FAIR POLITICAL PRACTICES COMMISSION
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October 15, 2003

Douglas P. Haubert
Aleshire & Wynder, LLP
18881 Von Karman Avenue
Tower 17, Suite 400
Irvine, CA 92612

Re: Your Request for Informal Assistance
Our File No. I-03-212

Dear Mr. Haubert:

This letter is in response to your request for informal assistance on behalf of the city clerk for the City of Carson, Helen Kawagoe, regarding campaign provisions of the Political Reform Act (the "Act").[1]

QUESTION

Are payments supporting an election contest, made by a defeated candidate, reportable as expenditures under the Act?

CONCLUSION

Yes, payments made by an unsuccessful candidate to prosecute an election contest are reportable expenditures within the meaning of the Act.

FACTS

Two unsuccessful candidates in the city's March 2003 election are pursuing an election contest (L.A. Superior Court Case No. BS082401) whose object is to reverse certified election outcomes, and have themselves declared winners. The defendants are Councilmembers Elito M. Santarina and Julie Ruiz Raber.

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[1] Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. Informal assistance does not provide the requestor with the immunity conferred by formal written advice. (Regulation 18329(c)(3).) (Copy enclosed.)

ANALYSIS

The answer to your question is controlled by the Commission's opinion *In re Buchanan* (1979) 5 FPPC Ops. 14 (copy enclosed). *Buchanan* considered an election contest growing out of a supervisorial primary election where one candidate received a plurality (but not a majority) of the vote. The law then required that the candidate with the second-highest vote count be placed on the general election ballot along with the winner of the primary election. As it happened, two candidates were tied for second place, and one of them filed a lawsuit seeking to remove his rival from the general election ballot, on the ground that the contestant had actually received more votes in the primary and therefore should have advanced to the general election *alone* against the first-place candidate. The candidate attempting to retain his place on the ballot paid the litigation costs himself, and asked the Commission whether those payments were reportable expenditures under the Act.

The Commission drew no distinction between payments made by a candidate who initiates an election contest, and payments made by a candidate defending against such a contest. Rather, the Commission reasoned from the core definitions of "expenditure" and "contribution."[2]

The Commission began its analysis by observing that the term "contribution" is defined as any payment that is received by or made at the behest of a candidate, without full and adequate consideration, *unless "[i]t is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office."* (*Buchanan, supra*; see now § 82015(b)(2)(B).) The Commission added that the term "expenditure" is defined in the same fashion. (*Id.* See now § 82025, regulation 18225(a) (2)(A) and (B).)

The Commission then noted:

> "Since the litigation expense payments are aimed at maintaining [the defending candidate's] status as a candidate, they are clearly related to his candidacy and should be reported on his candidate's statement as an expenditure. In addition, since [the candidate] has used his own funds to pay for the litigation, he must report the funds as a contribution to himself. Section 82015.
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> "Although payments for the costs of litigation are not generally thought of as having any connection with politi-cal campaigns, in the circumstances presented here

[2] In *Buchanan* the Commission based its opinion on portions of regulations 18215 and 18225, which have since been amended. However, the regulatory language considered by the Commission in the *Buchanan* opinion is identical to the language of the current statutes, §§ 82015 and 82025. For convenience, our discussion will refer to the present statutory language and to the regulations as currently numbered, rather than to the 1979 regulations. (See more recently *In re Johnson* (1989) 12 FPPC Ops 1; *Giacchino* Advice Letter, No. A-02-235.)

> and in similar circumstances, the litigation costs are just as key to the success of the campaign as traditional campaign costs such as mailings and media advertisements. When expenditures are made to support litigation aimed at gaining a place on the ballot for a candidate or measure, aimed at keeping a candidate or measure off the ballot, or challenging the results of an election, the expenditures are made for the purpose of influencing the outcome of the election in favor of or against a particular candidate or measure and should be reported." (*In re Buchanan* (1979) 5 FPPC Ops. 14.) (Footnote omitted.)

The precise subject of the *Buchanan* opinion was payments made to defend against an election challenge. But the Commission made it quite clear that payments incurred in "challenging the results of an election" also are reportable "expenditures" within the meaning of § 82025. Accordingly, we conclude that the answer to your question is governed by *In re Buchanan*. Payments made by unsuccessful candidates to prosecute election contests are reportable "expenditures" under the Act.

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

Sincerely,

Luisa Menchaca
General Counsel

Lawrence T. Woodlock

By: Lawrence T. Woodlock
Senior Counsel, Legal Division

Enclosures
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