



California Fair Political Practices Commission

September 2, 1992

Ms. Violet Hembrow
P.O. Box 9105
South Lake Tahoe, CA 96158-2205

Re: Your Request for Informal Assistance
Our File No. I-92-421

Dear Ms. Hembrow:

You are seeking confirmation of advice regarding the campaign provisions of the Political Reform Act ("Act").^{1/} Because your inquiry does not provide sufficient facts regarding past and current activities of the Tahoe Keys Property Owners Association, we are treating your request as one for informal assistance.^{2/}

QUESTION

Does the Tahoe Keys Property Owners Association ("Association") qualify as a committee as the result of the mailing of a particular newsletter?

CONCLUSION

Whether the Association qualifies as a committee will depend upon several factors including the amount of funds spent to mail the newsletter, the newsletter's circulation and the Association's history in making contributions or expenditures to support or oppose candidates or measures. Please refer to the Analysis for guidance.

^{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.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

FACTS

An issue of the Tahoe Keys Property Owners Association newsletter titled "Keys Breeze" included a column titled Presidents Message. In this article the President discussed his candidacy for the South Lake Tahoe City Council and implied that other homeowners support him. The article also discussed items of interest unrelated to his upcoming election. On August 6, 1992, I left a message on your telephone answering machine to call me so that I could obtain additional information relating to the organization and the mailing. As of August 18, 1992, I have not heard from you.

ANALYSIS

The Act requires certain individuals and entities which make contributions or expenditures to support or oppose candidates or measures to disclose those activities.

Regulation 18225(b) provides:

"Expenditure" includes any monetary or non-monetary payment made by any person...that is used 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 ballot measure.

- (1) "Clearly identified" has the following meaning:
 - (A) A candidate is clearly identified if the communication states his name, makes unambiguous reference to his office or status as a candidate, or unambiguously describes him in any manner.

* * *

- (2) 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.

(Emphasis added.)

However, Regulation 18225(b)(4)(C) provides that 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 regularly published newsletter or regularly published periodical, whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication.

The issue of the Keys Breeze which was attached to your advice request clearly states that the President is a candidate for city council and that homeowners support his candidacy. Therefore, unless this issue fits within the exception provided in Regulation 18225, the costs incurred for the newsletter are expenditures. We do not have sufficient facts to determine whether this issue qualifies for this exception.

Next, we must analyze whether these expenditures and other Association activities would qualify it as a committee.

An expenditure which is made at the behest of candidate is a contribution. (Section 82015.) An organization which makes contributions may qualify as a "recipient committee" (Section 82013(a)) or a "major donor committee" (Section 82013(c)) depending upon the organization's history and activities.

Section 82013 defines "committee" as:

"Committee" means any person or combination of persons who directly or indirectly does any of the following:

(a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.

(b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or

(c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

In addition, the definition of committee is further clarified for organizations, such as the Tahoe Keys Property Owners Association, which receive funds for purposes other than making contributions to candidates or committees or expenditures to support or oppose candidates or measures. Such organizations meet the definition of a "recipient committee" if the organization meets either of the following criteria:

1. The organization receives \$1,000 in a calendar year which is "earmarked" for making contributions to candidates or committees or expenditures to support or oppose candidates or measures; or

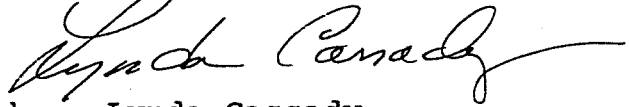
2. The organization makes contributions or expenditures of \$1,000 or more in a calendar year to support or oppose candidates or measures and the organization's members know or have reason to know that some or all of the payments will be used to make contributions or expenditures. The donors or members will have "reason to know" if the organization has established a history of making expenditures, i.e., it has during any previous calendar year made contributions to or expenditures on behalf of candidates or measures.

Whether the Association is a committee will depend upon the specific facts regarding the amount of expenditures incurred for the newsletter, any additional activities which may have occurred this calendar year and the Association's history in making contributions or expenditures to support or oppose candidates or measures. Unfortunately, without more specific facts I am unable to make a determination whether the Association qualifies as a committee.^{3/}

Please do not hesitate to contact me at (916) 322-5662 if you wish to discuss in more detail the issues addressed in this letter.

Sincerely,

Scott Hallabrin
Acting General Counsel



by: Lynda Cassady
Political Reform Consultant

^{3/} If the facts determine that the Association is a committee, it appears that it may also be "controlled" by the President of the Association. (Section 82016.) A candidate may have only one controlled committee for each election. (Section 85201.) Please have the President contact our office for guidance on this issue.