

October 6, 1980

Harvey Yorke  
495 Rowland Boulevard  
Novato, CA 94947

A-80-10-052

Dear Mr. Yorke:

I have been asked to respond to your letter to the Commission's staff of September 22, 1980. You asked a number of questions regarding reporting requirements in a petition drive for a local rezoning election. The following answers apply to reporting expenditures incurred in both preparing for and carrying out the petition drive and in the subsequent election, should there be one. The expenditures for the petition drive and for the election are all political expenditures and are all reportable by any committee formed under Government Code Section 82013.

1. If you provide services which are not related to political activities, including preparation for and services during the petition drive and the election, and if you can divide the services into those related to political activities and those which are not, only the pro rata share related to political activities need be reported. 2 Cal. Adm. Code Section 18423(c).

2. The fee to your employer counts as part of the threshold only if it is paid by or billed to the committee, or if your services have been donated to the committee by your employer and as such constitute a contribution to the committee. The expenditures of your employer and of the committee are not aggregated, even if your employer signed the notice of intention to circulate, so long as the committee is actually a separate independent entity. However, if your employer is "acting in concert" with the committee, he is part of the committee for purposes of Section 82013, and the expenses are aggregated. See Government Code Section 82047. If your employer is the organizer of the committee, consults with the committee, and, along with the investors' group stands to benefit from the committee's activities, he is "acting in concert" and is himself part of the committee.

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3. Your fee for your employer is reportable only if your work product is, in effect, "contributed" to the committee by your employer. See Government Code Section 82015. Of course, if your employer is "acting in concert" with the committee it is reportable as an expenditure by the committee. See question 2, above.

4. See 2 Cal. Adm. Code Section 18423(c).

5. If the contribution is made with the group's funds, then the group is considered the committee under Government Code Section 82013. See 2 Cal. Adm. Code Section 18419.

6. Any expenses made during the reporting period which are related to the political activity of anyone with a reporting obligation are reportable, even if they occur before the petition-circulating period. See Government Code Section 84210(h).

7. A. Whatever group acts to receive, control or expend the funds is the committee under Government Code Section 82013. This could be the investors' group as a whole, or a political action committee formed by the group, or your employer, or any combination of these three. See 2 Cal. Adm. Code Section 18419.

B. Government Code Section 84305 provides that the name and address of the sender be included on any mass mailing. If the committee is the sender, the committee's name and address is sufficient. If the sender is your employer, his name and address must be used. If the investor's group is the sender, it must be identified. See 2 Cal. Adm. Code Section 18435 for further definition of who is a "sender" under Section 84305. You should also look at Elections Code Section 29410, which prohibits all anonymous campaign literature. Section 29410 was recently held to be unconstitutional by the California Court of Appeal, Fourth District, in Schuster v. Imperial County Municipal Court. However, this ruling may be appealed to the California Supreme Court.

C. See 2 Cal. Adm. Code Section 18423(c).

D. No, if the expenditures were not made for political purposes at the time, their character is not changed by the fact that the drawings are later used in the campaign. See Government Code Section 82025.

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E. See 2 Cal. Adm. Code Section 18419.

F. If there is no surplus, simply say so on the forms.

I have enclosed copies of the relevant sections of the Government Code and the California Administrative Code. I have also enclosed a copy of the 1980 manual. If you have any further questions, please feel free to call or write to me again.

Very truly yours,

Barbara A. Milman  
Counsel  
Legal Division

BAM:nrw  
Enclosures

P.S. The following information is in response to our telephone conversation:

1) To register as a committee you should file form 410 with the Secretary of State's Office in Sacramento. On that form the date of qualification is the date when the \$500 expenditure mark was reached. If your form will be postmarked more than 10 days after the date of qualification, you should send a letter with the form explaining the delay and requesting that any fines under Government Code Section 91013 for late filing be waived. You will speed the process up if you include above your signature the following verification:

"to the best of my knowledge the foregoing statements are true and complete. Signed under penalty of perjury."

