

# DOCUMENT 9

**Emphasis Added By Grand Jury's Underscoring**



# California Fair Political Practices Commission

August 6, 1990

Carole Bailey  
Capistrano Unified School District  
32972 Calle Perfecto  
San Juan Capistrano, CA 92675

Re: Your Request for Advice  
Our File No. A-90-436

Dear Ms. Bailey:

John McLean, Legal Counsel with the Commission's Enforcement Division, has asked me to respond to your June 14, 1990, letter concerning the campaign provisions of the Political Reform Act.<sup>1</sup>

## QUESTION

Are payments made by the Capistrano Unified School District (CUSD), as itemized in Jerome R. Thornsley's letter dated January 31, 1990, to Michael Kenney, reportable under the Act?

## CONCLUSION

The payments for item 1 are not reportable under the Act. However, the payments for items 2-9 are reportable as independent expenditures. (Mr. Thornsley's letter is enclosed for your convenience.)

## FACTS

The Capistrano Unified School District held an election on May 9, 1989, to form a Mello-Roos Facilities District (Measure A). CUSD incurred expenses in relation to holding the election, including hiring consultants, producing and distributing informational material, and establishing phone lines for the purpose of contacting voters.

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<sup>1</sup> 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.

ANALYSIS

Section 82013(b) defines a "committee" as any person or combination of persons who directly or indirectly makes independent expenditures totaling \$1,000 in a calendar year.

An independent expenditure is defined as:

...an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

(Section 82031, emphasis added.)

Section 84200(b) requires all independent expenditure committees to file campaign statements by July 31 for the period ending June 30, and January 31 for the period ending December 31 if they have made independent expenditures during the six-month period before the closing date of the statements. In addition, depending upon the independent expenditure committee's activities, "late independent expenditure reports" may be required.

A late independent expenditure is:

...an independent expenditure which totals in the aggregate \$1,000 or more and is made for or against any specific candidate or measure involved in an election before the date of the election but after the closing date of the last campaign statement required to be filed prior to the election by a candidate or committee participating in such election.

(Section 82036.5.)

In other words, if the independent expenditure committee made independent expenditures which totalled \$1,000 during the 16 days before the May 9, 1989, election, a late independent expenditure report was due within 24 hours of making the expenditures. (See page 23 of the enclosed Information Manual E: Campaign Provisions of the Political Reform Act for Major Donor Committees and Independent Expenditure Committees for instructions on completing reports.) Even though the election has passed, if late independent expenditures were made, the committee is still required to file the late independent expenditure reports. However, the reports may be sent by regular first class mail and need not be sent by guaranteed overnight

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mail, as normally required. (Pessner Advice Letter, No. A-87-263, copy enclosed.)

In reference to Mr. Thornsley's letter, costs paid to the Orange County Registrar of Voters to conduct the election, item 1, did not constitute an independent expenditure. However, items 2 through 9 all pertain to expenses associated with communications which expressly advocated or, taken as a whole and in context, unambiguously urged passage of Measure A. Although Jerome R. Thornsley's letter of January 31, 1990, to Michael Kenney of the Fair Political Practices Commission indicated that "no printed or oral communication urged a "yes" vote by potential voters," the materials provided to John G. McLean of the Commission by your office state otherwise. As an example, the last page of Exhibit A states:

Those who advocate a "yes" vote on Measure A are encouraged to join in the effort to urge voters to approve this measure.

And Exhibit D, a flyer sent to Laguna Niguel and Dana Point voters reads, in part:

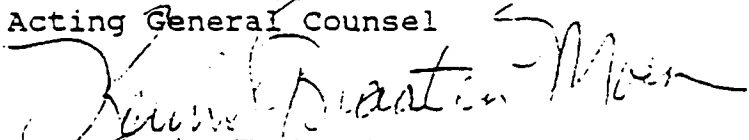
There's a lot in Measure A for Laguna Niguel and Dana Point residents. Measure A -- May 9

Therefore, since the total of independent expenditures made in items 2 through 9 is \$1,000 or more, and presumably were made within one calendar year, CUSD qualified as an independent expenditure committee and must file a campaign statement for each six month period (January 1 through June 30 or July 1 through December 31) in which independent expenditures were made, in addition to any late independent expenditure reports that were required. These reports must be filed with the Orange County Registrar's office as soon as possible. A copy of the filed reports should be forwarded to Mr. McLean.

If you have any additional questions, please contact me at (916) 322-5662.

Sincerely,

Scott Hallabrin  
Acting General Counsel

  
By: Kevin S. Braaten-Moen  
Political Reform Consultant

Enclosures

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