

FPPC TRANSMITTAL OF CORRESPONDENCE

CORRESPONDENT Steve Verum - Stockton DATE REC'D. 3-6
DATED 3-3 RE: Rptng reqs. - Friends of New Melone

ADMINISTRATION

- BOB T.
- LINDA
- BEV

EXECUTIVE

- TOM H.
- TED
- CARLA
- JEANNE
- BOB S.

CONFLICTS/LEGAL

- TOM S.
- DWIGHT
- SARAH
- ALICE
- GINA T.
- PATSY

ENFORCEMENT

- BOB B.
- ROGER
- MARTIN
- RON

TA&A

- JOHN K.
- GINA S.K.
- MARYANN
- BERMA
- JOHN G.
- JAY
- RICH
- HELEN-L.A

INFORMATION -REQUEST FOR ADVICE--MUST BE ANSWERED WITHIN 21 DAY

Sina, PLEASE:

TAKE WHATEVER ACTION YOU CONSIDER APPROPRIATE

- REPLY DIRECT BY 3-20 --COPY TO Patsy
- PREPARE SUGGESTED REPLY AND RETURN TO _____
- COORDINATE REPLY WITH _____

March 19, 1980

Steven A. Herum
Neumiller & Beardslee
400 First Federal Plaza Building
6 South El Dorado Street
Stockton, California 95201

A-80-03-017

Dear Mr. Herum:

Thank you for your letter dated March 3, 1980 in which you asked for advice regarding the reporting requirements of Friends of New Melones under the Political Reform Act of 1974. You stated that Friends of New Melones was involved in the following activities:

- 1) Obtaining membership for Friends of New Melones;
- 2) Preparing, publishing and distributing various background materials to educate the public as to the advantages of full utilization of the Reservoir;
- 3) Issuing press releases;
- 4) Examining files as authorized by the Freedom of Information Act;
- 5) Commenting, through press releases and press conferences, on activities of certain State officials which the organization regarded as improper;
- 6) Compiling and distributing informational newsletters to the membership;
- 7) Lobbying against legislation pending in the United States Congress which would designate portions of the Stanislaus River as part of the Wild and Scenic Rivers Act;
- 8) Testifying at one administrative hearing and one legislative hearing regarding State policies designed to prevent full utilization of the Reservoir; and
- 9) Raising funds for purpose of financing the activities of the organization.

Based on the information you have submitted in your letter, Friends of New Melones is not a committee as defined in Government Code Section 82013 since the activities do not seek to influence the action of voters for or against candidates or ballot measures.

Furthermore, the activities of Friends of New Melones do not appear to meet the test for a lobbyist or a lobbyist employer as defined in Government Code Sections 82039, 86108(a) and 2 Cal. Admin. Code Section 18239.

While Friends of New Melones may not meet the reporting thresholds as a lobbyist or lobbyist employer, the organization may be required to file lobbying disclosure reports if the organization's activities include payments to influence legislative or administrative action of two thousand and five hundred dollars (\$2,500) or more in value in any calendar quarter. Government Code Section 86108(B). "Payment to influence legislative or administrative action" means any of the following types of payment:

- (a) Direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose by a person employing or contracting for the services of the lobbyist separately or jointly with other persons;
- (b) Payment in support or assistance of a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request of suggestion of the lobbyist;
- (c) Payment which directly or indirectly benefits any elective state official, legislative official or agency official or a member of the immediate family of any such official;
- (d) Payment, including compensation, payment or reimbursement for the services, time or expenses of an employee, for or in connection with direct communication with any elective state official, legislative official or agency official.
- (e) Payment for or in connection with soliciting or urging other persons to enter into direct communication with any elective state official, legislative official or agency official.

I hope this advice is helpful. If you have any further questions, please do not hesitate to contact me.

