular candidate.

In our conversation of April 12, you indicated it was the intention of the city to either collect from all candidates statements or from none of them. In that situation, the analysis of the Masini opinion leads to the conclusion that the failure to collect for the statement of qualifications is neither an expenditure by the city or a contribution to the individual candidates. However, if a city discriminates in its non-collection policy, rather than engaging in an educational activity and providing a forum to all candidates, the city would be giving an advantage to the candidates from whom no effort is made to collect. In such a case, a city's collection policy must be deemed an effort to influence the voters' actions for the favored candidates, and the provision of the free service would be a contribution by the city to the favored candidates.

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I would, however, add one proviso. As I am sure you are aware, a case challenging the constitutionality of collection of the costs of printing and distributing candidates' statements of qualifications is currently pending before the California Supreme Court. East Bay Municipal Utility District v. Appellate Department, No. SF 23675. One possible outcome of that case is a decision which permits collection of costs of the statement of qualifications from all but indigent candidates. Such a decision would impose a constitutionally based discriminatory collection policy on all cities that wished to collect the statement costs. As noted above, a discriminatory collection policy ordinarily requires reporting in the cases of candidates from whom no effort is made to collect. However, if the collection policy discriminates in favor of indigent candidates in the manner constitutionally required by the courts, a city cannot be said to be acting for the purpose of influencing the voters for the indigent candidates from whom no effort is made to collect. Rather, the city is acting under judicially enforced constitutional compulsion. In such circumstances, the payment by the city for the indigent candidate's statement of qualifications would not be a contribution or expenditure.

I hope this advice proves helpful to you. If you have any further questions, please do not hesitate to call me at (916) 322-5901.

Sincerely,

Lee C. Rosenthal
Chief
Legal Division

LCR:kp

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CITY HALL
STOCKTON, CA 95202

OFFICE OF THE CITY ATTORNEY
(209) 944-8333

March 27, 1979

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Commission
P.O. Box 807
Sacramento, CA 95804

CAMPAIGN DISCLOSURE

Elections Code Section 10012, Candidate's Statement of Qualifications, permits the local agency to collect, in advance the cost of printing, handling, translating and mailing the statements to be included in the voter's pamphlet. The City Council (five of whom are candidates) has the discretion whether or not to collect for the cost of their statement.

If the Council determines not to collect for the cost of the statement, would this be considered "(a)n expenditure made at the behest of a candidate" within the meaning of Section 82015 of the Government Code which must be declared on the candidate's statements?

In Knoll v. Davidson (1974) 12 C.3d 355, the Supreme Court upheld the constitutionality of Election Code Section 10012, but did not address the disclosure issue.

Your assistance and advice in this matter will be appreciated.


GERALD A. SPERRY
CITY ATTORNEY

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