



# California Fair Political Practices Commission

April 11, 1994

Howard J. Klein  
Attorney at Law  
4199 Campus Dr., Ste. 700  
Irvine, CA 92715

Re: Your Request for Advice  
Our File No. A-94-097

Dear Mr. Klein:

You have requested advice on behalf of Ron K. Unz concerning the campaign provisions of the Political Reform Act (the "Act").<sup>1/</sup>

### QUESTION

Prior to deciding to run for office, your client, Ron K. Unz, commissioned a public opinion survey. You have asked whether Mr. Unz must disclose payments made from his personal funds to commission the survey. If the cost of the survey is reportable, you have asked whether the amount to be disclosed is the total cost of the survey or only that portion which relates to the political campaign, and whether the value can be discounted using the formula set forth in federal regulation 11 CFR §106.4.

### CONCLUSION

Mr. Unz must disclose payments made for the survey. The amount to be disclosed may be pro rated based on the portion of the survey which assisted Mr. Unz in deciding whether to run for office, but may not be discounted based on the federal regulation.

### FACTS

In February 1994, Mr. Unz filed a Declaration of Intent to run for the Republican nomination for Governor. In March 1994, he filed a Declaration of Candidacy and the required Candidate Intention and Campaign Bank Account statements.

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<sup>1/</sup> 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.

In November 1993, Mr. Unz commissioned a survey which covered a variety of issues, including issues that might be relevant to him if he were to run for Governor. Mr. Unz was not mentioned by name in the survey. The cost of the survey was in excess of \$10,000, which was paid from Mr. Unz's personal funds.

#### ANALYSIS

The Act requires candidates to file periodic reports disclosing contributions received and expenditures made for the purpose of seeking or holding state or local elective office. (Section 84200, et seq.) The term "candidate" is defined in Section 82007, as follows:

"Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time....

The Commission has previously advised that an individual may undertake certain exploratory activities without qualifying as a candidate under the Act or incurring any campaign disclosure obligations. (Powell Advice Letter, No. A-85-241.) Such activities include conducting a survey to determine what issues are considered most important to voters as long as the survey does not list the potential candidate's qualifications or list the names of persons who are supporting the individual's candidacy. However, if the individual ultimately decides to become a candidate, payments in connection with the exploratory activities must be disclosed. (Powell, supra.) Therefore, Mr. Unz must disclose his payments for the survey.

For purposes of determining the amount which must be disclosed, you have stated that the survey had substantial non-political aspects within the scope of its questions. Therefore, we believe it would be appropriate to disclose only the amount Mr. Unz would have paid to commission a survey asking those questions which related to political issues or assisted him in deciding whether to run for office.

With regard to the discounting of survey costs as established in federal regulation 11 CFR §106.4, we note that this regulation is applicable to the valuation of survey results purchased from or contributed by a third party. Payments made by an individual for a survey to determine whether to run for office are regulated under 11 CFR §100.8(b)(1), which states that such payments are reportable if the individual ultimately decides to become a candidate. The Fair Political Practices Commission does not interpret federal statutes or regulations. However, the advice provided in the Powell letter is consistent with the federal rules governing the disclosure of payments made by a potential candidate -- for exploratory surveys. Therefore, Mr. Unz's payments for the survey may not be discounted.

If you have questions concerning this letter, please contact me at (916) 322-5662.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Carla Wardlow  
Chief, Technical Assistance  
Division