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# State of California



## Fair Political Practices Commission

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October 15, 1981

Dana W. Reed  
Dobbs & Nielsen  
Attorneys at Law  
612 South Flower Street, Suite 309  
Los Angeles, CA 90017

A-81-10-064

Dear Mr. Reed:

Bob Stern has passed along your September 25, 1981, request for advice to this division to be answered. You have asked whether a newsletter prepared by Congressman George Miller constitutes a reportable expenditure under the Political Reform Act. You have indicated that there are other Congressmen who may wish to send similar letters, either for or against the Peripheral Canal, and would like to know if such letters are reportable under the Act. Since you have not identified the person or persons on whose behalf you are asking this question, I am unable to give you any very specific advice on this matter. See 2 Cal. Adm. Code Section 18329. However, I can answer some of your questions in very general terms.

A person who sends out a newsletter advocating passage or defeat of a ballot measure is required to file campaign statements under the Political Reform Act only if the person (or persons) constitutes a committee as defined in Section 82013 of the Government Code, or is one of the person or persons listed in 2 Cal. Adm. Code Section 18225(b).

2 Cal. Adm. Code Section 18225(c) helps provide a definition of when a person or persons becomes a committee under Section 82013(b) of the Government Code. A person or persons who makes expenditures of \$500 or more during a calendar year on newsletters which expressly advocate the passage or defeat of a ballot measure, as defined in 2 Cal. Adm. Code Section 18225(c), constitutes an independent expenditure committee under Government Code Section 82013(b).

You also asked whether expenditures on a newsletter are exempt from the reporting requirements of the Act. Congressional newsletters are not included among the list of exempt entities

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in Government Code Section 86300(b) and 2 Cal. Adm. Code Section 18225(c)(4).

Since it is my understanding that you have not written for advice on behalf of Congressman Miller, I will not offer any opinion as to Congressman Miller's possible reporting obligations in connection with the newsletter which you have provided. If you want advice on behalf of any other Congressman, or on behalf of any other person, with respect to a particular newsletter, I will be happy to try to assist you. In the meantime, I hope this letter has answered most of your questions.

Very truly yours,



Barbara A. Milman  
Chief  
Legal Division

BAM:plh

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September 25, 1981

Robert Stern, Esq.  
General Counsel  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804

Re: Congressional Newsletters As Nonmonetary  
Contributions

Dear Bob:

We respectfully request your assistance in determining the types of mailings that are permissible from elected officials concerning an issue to be voted upon by the people of California at the next statewide election without triggering any reporting responsibilities. Our request is based upon a newsletter prepared by Congressman George Miller. Enclosed is a copy for your review.

Section 82025 of the Government Code defines "expenditure" as "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes."

The term "political purposes" is defined by commission regulation to mean: "made for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (2 Cal.Admin. Code §18225(a)).

Section 18225(c) of Title 2 of the California Administrative Code states that expenditures include payments which "expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure."

Section 18225(c)(1)(C) states that, "A measure that has qualified to be placed on the ballot is clearly identified if the communication states a proposition number, official title or

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popular name associated with the measure. In addition, the measure is clearly identified if the communication refers to the subject matter of the measure and either states that the measure is before the people for a vote or, taken as a whole and in context, unambiguously refers to the measure. Section 18225(c)(2) states that, "A communication 'expressly advocates' the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," "sign petitions for" or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election."

Throughout the enclosed newsletter, Congressman Miller clearly identifies the peripheral canal. He states that "decisions will soon be made, by the voters of California on the Peripheral Canal referendum." Congressman Miller strongly urges a particular result on that vote in his newsletter. He states that "We have long argued that the Peripheral Canal makes no sense for northern California. But the fact is that it makes no sense for southern California either. It will not provide a solution." He also includes a number of quotations from various people discussing purported negative aspects of the peripheral canal.

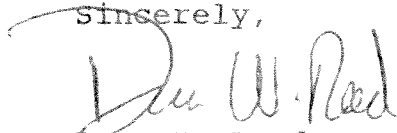
Section 18225(c)(4)(A) states that, "Notwithstanding the provisions of this subsection, the term expenditure does not include costs incurred for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates or the qualification, passage or defeat of a clearly identified measure or measures by: (A) A regularly published newspaper, magazine or other periodical of general circulation which routinely carries news, articles and commentary of general interest." We are not aware of any opinion of the Commission which has designated a newsletter from a Congressman or member of the state legislature as covered by the above-referenced section. However, we wish to be advised whether this section does apply to such newsletters.

We believe that numerous California Congresspersons would be willing to mail a similar newsletter advocating the construction of the peripheral canal. We desire to know what, if any, reporting obligations will be triggered within the confines of the Political Reform Act and applicable regulations. It is our understanding that while Congressional newsletters are mailed at government expense, the costs of printing and typesetting are paid privately.

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We appreciate your assistance in providing us with some guidance as to the questions raised in this letter. Please do not hesitate to contact us if we may provide you with additional information to further explain our request.

Sincerely,



Dana W. Reed

DWR:rb