2) You must file a campaign statement 35 days after the deadline for filing petitions, covering receipts and expenditures up to 28 days after the deadline (unless the measure is qualified prior to October 24, 1980). Assuming that the deadline is October 24, 1980, the report is due November 28, 1980, and the closing date for the reporting

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(P.S. continued)

period is November 21, 1980. See Government Code Section 84204. The opening of the reporting period is the date of the first reportable expenditure (which is probably your fee for advising on the petition drive, based on what you told me).

3) If your committee has additional financial transactions after November 21 in connection with the petition drive or the election itself, a semi-annual statement including the period from November 22, 1980, through December 31, 1980, should be filed in January, 1981.

4) You should consult the 1981 Campaign Manual to determine your filing duties after December 31, 1980.

HARVEY YORKE  
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CONSULTANT  
PUBLIC RELATIONS  
COMMUNICATIONS  
PUBLIC AFFAIRS

September 22, 1980

Fair Political Practices Commission  
1100 K Street  
Sacramento CA 95814

Dear Staff:

Please help to clarify a reporting situation which may arise in connection with my work as a public relations consultant.

I have been retained by a man who represents a group of investors who have an option to buy a parcel of land in the Town of Fairfax, Marin county. The land was zoned for one use by election some years ago. Another election is required to change the zoning for use by my employer.

My employer has begun the process required by the Elections Code. He published a Notice of Intention to Circulate Petitions and in mid-October he plans to begin circulating petitions. By mid-November he expects to have the signatures required to have the Town Council set a date next spring for a special election. Part of my responsibility is to advise and assist throughout the process, including the election.

A citizens committee will be formed in October to assist with the petition drive. The same committee will probably carry over into the election next spring. I will be asked to help organize the committee and then to assist it in various ways.

We know that more than \$500 will be spent on the election. We are not sure how much money will be required for the petition drive, but it could be less than \$500, excluding my fee.

Now for the questions:

1. The basic question is whether part or all of my fee as a consultant is reportable under FPPC rules, and under what circumstances.
2. If we form a committee to circulate petitions and it spends \$500 or more (or collects \$500 or more), I know that we must get an FPPC ID number and file reports. But what if the committee collects and spends less than \$500, excluding my fee to my employer? Does my fee to my employer (who signed the notice of intention to circulate petitions) count against the \$500 threshold? All of the fee or only that portion associated with the petition drive?
3. If a committee is formed to conduct the election campaign and my employer is a contributor to that committee, is my fee as his public relations advisor reportable? (I realize that any work I do for the committee which is paid for by the committee is a reportable item.)

4. Assuming that my employer pays the entire cost of circulating petitions, and further assuming that he spends over \$500, would it be proper and legal to assign one portion of my fee related to the petition drive to that campaign and the portion of my fee which is not related to the petition drive would not be reported?
5. During the election campaign with its own committee, if my employer is a major contributor using the investor group's funds, is the investor group considered a committee? That is, they take a portion of the funds used to buy the property, hire attorneys, architects, etc., and contribute to the campaign committee.
6. Is my employer required to report in the petition-circulating period (with or without a committee) the money spent on attorney fees prior to circulating petitions? These would be fees for writing the ordinance to accompany the ballot measure, as an example.
7. What if my employer and his fellow investors decide to finance the entire election campaign and the citizens committee neither raises nor spends money?
  - A. Who files with FPPC for an ID number and completes reports?
  - B. On campaign materials I know that the committee must be listed, but what individual must be identified, the committee chairman (not handling money) or my employer who is paying for the campaign?
  - C. What portion of my fee as a consultant is reportable?
  - D. Are fees not related to the election, such as the architect for his drawings (which may be used in campaign literature), listed as campaign costs?
  - E. Would my employer and others in the investment group be required to set up a special campaign fund which then would show on FPPC reports as contributions?
  - F. With this kind of in-house financing, there will be no surplus to distribute after the campaign. How is this indicated on FPPC forms which ask what happens with surplus funds?

Sorry for this long list of questions, but I want to do what is right. I would appreciate an early reply to my questions. Also, I would appreciate a current FPPC manual.

  
HARVEY YORKE