

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 4, 1997

Dexter D. Ahlgren
San Lorenzo Valley Water District
c/o Ahlgren Vineyard
P.O. Box 909
Boulder Creek, California 95006

Re: Your Request for Assistance
Our File No. I-96-348

Dear Mr. Ahlgren:

This is in response to your request for advice under the campaign disclosure provisions of the Political Reform Act.¹ Since you are merely seeking general information regarding your reporting responsibilities, your letter is considered a request for informal assistance.²

QUESTION

The Arcias for Senate committee ("committee") asked you if it would be permissible to include your name and photograph in a flyer which endorsed your election to the San Lorenzo Valley Water District Board. Did the committee make a contribution to you which you must report?

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 18000-18995. 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).)

CONCLUSION

Since the committee received your consent to include you in a mailer which supported your election, the expenditure by the Areias for Senate committee to produce the mailer is a contribution to you.

FACTS

During your campaign for the San Lorenzo Valley Water District board ("board"), you and two other candidates for the board were endorsed in a mailer paid for and mailed by the Areias for Senate committee. The mailer was sent to approximately 14,000 residents not only within the San Lorenzo Valley Water District, but outside the district as well. You believe that the total cost of the mailer was \$6,000 to \$8,000.

The mailer which you submitted with your request for advice is a one-page 8 ½ x 11" flyer. One side of the flyer reads in bold print "Scotts Valley School-site Alert!" followed by three statements which read: "Stop the Graham Hill project!," "Keep Scotts Valley in Scotts Valley," and "Vote to Elect: Rusty Areias to State Senate" and "Peter Lang, David Ross, Dexter Ahlgren, San Lorenzo Valley Water District Board."

The other side of the flyer contains a 3 x 5" picture of Rusty Areias with a statement opposing the Scotts Valley School Complex with an endorsement by The Sierra Club and The League of Conservation Voters. Below the picture of Rusty Areias are 2 x 3" pictures of each of three candidates for the San Lorenzo Valley Water Board, i.e., Peter Lang, David Ross, and you. Below the photographs is a statement that the candidates for the board pledge to protect the environment, stop the Graham Hill School Complex, and oppose logging the District's watershed at Waterman Gap. This statement is followed by an endorsement by The Sierra Club.

You indicated in a telephone conversation that the Areias for Senate committee asked for your consent to promote your election in the mailer prior to its mailing. The committee further requested, and received from you, a photograph for use in the mailer.

ANALYSIS

The Political Reform Act was enacted by the voters in 1974 to accomplish several purposes, one purpose being that the receipts and expenditures in election campaigns be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited. (Section 81002(a).) To accomplish that purpose, the Act requires candidates to disclose campaign contributions received and expenditures made at specified times.

A contribution means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure "made at the behest" of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure, or some exception applies. (Section 82015; Regulation 18215.)

If a person or group of persons make an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate and the payment is not made to, or made at the behest of, the affected candidate, the person is making an "independent expenditure."³ Candidates and committees which may have benefitted by the message in the communication have not received a contribution provided the communication was not made at the behest of the candidate or committee.

"Made at the behest" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of, the candidate. Such arrangement must occur prior to the making of a communication described in Section 82031.

An expenditure is presumed to be made at the behest of a candidate or committee if it is:

- (1) Based on information about the candidate's or committee's campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or
- (2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.

An expenditure is not made at the behest of a candidate or committee merely when:

- (1) A person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or candidate's agents concerning the expenditure; or

³ An independent expenditure means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. (Section 82031.)

(2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agents.

(Regulation 18225.7.)

In our telephone conversation, you indicated to me that the Areias for Senate committee asked for, and obtained from you, a photograph for use in the mailer.

This activity, standing alone, would not result in a communication made at your behest. If a person merely obtains your photograph, your biography or a copy of a press statement and, totally unbeknownst to you, the person used this information to create a mailer supporting your election, the creation of the mailer would not be at your behest and you would not have received a contribution.

Your facts are somewhat different. In our telephone conversation, you indicated that the Areias committee contacted you and specifically asked if it would be permissible for them to send out a flyer supporting your election. It also appears from the mailer that the photographs of you and of Peter Lang and David Ross, which contain the same background material and are of the same size and pose, were taken by a photographer for the purpose of developing the mailer. This is somewhat different than a person merely obtaining information for the purpose of developing a flyer totally independent of your knowledge, cooperation or permission.

The facts do not provide for any conclusion other than the expenditure by the Areias for Senate committee was made at your behest and is a payment which you must report as a contribution.⁴

You indicated to me that this contribution was not reported on your semi-annual statement filed on January 31, 1997. That semi-annual statement must be amended to reflect this contribution. You would report this payment as a non-monetary contribution on Schedule C of the Form 490 at a value of what it would cost you to send a similar mailing, at the fair market rate. For purposes of valuing, you may exclude the cost incurred to mail to residents outside the voting area of the water district. This will, of course, change the figures on the summary portion of Schedule C, as well as the Campaign Disclosure Statement Summary Page. A new Form 490 is enclosed for your use. The amended Form 490, along with the enclosed Form 405, Amendment to Campaign Disclosure Statement, must be completed as soon as possible and filed with your appropriate filing officers.

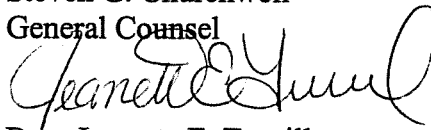
⁴Please note that Proposition 208, a campaign finance reform initiative passed by the voters in the 1996 General Election took effect January 1, 1997. Section 85306 of Proposition 208 prohibits candidates and committees controlled by a candidate or officeholder from making any contribution to any other candidate running for office or his or her controlled committee.

In your letter, you asked to receive the regulations which are referenced as footnotes 42, 45, 60 and 65, in the pamphlet titled California's Conflict of Interest Laws for Public Officials which you had previously received from this office. Those regulations are enclosed.

If you have any questions, or wish to discuss this further, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script, appearing to read "Jeanette E. Turvill", written over the typed name.

By: Jeanette E. Turvill
Political Reform Consultant
Technical Assistance Division