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## FAIR POLITICAL PRACTICES COMMISSION

April 16, 1997

Robert E. Ewing  
City Attorney  
Town of Danville  
510 La Gonda Way  
Danville, California 94526-1722

**Re: Your Request for Advice  
Our File No. A-97-061**

Dear Mr. Ewing:

As the city attorney, you are seeking advice on behalf of your client, the Town of Danville. This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Is the mail-out ballot and protest procedure required by Article XIID, Section 4 of the California Constitution a "measure" within the meaning of Government Code Section 82043?
2. Is a group of citizens who either receive or spend more than \$1,000 advocating a yes or no vote in a ballot and protest procedure considered a committee pursuant to Government Code Section 82013?

### CONCLUSIONS

1. The mail-out ballot and protest procedure for assessment districts required by Proposition 218 is neither a measure nor an election under the Act.
2. A group of citizens who receive or spend more than \$1,000 advocating a yes or no vote in the ballot and protest procedure is not considered a committee under Section 82013 of the Act. Therefore, they do not have any filing requirements.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

## FACTS

The Town of Danville will be conducting a mail-out ballot and protest procedure, pursuant to the requirements of Proposition 218. A group of citizens has indicated an interest in working collectively to promote ratification of the town's existing Landscape and Lighting Assessment District. The group may seek contributions and make expenditures as part of this effort. Representatives of this citizen's group have asked if they are considered a committee and if they must comply with the provisions of the Political Reform Act.

## ANALYSIS

### Question 1

Section 82043 of the Act defines a "measure" as:

"...any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot."

The Act defines "election" as any primary, general, special or recall election held in this state. (Section 82022.) However, the provisions pertaining to the requirements for an election are in the California Elections Code, which is under the jurisdiction of the Secretary of State's Office.

The mail-out ballot and protest is a procedure whereby ballots are mailed to all property owners in an assessment district to determine if there is a majority protest to an assessment. Property owners may vote only by mail-in ballot. At a public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. (Proposition 218, Section 4(e).)

Based upon the definitions and interpretation of the Act, the mail-out ballot and protest procedure for assessment districts required by Proposition 218 is neither a measure nor an election.

In addition, the Secretary of State's Elections Division is informally advising that the necessary statutory and constitutional procedures for a formal election are missing from the ballot and protest process.

Assembly Bill 1506 would provide that the majority protest proceedings of Proposition 218 constitute neither an election nor voting within the meaning of Article II of the California Constitution or the Elections Code.

## Question 2


You also inquired if a group of citizens, who receive or spend \$1,000 or more to advocate a yes or no vote in the ballot and protest procedure, is considered a recipient committee under the Act. A committee is broadly defined as any group of persons who receives contributions of \$1,000 or more in a calendar year. (Section 82013(a).) A contribution is "any payment 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 the qualification or passage of any measure." (Regulation 18215(a)(1), copy enclosed.)

Since the citizens are not raising money for the election of a candidate or the qualification or passage of a measure, under the definitions in the Act, they are not raising money for a political purpose. Therefore, a group of citizens raising money only to advocate a position during the mail-out ballot and protest procedure do not constitute a committee pursuant to Section 82013 and do not have any filing requirements under the Act.

I trust this answers your questions. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel

By:  Jill Stecher  
Staff Counsel, Legal Division

SGC:JS:ak

Enclosure