

DOCUMENT 11

Emphasis Added By Grand Jury's Underscoring



California Fair Political Practices Commission

January 23, 1991

Connie Ferris Johnson
Deputy District Attorney
P.O. Box 808
Santa Ana, CA 92702-0808

Re: FPPC No. 89/453
Placentia School District

Dear Ms. Johnson:

We have completed our review of your complaint questioning whether the Placentia Unified School District, the Yorba Linda School District, and the San Juan Capistrano Unified School District violated the campaign reporting provisions of the Political Reform Act (the "Act")^{1/} in connection with their involvement in two school elections. We have decided to close the file for the reasons expressed below.

Generally, state and local government agencies are prohibited from spending public funds on campaign-related activities. (Penal Code §424, Stanson v. Mott, 17 Cal. 3d 206 (1976).)^{2/} Nonetheless, Commission Regulations make clear that if a state or local government agency makes expenditures or contributions, the agency must file campaign statements as required by the Act. (Regulation 18420(d).)

In November 1988, the Yorba Linda and Placentia Unified School Districts made expenditures in connection with items which expressly advocated the adoption of ballot measures which proposed the merger of those two school districts. Together, the districts spent a total of approximately \$8,700.

^{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, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} The school districts believe that provisions of the Education Code provide them with authority to make the expenditures complained of here. The validity of the expenditures is not a matter within the jurisdiction of the Commission.

In May 1989, the San Juan Capistrano Unified School District spent approximately \$56,000 in connection with a ballot measure to establish a Mello-Roos District which would enhance the district's ability to seek revenue through bonds. The district distributed literature, hired consultants to conduct polls, acquired computer tapes of registered voters, conducted get-out-the-vote activities and more.

None of the school districts complied with the reporting provisions of the Act prior to the elections. In February 1989, the Yorba Linda and Placentia School Districts filed independent expenditure reports disclosing their expenditures. In September 1990, the San Juan Capistrano Unified School District, after contact by Commission staff, filed independent expenditure reports disclosing their expenditures but indicated that it was doing so "under protest, because in our opinion the school district did not advocate the passage of Measure A, but, rather, limited its efforts to informing local voters of the need for local school facilities."

Commission Regulation 18225 defines the term "expenditure" in pertinent part as follows:

(b) "Expenditure" includes any monetary or non-monetary payment made by any person...that is used for communications which expressly advocate the...passage or defeat of a clearly identified ballot measure.

(2) A communication "expressly advocates" the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," "sign petitions for" or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

(Emphasis added.)

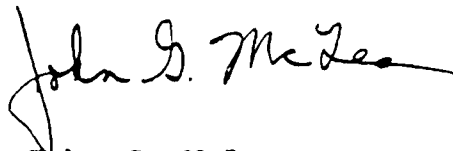
In the present situation, the expenditures by the Yorba Linda and Placentia School Districts were for communications which expressly urged voters to "Vote Yes" on the merger of the two school districts. However, the expenditures by the San Juan Capistrano School District were made for communications which were less specific. While the literature distributed to voters, did not expressly state "Vote Yes on Measure A" we believe that most of it did unambiguously urge that voters approve Measure A. Furthermore, a script provided to persons who assisted in get-out-the-vote activities indicates that the volunteers were calling only those persons whom it was believed supported Measure A. In such circumstances, it is clear that the district had reporting obligations.

Nonetheless, this matter is being closed without formal enforcement action for the following reasons. The respondents in this case are not experienced in conducting political campaigns or in complying with the reporting obligations which arise under the Act. When informed of their reporting obligations, respondents filed appropriate reports. While the reports were not available until after the election, the literature associated with these expenditures clearly indicated that it was being provided by the school districts. Thus the public was aware that the districts were making expenditures in connection with the elections. With respect to Capistrano Unified School District, the measure to form a Mello-Roos District failed passage. Furthermore, the content of the materials distributed by Capistrano support their assertion that the district believed that it was complying with all pertinent laws by excluding from its literature any statements expressly urging passage of the measure. The measure to merge the Yorba Linda School District and the Placentia School District passed, but as a result, the Yorba Linda School District no longer exists.

While we have decided not to take formal enforcement action, we have advised the Districts of their obligations, and have advised them that this matter will be considered when evaluating future alleged violations of the Act.

Thank you for calling this matter to our attention.

