



California Fair Political Practices Commission

June 5, 1990

Thomas Hiltachk
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
770 L Street, Suite 800
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-90-335

Dear Mr. Hiltachk:

We have received your letter dated May 11, 1990 seeking advice on behalf of two committees, Pete Wilson for Governor - 1990 and Crime Victims for Justice, Yes on 115, for which you serve as legal counsel. Your request follows prior informal advice provided to you by this agency regarding the obligations of the two committees under, and the general application of, the Political Reform Act ("the Act"),¹ and particularly Sections 84501-84514 ("Proposition 105").

QUESTIONS

Pete Wilson for Governor - 1990 will produce and air a television commercial explaining Pete Wilson's support of, and urging voters to vote for, Proposition 115.

1. Is Pete Wilson for Governor - 1990 required by Proposition 105 to examine its campaign reports to determine if any major funding source category disclosure is required?
2. Is Pete Wilson for Governor - 1990, a candidate controlled committee primarily formed to support his candidacy, a "person" within the meaning of Proposition 105? If yes, does this present any problems with the contribution restrictions under the Act?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

1. Proposition 105 requires Pete Wilson for Governor - 1990 to examine its campaign reports to determine if any required major funding source category disclosure is applicable.

2. Pete Wilson for Governor - 1990 can, if the requisite financial thresholds are met, constitute a "person" under Proposition 105 for disclosure as a major funding source of an initiative committee, such as Crime Victims for Justice, Yes on Proposition 115. Should Pete Wilson for Governor - 1990 constitute a person for purposes of Proposition 105 disclosure, no conflict would be presented with the Act's contributions limitations.

FACTS

Pete Wilson for Governor - 1990 ("Wilson Committee") is a candidate controlled committee formed to support Senator Wilson's campaign for governor. Crime Victims for Justice, Yes on 115 ("Yes on 115 Committee") is a candidate controlled committee formed to support Proposition 115 on the June, 1990 primary election ballot, for which Senator Wilson is one of the controlling candidates.

The Wilson Committee will be producing and airing a television commercial at its own expense in which Senator Wilson explains his support, and urges voters to vote, for Proposition 115. It is understood that this commercial will also benefit Senator Wilson's candidacy. All of the costs of the television commercial will be paid for by the Wilson Committee, and that the total amount of funds expended by the committee will substantially exceed \$50,000. You have been previously advised that Proposition 105 does not require disclosure on this television commercial of the major funding sources of other committees, such as Yes on 115 Committee.

ANALYSIS

Sections 84501 - 84514 were added to the Act as a result of the enactment by the voters of Proposition 105 in the November, 1988 election. Operative on January 1, 1990, these provisions impose disclosure requirements on committees which pay for or authorize an advertisement in support of or opposition to an initiative.

(1) The Wilson Committee, by spending more than \$50,000 to pay for a television advertisement which urges voters to support Proposition 115, triggers application of Proposition 105, whose terms apply (a) to a statewide initiative (Section 84501), (b) to a committee which makes expenditures of \$50,000 or more in support of or opposition to an initiative (Section 84502), and (c) to an advertisement authorized and paid for by a committee for the purpose of supporting or opposing an initiative (Section 84503).

Having made the requisite expenditure in support of an initiative, the Wilson Committee is subject to the disclosure of major funding sources provisions of Section 84507. This conclusion is based on the fact that the definition in Section 84502 applies to "any committee" making expenditures of \$50,000 or more. The disclosure obligations of Section 84507 require the committee to indicate in the advertisement which, if any, major funding sources of the committee apply.²

(2) We agree with your conclusion that the airing of the advertisement paid for by the Wilson Committee constitutes a non-monetary contribution to the Yes on 115 Committee. For this reason, upon having "made" the non-monetary contribution to the Yes of 115 Committee, the Wilson Committee thereafter would become, and thus be required to be disclosed as, a major funding source of the Yes on 115 Committee pursuant to any applicable provisions of Proposition 105, and specifically Section 84507.

Of the four categories of major funding sources requiring disclosure pursuant to Section 84507, "persons" as provided in Section 84507(b) is potentially applicable to the Wilson Commit-

² Section 84507, "Disclosure of Major Funding Sources," reads as follows:

Any advertisement authorized by a committee shall include a statement that each of the following, where applicable, is a major funding source:

(a) Any industry which is both the largest industry contributor to the committee and whose combined contributions to the committee are \$500,000 or more, or are \$50,000 or more and constitute 25 percent or more of all contributions.

(b) A person whose contributions to the committee are \$100,000 or more and who is the largest contributor.

(c) Corporations as a group when their combined contributions to the committee are \$100,000 or more and constitute 50 percent or more of all contributions, and unions as a group when their combined contributions to the committee are \$100,000 or more, and constitute fifty percent or more of all contributions.

(d) Out-of-state contributors as a group, when their combined contributions to the committee are \$100,000 or more and constitute 50 percent or more of all contributions.

Because of the Act's contribution limitations, the disclosure required by Section 84507(b) would not apply to the Wilson Committee.

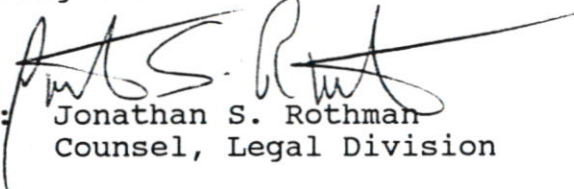
tee.³ Section 84507(b) requires disclosure of any person whose contributions to the committee are \$100,000 or more and who is the largest contributor. Section 84505 defines "person" as, among other things, any "group of persons acting in concert." The literal and plain words of this definition do not exclude a candidate's campaign committee.⁴

Should the Wilson Committee constitute a major funding source for the Yes on 115 Committee for purposes of Proposition 105, we do not see this as giving rise to any conflict with the contribution restrictions of Proposition 73. Proposed Regulation 18538, scheduled for pre-notice consideration at the Commission's June 6, 1990 meeting, specifically excludes from the ambit of a contribution the inclusion of a candidate's name when required by any provision of law. Therefore, subsequent to the airing of the Wilson Committee's advertisement, any advertisement authorized and paid for by the Yes on 115 Committee that was required to disclose the Wilson Committee as a "major funding source" would not be considered to be a contribution to the Wilson Committee and, as such, would not conflict with the contribution restrictions of Proposition 73.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Jonathan S. Rothman
Counsel, Legal Division

SH:JSR:plh

Enclosure

³ The other categories -- industry, corporations/unions, and out-of-state contributors -- do not appear applicable.

⁴ Although you raise the point in your letter that it was "doubtful" the proponent of Proposition 105 intended to require disclosure of a candidate's committee as a major funding source, the language of the proposition is unambiguous and it is understood that the drafter of the proposition knew how to say what was intended. City and County of San Francisco v. Farrell (1982) 32 Cal.3d 47, 52; Tracy v. Municipal Court (1978) 22 Cal.3d 761, 764; Hiltachk Advice Letter A-90-186 (copy enclosed).