Sincerely,

J. Richard Eichman
Accounting Specialist

Neumiller & Beardslee

ATTORNEYS AND COUNSELORS

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F P P C
MAR 6 9 12 AM '80

CHARLES L. NEUMILLER
1873-1933
ROBERT A. DITZ
1889-1971
IRVING L. NEUMILLER
1899-1970

ROBERT L. BEARDSLEE
THOMAS J. SHEPHARD
DUNCAN R. McPHERSON
RUDY V. BILAWSKI
ROBERT C. MORRISON
JAMES R. DYKE
ARTHUR COFOD
JAMES A. ASKEW
JOHN P. BYRD
JOHN W. STOVALL
DAVID SHEUERMAN
NELSON E. BAHLER
KENNETH R. LEVY
BENJAMIN F. GREEN
DONALD W. WEST
JAMES D. SELLARS
FRANK E. AUSTIN

March 3, 1980

2736-4723

THOMAS HOUSTON, ESQ., Chairman
Fair Political Practices Commission
1100 K Street
Post Office Box 807
Sacramento, California 95804

Dear Mr. Houston:

On behalf of our client, The Friends of New Melones, I hereby request an opinion from the Fair Political Practices Commission (hereinafter "Commission") relative to whether or not certain activities of Friends of New Melones activates the reporting requirements of the Political Reform Act of 1974 (hereinafter "The Act"). Specifically I ask whether or not certain activities of Friends of New Melones satisfies the definition of "committee" as defined by Government Code § 82013.^{1/}

STATEMENT OF FACTS

The New Melones Reservoir was authorized by the United States Congress under the Flood Control Act of 1944 [58 Stat. 887] and reauthorized by the Flood Control Act of 1962 [76 Stat. 1173]. In 1974 a statewide ballot measure asked voters to decide whether the Reservoir should be operated at full capacity or whether the white waters of the Stanislaus River should be placed under the Wild and Scenic Rivers Act. The voters of California approved operation of

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"According to Government Code § 82013 a committee, for purposes of the Act, means any person or combination of persons receiving contributions or making expenditures "for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure . . . whether national, state or local". (Emphasis added.)

the Reservoir at full capacity by defeating the statewide ballot.

Thereafter numerous governmental efforts have thwarted the will of the people. First, the State Water Resources Control Board issued Decision 1422 whereby the United States Bureau of Reclamation's water appropriation permit was subject to 22 conditions. However, condition number two, which effectively limited full use of the Reservoir, was, in theory, invalidated by the rule of United States v. California, 57 L.Ed 2d 1018 (1978). That decision impliedly removes State jurisdiction over the primary question of whether or not the State can restrict full utilization of the Reservoir in derogation of the expressed Congressional authorization.

Second, the federal government temporarily suspended filling the Reservoir pending the completion of archeological studies authorized pursuant to the Moss-Bennett Act (16 U.S.C. § 469(a)(2)). During the archeological survey and recovery work the Secretary of Interior has restricted the amount of water impounded behind the Reservoir to 25% of capacity.

Friends of New Melones, an organization with antecedents to the 1974 statewide initiative, advocates the operation of the Reservoir at full capacity. To this end they have engaged in activities designed to educate the public and promote full utilization of the Reservoir.

These activities, which are the subject of this request, include but are not limited to:

*Obtaining membership for Friends of New Melones;

*Preparing, publishing and distributing various background materials to educate the public as to the advantages of full utilization of the Reservoir;

*Issuing press releases;

*Examining files as authorized by the Freedom of Information Act;

*Commenting, through press releases and press conferences, on activities of certain State officials which the organization regarded as improper;

*Compiling and distributing informational newsletters to the membership;

*Lobbying against legislation pending in the United States Congress which would designate portions of the Stanislaus River as part of the Wild and Scenic Rivers Act;

*Testifying at one administrative hearing and one legislative hearing regarding State policies designed to prevent full utilization of the Reservoir;^{2/} and

*Raising funds for purpose of financing the activities of the organization.

STATEMENT OF LAW

It is the opinion of this office that the above listed activities do not constitute "committee" as defined by Government Code § 82013. Therefore, the activities of our client are not subject to the reporting requirements of the Act. This opinion, in large part, is based upon the fact that the activities listed do not seek to influence the action of voters for or against candidates or ballot measures.

Notwithstanding the opinion of this office, our client is prepared to comply with the relevant reporting requirements of the Act upon a determination that the Commission has jurisdiction over its activities. Accordingly, I am submitting this matter to you for your opinion.

Very truly yours,



STEVEN A. HERUM
for
NEUMILLER & BEARDSLEE

SAH/sd

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The direct lobbying of State legislative and administrative actions by Friends of New Melones have been incidental to the general activities of the organization. The organization stipulates that at no time has its activities, defined as lobbying by Government Code § 82039, satisfied the threshold requirements of FPPC Reg. § 18239.