

# 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

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82025  
82015  
18423

June 23, 1980

Bart J. Schenone  
Haley, Schenone, Birchfield  
& Smith  
P.O. Box 450  
Hayward, CA 94543

A-80-06-034

Dear Mr. Schenone:

Your letter requesting advice about how to report your firm's legal services to Manuel S. Garcia has been referred to me for reply. On April 8, 1980, Mr. Garcia was a candidate for the office of councilman in Union City. He received eight fewer votes than the third highest vote getter. Your office provided legal services in connection with a recount and subsequent election contest out of which Mr. Garcia emerged as a duly elected councilman. Your office intends to donate these services to Mr. Garcia and you want to know whether the services you provided are to be reported as a contribution or as a gift and how to value them in either event.

The Commission has addressed itself to the question of how to report donations for legal expenses in an opinion in the Matter of: Douglas Buchanan, 5 FPPC Opinions 14 (No. 78-013, May 1, 1979) (copy enclosed). In Buchanan the Commission held that the cost of litigation aimed at maintaining a candidate's place on the ballot was a contribution.

Although payments for the costs of litigation are not generally thought of as having any connection with political campaigns, in the circumstances presented here and in similar circumstances, the litigation costs are just as key to the success of the campaign as traditional campaign costs such as mailings and media advertisements. When expenditures are made to support litigation aimed at gaining a place on the ballot for a candidate or measure, aimed at keeping a candidate or measure off the ballot, or challenging the results of an election, the expenditures are made for the purpose

Mr. Bart J. Schenone  
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of influencing the outcome of the election in favor of or against a particular candidate or measure and should be reported. Similarly, when expenditures are made during the course of a campaign for litigation designed to protect or vindicate the personal reputation of a candidate, those expenditures generally are made to forward the fortunes of the candidate in the election and should also be reported.

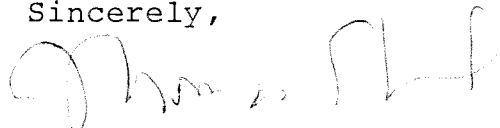
Buchanan, pp. 15-16

Therefore, the cost of legal services provided Mr. Garcia should be reported as a contribution.

Assuming that the requirements of 2 Cal. Adm. Code Section 18423(a)(1) and (2) are met, you are correct that the value of the services of an employee of the firm would be reportable pursuant to Section 18423(c). Subsection (d), however, also provides that any other expenses incurred in connection with the services rendered to Mr. Garcia, must also be reported by your firm as part of the total amount contributed.

I trust that this answers your questions. If I may be of any further assistance to you, please do not hesitate to contact me.

Sincerely,



Thomas M. Sobel  
Chief  
Legal Division

TMS:nrw  
Enclosure

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F P C

LAW OFFICES OF  
**HALEY, SCHENONE, BIRCHFIELD & SMITH**

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BART J. SCHENONE  
RONALD G. PECK

FILE NO:  
REPLY TO

June 11, 1980

FAIR POLITICAL PRACTICES COMMISSION  
1100 K Street Building  
Sacramento, California 95814

RE: INFORMAL ADVICE LETTER

Dear Madam or Sir:

Our law office, HALEY, SCHENONE, BIRCHFIELD & SMITH, rendered legal services for Manuel S. Garcia, candidate for Councilman of the City of Union City. It is the intention of this law office to donate the services that have been rendered.

We seek an informal advice letter determining whether the donation is a contribution or a gift under statute and regulation.

On April 8, 1980, the general election of Councilman for the City of Union City was held. Three city council positions were to be filled. Manuel S. Garcia received eight fewer votes than Richard P. Oliver, who received the third-highest number of votes.

Subsequent to the April 8, 1980 election, our office was contacted regarding legal services for Manuel S. Garcia for a recount and any election contest. In fact, a recount was conducted and an election contest was held, where Manuel S. Garcia has been confirmed to be duly-elected.

Our office has examined the applicable Government Code, section 82015, and the applicable regulation, section 18423, and has determined that if the services rendered are a contribution, they must be reported as such. Subsection (b) of the regulation defines personal services as rendered for political purposes "if they are carried on for the purpose of influencing or attempting to influence the action of voters." Our feeling is that since our services occurred subsequent to the election of April 8, 1980, it does not fall within the definition of personal services rendered for political purposes.

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We should like to have advice as to whether we are correct in our assessment that the rendering of services is not a contribution. If we are incorrect, then we should like further advice as to whether, under subsection (c) of Regulation 18423, the amount reportable is the pro-rata portion of gross salary attributable to the time spent on political activity of the employee of the law firm rendering such services--not the fair market value of the services.

If we are correct in our assessment that the donation of the personal services is a gift, please so advise. We believe the value of the personal services as a gift would be the fair market value of such services. Would you also so advise.

If there are any questions, please contact me. Thank you for your cooperation and courtesy in this matter.

Respectfully,

HALEY, SCHENONE, BIRCHFIELD & SMITH

BY Bart J. Schenone  
BART J. SCHENONE

BJS:km