



## FAIR POLITICAL PRACTICES COMMISSION

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July 20, 1999

Robert E. Leidigh  
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555 Capitol Mall, Suite 1425  
Sacramento, California 95814-4602

**Re: Your Request for Advice  
Our File No. A-99-200**

Dear Mr. Leidigh:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Does Section 85320 prohibit a United States citizen, who is domiciled outside of the United States, from making any contribution or expenditure in connection with a California ballot measure?

### CONCLUSION

Yes. As United States citizens domiciled in Taiwan, neither Frederic Lin nor Kevin Lin may make a contribution or expenditure in connection with a state or local ballot measure.

### FACTS

Hong Lien ("Frederic") Lin and his brother Yao ("Kevin") Lin are United States citizens. At one time, they resided in California. Their parents are citizens of Taiwan. Frederic and Kevin Lin currently reside in Taipei, Taiwan and are active managers in various successful business enterprises owned by their family. They also have extensive real property holdings in California, including a residence in Hillsborough, California, to which they return from time to time.

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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.

The two brothers, together with their mother, Chang Su-O ("Jennifer") Lin hold undivided interests in several large parcels of real property situated in the North Livermore area of Alameda County. Jennifer, Frederic and Kevin Lin ("the Lins") also jointly own other parcels of real property in California, including property within the City of Pasadena.

The Lins are in the process of obtaining land use approvals in order to develop their properties in the North Livermore area. The proposed development project is nearing the final EIR state, which is a necessary step toward final approval by various governmental entities. The Lins real property within the City of Pleasanton is also undeveloped.

The Lins have hired various consultants (with letters of authorization) to handle their affairs relative to these properties. Among these consultants are: Ted Fairfield, James Tong and Martin Inderbitzen, each of whom is a United States citizen. The consultants prepare the various documents and other submissions necessary for approval of the proposed project in North Livermore, and any documents pertinent to the possible development of the property in Pleasanton. The consultants also interact with local governmental officials and community leaders in relation to the proposed project. One or more of them may also interact with the campaign committee(s) being formed to oppose the proposed ballot measure discussed below.

Recently, a ballot measure was circulated in the City of Livermore to place an initiative on the next ballot that would restrict development of certain properties. The initiative would have an adverse impact on the Lins' properties in North Livermore and on other properties adjacent thereto. The Lins' wish to oppose the initiative when it reaches the ballot.

In April 1999, signatures were obtained by the proponents and the measure was then submitted on April 28, 1999 to the Livermore City Council for placement on the ballot. However, the city discovered some errors in the petitions as circulated. On May 1, 1999, at a special meeting, the city council considered whether to challenge the petitions based on the apparent defects. Ultimately, the city council decided to seek judicial review to determine if any of the errors would invalidate the measure before it is placed on the ballot. The superior court held that the petitions were satisfactory for the measure to be placed on the ballot. On July 12, 1999 the city council formally placed the initiative on the November 1999 ballot.

In Pleasanton, a similar measure has been circulated. Signatures were turned in to the city clerk on May 24, 1999, and were certified on June 1, 1999. Pleasanton does not have a regularly scheduled election in November 1999; therefore, a special election must be held to vote on the initiative. In the meantime, the city council has directed city staff to prepare a detailed report on the effects of the initiative. The city council will ultimately decide whether to adopt the initiative as an ordinance or whether to call a special election in November and place the measure on the ballot. If adopted, the measure will directly and adversely impact the Lins' property.

Frederic and Kevin Lin wish to make contributions and expenditures in opposition to both ballot measures. Jennifer Lin will not make any contributions or expenditures in relation to the ballot measure campaign, nor will she or her husband or their Taiwanese businesses reimburse anyone for contributions or expenditures in relation to this ballot measure campaign. Any services performed by the Lins' team of consultants, which might constitute contributions or expenditures, will be segregated and billed separately to a segregated account funded exclusively by Frederic or Kevin Lin, or both.

### ANALYSIS

Section 85320 provides, in pertinent part:

“(a) No foreign government or foreign principal shall make any contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local initiative, recall, or referendum measure.

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“(c) For purposes of this section, a foreign principal is a person defined in 22 U.S.C. 611(b).”

Section 85320 defines a “foreign principal” according to United States Code, Title 22, Section 611(b) (“22 U.S.C. 611(b)”). The relevant portion of 22 U.S.C. 611(b) defines a “foreign principal” as “a person outside of the United States, *unless* it is established that such person is an individual and a citizen of and domiciled within the United States.” A “person” includes an individual. (22 U.S.C. § 611(a).) Thus, United States citizens domiciled outside of the United States are considered to be “foreign principals.”<sup>2</sup> Consequently, such persons may not make contributions or expenditures in connection with state or local ballot measures.

You believe that the Legislature did not intend this result. (Stats. 1997, ch. 67.) You have provided legislative history documents which demonstrate that the Legislature and the Governor did not intend to restrict the rights of United States citizens with the enactment of Section 85320. You have identified four legislative documents that misstate the definition of “foreign principle” contained in 22 U.S.C. 611(b).<sup>3</sup> These documents define a “foreign

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<sup>2</sup> The term “domicile” is not defined in the statute. However, under federal common law, a person is “domiciled” in the United States if, lawfully, the person is physically present and intends to remain in the United States indefinitely. (*Lepe-Guitron v. Immigration and Naturalization Service* (1993) 16 F.3d 1021, 1025.)

<sup>3</sup> Governor’s Office of Planning and Research, Enrolled Bill Report, Analysis of Sen. Bill 109, July 7, 1997; Sen. Rules Com., Office of Sen. Floor Analysis, Unfinished Business Analysis of Sen. Bill 109, June 27, 1997; Sen. Rules Com., Office of Sen. Floor Analysis, Third Reading Analysis of Sen. Bill 109, Mar. 19, 1997; Senate Com. on Elections and Reapportionment, Analysis of Sen. Bill 109, Feb. 19, 1997.

principal,” in pertinent part, as an “individual outside the United States who is not a U.S. citizen.” Thus, the legislators who relied upon the analyses did not realize that the new law, by its plain language, would apply to United States citizens who are domiciled outside of the United States.

Notwithstanding the law’s legislative history, it is well settled that the courts in California will not refer to extrinsic sources when a statute is clear and unambiguous on its face. (*People v. Otto* (1992) 2 Cal.4th 1088, 1100.) The reference to the federal statute in Section 85320 is not vague. In addition, the federal statute clearly states that all individuals outside of the United States are “foreign principals” unless they are United States citizens *and* domiciled within the United States. Accordingly, as United States citizens domiciled outside of the United States, neither Frederic Lin nor Kevin Lin may make a contribution or expenditure in connection with a state or local ballot measure.

You believe that this interpretation of Section 85320 unconstitutionally infringes on a United States citizen’s right to engage in free speech in defense of his or her property rights. We have no authority to consider that issue. The Commission may not declare a statute invalid, unless an appellate court has made that determination. (Cal. Const., art. III, § 3.5.)

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

Sincerely,

Steven G. Churchwell  
General Counsel



By: Julia Butcher  
Staff Counsel, Legal Division

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