Sincerely,



John G. McLean
Counsel
Enforcement Division

cc: Wallace Wade

to whom the fee was paid acted under a mistaken belief in the validity compelling the payment. The significance of the fact of payment under when *Wingert* is compared with *Lewis v. City and County of San Cal. App. 112 (1905)* and *Trower v. City and County of San Francisco, 9 (1907)*, two cases which considered payments made under the same onal statute which was involved in the *Wingert* case. The only between the facts presented in *Wingert* and those of *Lewis* and *Trower* ition in the latter two cases of the fact that the payments were made it, an allegation not appearing in *Wingert*.

ne Court of Appeal in the *Lewis* case and the Supreme Court in the allowed recovery of the fees, the *Lewis* court stating the rule as follows:

he exaction by a clerk or other official, against the protest of a of illegal fees as a condition for filing a document in his office which ty presenting it is entitled to have filed by him renders the payment fees compulsory, and it is none the less compulsory that the party ave procured a writ of mandate compelling him to file the docu- without paying the fees demanded. His right to file the document mediate, and the payment of the fee under the alternative of bring- ch action and incurring the expense and delay thereof is not ry." 2 Cal. App. 112, 115.

preme Court in *Trower* quoted this rule with approval. Since, as noted nly element included in the *Lewis* and *Trower* facts not included in the acts was payment under protest, payment under protest must be con- al, if not decisive factor.

ng the *Lewis* and *Trower* rule quoted above to the cases of candidates t the candidate filing fee under protest, the conclusion must be that should recover the fee. Although the right to seek a writ of mandate ler Elections Code section 6403 was open to such persons, such right he expense and especially the delay involved, would not change the nature of the payment. The delay factor is of course crucial in an ter where a successful petitioner for writ of mandate who secures his e ballots have been printed would have a very hollow victory. The e the Court of Appeal in *Newport Building Corporation v. City of upra, 210 Cal. App. 2d 771*, reinforces the proposition that a candidate filing fee under protest does not do so voluntarily, because to a political lace on the ballot is a right and an interest to be protected with ex- Thus payment of the fee under protest should be looked upon as no e action of a reasonably prudent man protecting a vital interest.

ment Code sections 905 and 905.2 require claims to be filed against the state, respectively, for refund of the fees in question. In each claim must be filed within one year of the accrual of the cause of Code § 911.2. The cause of action for persons who paid candidate der protest accrued on the date the payment under protest was made,

not on the date the statutes were declared unconstitutional. *Monroe v. Trustees of the California State Colleges, supra, 6 Cal. 399, 405; Bainbridge v. County of River- side, 167 Cal. App. 2d 418 (1959)*. In order to be timely, therefore, claims from persons who paid the filing fee under protest must be made within one year of the payment thereof.

Opinion No. CV 74-208—December 13, 1974

SUBJECT: VARIOUS COURTS CLOSING ON COUNTY DESIGNATED HOLIDAYS—Superior, municipal, and justice courts may close operations on county designated holidays, with awareness of constitutional limitations regard- ing arraignments. Time limits for persons to perform acts are extended to the next business day in case of these holidays.

Requested by: COUNTY COUNSEL, TULARE COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General
Clayton P. Roche, Deputy

The Honorable Calvin E. Baldwin, County Counsel, Tulare County, has re- quested the opinion of this office on the following questions:

"1. If a day, such as the Friday after Thanksgiving, is designated as a county holiday, the same not being a holiday as provided in Government Code sections 6700 *et seq.*, may the Superior Court, Municipal Courts and Justice Courts within said county close operations on said county holiday, except for the purposes enumerated in Code of Civil Procedure section 134?"

"2. If your answer to the foregoing question is in the affirmative, may a person required to perform an act within a certain period of time, such as filing a complaint within the applicable limitations period, perform such act on the next business day, if the Court is closed on a county holiday which is the last date for compliance?"

The conclusions are:

1. Superior, municipal and justice courts may close operations on specially designated county holidays such as the Friday after Thanksgiving, except for pur- poses specified in section 134 of the Code of Civil Procedure. Care, however, must be taken to assure that constitutional limitations regarding arraignments are not violated.

2. Under the provisions of section 12b of the Code of Civil Procedure, the time within which a person may perform an act such as filing a complaint will be extended to the next business day where courts close on a specially designated county holiday.