

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

October 23, 1995

William Vines, Councilmember
City of East Palo Alto
865 Runnymede
East Palo Alto, CA 94303

Re: Your Request for Informal
Assistance
Our File No. I-95-275

Dear Mr. Vines:

You have requested advice concerning the campaign provisions of the Political Reform Act (the "Act")^{1/} as well as the provisions regulating the use of campaign funds. Because your questions partially concern activities which have already occurred, we must treat your letter as a request for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTIONS

1. May you use campaign funds to produce a newsletter containing non-political items of general interest in addition to political information?
2. May you provide both unpaid and paid advertising in the newsletter to local businesses?
3. May contributions be accepted to assist in funding the newsletter?

^{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. (Section 83114; Regulation 18329(c)(3).)

4. May you publish articles supporting candidates for local elected office?

5. Are volunteer services of the treasurer in producing the newsletter or others in writing columns for the newsletter considered in-kind contributions?

6. May the committee use a post office box in lieu of a street address on the newsletter?

CONCLUSIONS

1-4. The expenditure of campaign funds for a newsletter is permissible so long as it is reasonably related to a political, legislative, or governmental purpose. The newsletter distributed on August 19, 1995, appears to meet this test. Payments received and made in connection with the newsletter must be disclosed on your campaign disclosure reports and may be subject to restrictions as discussed in the analysis below.

5. Volunteer personal services are not contributions under the Act and are not required to be disclosed.

6. The name and address of a candidate or committee which sends a mass mailing must be printed on the outside of the mailing in no less than 6-point type. If the candidate or committee's street address is a matter of public record with the Secretary of State, a post office box may be used. Only materials distributed the mail are subject to this requirement.

FACTS

Your controlled committee, Friends of Bill Vines, published a newsletter which was distributed on August 19, 1995, containing articles about city projects, the city budget, and police services. The newsletter also contained a calendar of upcoming meetings of the city council and redevelopment agency, and an article written by a candidate for the school board. Because there is no newspaper in East Palo Alto, you would like to continue publishing the newsletter twice monthly and include both political and non-political items of general interest. Non-political items would include information about city government similar to the information published in the August 19 newsletter; lists of community resources; health, school and senior information; recipes; and profiles of local residents and businesses.

The newsletter will be distributed in stacks at local businesses and apartment buildings and later may be distributed newspaper-style to individual homes.

ANALYSIS

Permissible Expenditures of Campaign Funds

In general, expenditures of campaign funds must be reasonably related to a political, legislative, or governmental purpose.^{3/} (Section 89512.) Expenditures from your campaign funds to publish a newsletter informing residents about the activities of the city council and other city agencies are reasonably related to a governmental purpose. (Pearson Advice Letter, No. I-91-287; Olander Advice Letter, No. A-92-211.) In addition, publication of a newsletter in which you are featured will clearly provide political benefits to you as an elected official and future candidate. Including articles supporting or opposing other candidates also has a political purpose, although these expenditures are reportable and may be subject to the transfer ban as discussed below.

Furthermore, Section 89513(f)(1) provides that an expenditure of campaign funds for personal gifts is permitted only when the gift is directly related to a political, legislative, or governmental purpose. The Act defines "gift" to mean a payment to the extent that consideration of equal or greater value is not received. (Section 82028.) Therefore, you may provide free advertising in the newsletter to local businesses as long as it can be established that doing so bears a direct relationship to a political, legislative, or governmental purpose.

Disclosure of Contributions Received and Expenditures Made

Donations you receive to help defray the cost of publishing the newsletter would be considered reportable "contributions" to you, and payments made in connection with the newsletter would be considered reportable "expenditures." (Sections 82015 and 82025; Regulations 18215 and 18225.) Payments you receive for advertising for which the advertiser has paid fair market value may be reported as miscellaneous increases to cash on Schedule I of your campaign statements. "Fair market value" is the amount the advertiser would pay to purchase similar advertising space on the open market. (Section 82025.5.)

The definition of "contribution" specifically excludes volunteer personal services as well as payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they will be repaid. (Section 82015.) Therefore, you are not required

^{3/} Expenditures which confer a substantial personal benefit on the candidate or any individual or individuals with authority to approve the expenditure of campaign funds held by a candidate's committee must be directly related to a political, legislative, or governmental purpose. (Section 89512.)

to report the voluntary personal services of the treasurer or of others who write columns for the newsletter.

Contributions to Other Candidates and the Transfer Ban

At present, contributions from your campaign funds to another candidate are prohibited only if the candidate is running in a special election, or if the candidate is subject to a valid local contribution limitation ordinance. (Section 85304.)^{4/}

If you expend campaign funds to publish an article supporting the election of another candidate and the article is published in cooperation, consultation, coordination, or concert with, or at the request or suggestion of the candidate, the expenditure will be considered a "contribution" to the candidate. The same is true if you provide free advertising to a candidate. (Section 82015; Regulation 18215.)

Mass Mailing Identification

The Act requires that any mass mailing (more than 200 substantially similar pieces of mail sent in a calendar month) must contain the name and address of the candidate or committee which has paid the costs of the mailing. (Sections 82041.5 and 84305; Regulation 18435.) The name and address must be printed on the outside of the mailing in no less than 6-point type. Section 84305(a) also provides that a post office box may be stated in lieu of a street address if the sender's address is a matter of public record with the Secretary of State.

However, the requirement to print any identifying information on materials distributed by a candidate or committee is applicable only to materials sent through the mail.

Bank Account Restrictions

Section 85201 specifies that all expenditures made by a candidate to run for a specific office must be made from the appropriate campaign bank account established for that election. In addition, any mass mailing sent within three months of the candidate's election must be paid from the account. If the newsletter will be used to promote your future election or you send more than 200 copies of a newsletter through the mail during the three months prior to your next election, expenditures for the newsletter must be made from an account designated for that election.

^{4/} The general transfer ban has been enjoined by the federal courts. (Service Employees International Union, et al. v. Fair Political Practices Commission (1992) 955 F.2d 1312, cert. den. 112 S.Ct. 3056.) The California Supreme Court may reinstate it in the near future. (Quentin L. Kopp and Ross Johnson v. Fair Political Practices Commission, Supreme Court, Case No. S038571.)

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Our records indicate that you have filed a campaign bank account statement (Form 502) which is designated for your 1992 election. If you plan to run for reelection in 1996, you must establish a bank account for 1996 or redesignate your existing account in order to make expenditures in connection with that election.

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) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

Carla Wardlow

By: Carla Wardlow
Division Chief
Technical Assistance Division