



## FAIR POLITICAL PRACTICES COMMISSION

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August 28, 1998

James Hill  
6085 Avenida Antigua  
Yorba Linda, CA 92887

Re: Your Request for Advice  
Our File No. A-98-194

Dear Mr. Hill:

This letter is in response to your request for advice on behalf of the Organization of Unified Concerned Homeowners ("OUCH") regarding its filing obligations under the provisions of the Political Reform Act (the "Act").<sup>1</sup> Please bear in mind that nothing in this letter should be construed as an evaluation of any conduct which may already have taken place. Further, this letter is based on the facts as they have been presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPCC Ops. 71.)

### QUESTIONS

1. Does OUCH have any filing obligations as a result of having made payments to an attorney who drafted a ballot measure?
2. Does OUCH incur any filing obligations as a result of printing articles in its newsletter advocating on behalf of the ballot measure?
3. Will OUCH incur any filing obligations as a result of its support of the ballot measure?

### CONCLUSIONS

1. No. Paying attorney fees for the drafting of a ballot measure does not impose filing obligations on OUCH.

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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.

2. No. So long as OUCH has incurred no additional costs in producing its regularly scheduled newsletter it has no filing obligations as a result of advocating on behalf of the ballot measure.

3. It is possible that OUCH may have future filing obligations as a result of supporting the passage of a ballot measure.

### FACTS

You are the Treasurer for OUCH, a 501(c) (4) organization that has been in existence for about 10 years. OUCH is a homeowner's association in Yorba Linda which has monthly public meetings to which speakers are invited, including public elected officials as well as others. You indicate that OUCH has never made political contributions.

OUCH made payments of \$2,000 to \$3,000 in 1996 and 1997 to an attorney to draft a city ballot measure which has qualified for the November 1998 ballot in Yorba Linda. The measure is called Proposition J, a Measure to Stop the Widening of the Imperial Highway.

You have also stated that OUCH has supported the ballot measure in its quarterly newsletter. OUCH has not incurred any additional costs to produce this message by: deviating from its normal schedule and putting out a special issue, or by including any additional pages over what it normally puts in the newsletter, or by expanding its distribution list. However, two of the proponents of the ballot measure are directors of OUCH, and they have formed a committee primarily formed to support the passage of Proposition J. This committee has reported the mention of the ballot measure in the newsletter as an in-kind contribution to their committee.

### ANALYSIS

The Act imposes campaign disclosure obligations on persons who make or receive payments for political purposes. (Sections 82013, 82015, 82025.) A payment is made for political purposes if it is intended to influence the actions of the voters for or against the qualification or passage of any measure. (Regulations 18215 and 18225.)

A person or group of persons that receives contributions totaling \$1,000 or more in a calendar year to support or oppose a measure will incur campaign disclosure obligations as a "committee" under the Act. (Section 82013(a).)

The term "measure" is defined in Section 82043 to include a referendum, initiative, or recall procedure, whether or not it qualifies for the ballot. However, the Commission has held

that such a procedure does not become a measure until the proponents begin to circulate signature petitions to qualify the measure for the ballot, and that certain costs incurred prior to that time, such as legal fees paid in connection with drafting the measure, are not reportable events. (*Madden Advice Letter*, No. I-92-242, copy enclosed; see also *League of Women Voters v. Countywide Criminal Justice Coord. Com.* (1988) 203 Cal. App. 3d 529.)

The term "contribution" as defined in Regulation 18215 excludes payments made by an organization for its regularly published newsletter if the circulation is limited to the organization's members and those who request the publication. This exception applies only to the costs regularly incurred in publication and distribution of the newsletter. The regulation further states that any additional costs incurred are contributions, including, but not limited to, expanded circulation; substantial alterations in size, style, or format; or a change in publication schedule, such as a special edition. The fact that the committee which is primarily formed to support the passage of Proposition J has, out of an abundance of caution, reported a contribution from OUCH because of the mention of the ballot measure in the newsletter, does not make that activity a contribution.

Therefore, based on the information you have provided us, it does not appear that OUCH meets the definition of committee and does not have any filing obligation based on its activity. However, it may have filing obligations as a result of future activity.

If OUCH asks for contributions to support or oppose candidates or ballot measures and pursuant to such a solicitation receives contributions totaling \$1,000 or more in a calendar year, it will meet the definition of committee in Section 82013 and incur filing obligations.

In addition, you should be aware that the term "contribution" is defined in Regulation 18215(b)(1) as follows:

"Any payment made to a person or organization other than a candidate or committee, when, at the time of making the payment, the donor knows or has reason to know that the payment, or funds with which the payment will be commingled, will be used to make contributions or expenditures. If the donor knows or has reason to know that only part of the payment will be used to make contributions or expenditures, the payment shall be apportioned on a reasonable basis in order to determine the amount of the contribution

"There shall be a presumption that the donor does not have reason to know that all or part of the payment will be used to make

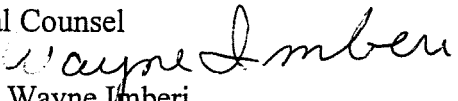
expenditures or contributions, unless the person or organization has made expenditures or contributions of at least one thousand dollars (\$1,000) in the aggregate during the calendar year in which the payment occurs, or any of the immediately preceding four calendar years."

Because OUCH has never made political contributions, the members of OUCH, at this point, appear to have no reason to know that their donations to OUCH may be used for political purposes. However, if OUCH makes political expenditures or contributions of \$1,000 in a calendar year and then makes additional expenditures or contributions of \$1,000 or more within the next four years, OUCH will qualify as a committee under section 82013.

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

Sincerely,

Steven G. Churchwell  
General Counsel

  
By: Wayne Imber  
Political Reform Consultant

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