



California
Fair Political
Practices Commission

SUPERSEDED
(SEE ATTACHED MEMO)

August 12, 1992

Richard Schmidt
112 Broad Street
San Luis Obispo, CA 93405

Re: Your Request for Advice
Our File No. A-92-408

Dear Mr. Schmidt:

You have requested advice as treasurer of Citizens for Open Government ("Citizens") concerning the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. Must Citizens for Open Government disclose donations received and payments made to defend against litigation to remove its referendum from the ballot?
2. May Citizens place the litigation funds in a separate bank account?
3. May Citizens form a separate committee for funds raised in connection with the litigation?

CONCLUSIONS

1. Payments received and made in connection with the litigation are reportable campaign activities.
2. Payments received in connection with the litigation may be placed in a separate bank account.

^{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.

3. Contributions received by Citizens to support the qualification or passage of the referendum and contributions received to defend against litigation aimed at keeping the measure off the ballot are not treated as separate activities for purposes of the Act's campaign disclosure provisions. Therefore, Citizens may not disclose funds raised and spent in connection with the litigation under a separate committee. However, Citizens may disclose the activity on separate schedules within its campaign disclosure reports.

FACTS

Citizens for Open Government circulated petitions and qualified a referendum for the November 3, 1992, ballot in the City of San Luis Obispo. A lawsuit has been filed which seeks to invalidate the measure on the basis that the issue it addresses is beyond the reach of the electorate.

Until the lawsuit was filed, Citizens had collected less than \$1,000 to qualify and support passage of the referendum. However, a separate bank account has been established to raise funds to defend against the litigation and Citizens has now raised over \$1,000 for both activities.

ANALYSIS

Under the Act's campaign disclosure provisions, a person^{3/} who receives contributions totaling \$1,000 or more in a calendar year becomes a "committee" and is required to file periodic reports disclosing contributions received and expenditures made. (Sections 82013, 84100-84221.) The terms "contribution" and "expenditure" are defined in Sections 82015 and 82025, respectively, as payments made for political purposes. A payment is made for political purposes if it is:

...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;....

Regulations 18215 and 18225.

The term "measure" includes a referendum. (Section 82043.)

^{3/} The term "person" is defined in Section 82047 to include an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

With regard to litigation expenses, the Commission has stated:

...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,^{3/} the expenditures are made for the purpose of influencing the outcome of the election in favor of or against a particular candidate or measure and should be reported....

^{3/} Litigation challenging the results of an election must be distinguished from litigation challenging the constitutionality or legality of a statute enacted by an initiative. The only connection litigation in the latter category has to the election process is the coincidental one that the statute in question was enacted by the voters rather than a legislative body. Therefore, such litigation would not give rise to any campaign disclosure obligations.

In re Buchanan
5 FPPC Ops. 14, 16 (1979).

Subsequent advice letters interpreting the Buchanan opinion have concluded that expenditures to defend against a legal challenge to the qualification of a measure and litigation costs incurred to maintain a measure's place on the ballot are also reportable. (Swift Advice Letter, No. A-83-096, and Roberti Advice Letter, No. I-91-292.) You have asked if this litigation, which challenges the legality of placing such a measure before the voters, would fall within the exception set out in footnote three of the Buchanan opinion. However, the Commission has advised that footnote three is applicable to challenges to already enacted statutes and is not applicable to pre-election challenges. (Doyle Advice Letter, No. I-88-202.)

Therefore, payments made to defend against the litigation are reportable expenditures and the money Citizens is receiving to help pay the litigation costs are reportable contributions.

With regard to the issues of separate bank accounts and separate committees, the Act does not prohibit a committee formed to support or oppose a ballot measure from establishing more than one bank account. Money raised to pay litigation costs may be placed in a separate bank account.

However, because under the Buchanan opinion expenditures made in connection with the litigation are expenditures made for the

purpose of influencing the outcome of the election in favor of the referendum, they cannot be reported separately from other expenditures made by Citizens to support the measure. Therefore, Citizens may not form a second committee to disclose contributions received and expenditures made to pay litigation costs. The committee may disclose the contributions and expenditures on separate schedules within its campaign statements, or may indicate on its campaign statements which contributions were received and which expenditures were made in connection with the litigation.

I hope this letter adequately addresses your concerns. Please contact me at (916) 322-5662 if you have questions concerning this letter.^{4/}

Sincerely,

Scott Hallabrin
Acting General Counsel

Carla Wardlow

By: Carla Wardlow
Chief, Technical Assistance
and Analysis Division

^{4/} Copies of Commission regulations and opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.