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Auditor General

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June 21, 1983

Letter Report P-241

Honorable Art Agnos
Chairman, and Members of the
Joint Legislative Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

We reviewed the activities of The Metropolitan Water District of Southern California (district) in connection with the Peripheral Canal (canal). The objective of this review was to determine how much money the district spent on public information activities in connection with the canal and whether those expenditures were in accordance with state and local laws.

The district provided information on the canal through its Public Information Division, its Speakers Bureau, and its lobbyist. Although we could determine how much money the district paid to outside vendors for materials pertaining to the canal, we could not identify the district's internal costs for public information activities and materials, nor could we determine the district's costs for lobbying efforts related to the canal. Nevertheless, we found that during the period of July 1979 through June 1982, the Public Information Division paid approximately \$83,000 to outside vendors for producing materials related to the canal, and we estimate that the district paid less than \$8,800 to employees and directors for expenses they incurred while participating, through the Speakers Bureau, in programs related to the canal.

Although the district's Public Information Division (division) distributed information specifically related to the canal, including pamphlets and exhibits, and conducted tours of the Sacramento/San Joaquin River delta, we could not determine the extent of the division's staff costs for work on those activities because the district's accounting records do not identify staff time associated with specific issues. In

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addition, the division chief could not estimate the costs associated with staff work related to the canal. Moreover, although the district's lobbyist was active in connection with the canal, the district's records do not identify costs associated with lobbying specific issues such as the canal.

To ensure that its public information conforms with state and local laws, the district has established criteria to govern its presentation of public information. We submitted to the Legislative Counsel materials prepared by the district relating to the Peripheral Canal. In the opinion of the Legislative Counsel, nothing in these materials clearly constituted improper campaign activity. A copy of the Legislative Counsel's opinion is attached.

BACKGROUND

The Metropolitan Water District of Southern California was established in 1928 by the Metropolitan Water District Act for the purpose of developing, storing, and distributing water for domestic and municipal use. The State Water Project and the Colorado River Aquaduct supply water to the district for distribution to its 27 member agencies. A board of directors composed of representatives from the member agencies governs the district. The board has authority to set water rates to cover district expenses and to levy taxes on property within the district's service area. It also has authority to spend money to publicize district activities.

The district provides public information about its activities through its Public Information Division, a Speakers Bureau, and a lobbyist. The district's Public Information Division provides programs to inform the public about Southern California's water supply. The district's Speakers Bureau sends representatives to local community organizations to speak on issues of concern to the organizations and the district. The district also engages in lobbying activities for purposes of influencing legislation that concerns the district. By law, district public information expenditures may not exceed \$0.005 for each \$100 of assessed property value in the district's service area. In fiscal year 1981-82, assessed valuation of property in the district's service area exceeded \$78 billion.

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Since 1960, when state law established the State Water Project, the district has supported measures to convey water across the Sacramento/San Joaquin River delta. In 1980, the State Legislature passed Senate Bill (SB) 200, which authorized the construction of a canal to convey water across the delta. The project was called the Peripheral Canal. However, groups opposed to the canal qualified a referendum for the June 1982 election. The referendum, listed as Proposition 9 on the ballot, allowed voters to approve or defeat implementation of SB 200. In connection with SB 200 and Proposition 9, the district distributed public information through its Public Information Division, its Speakers Bureau, and its lobbyist.

SCOPE AND METHODOLOGY

The purpose of this audit was to determine how much money the district spent to provide information on the Peripheral Canal and to determine whether these expenditures were consistent with applicable state and local laws. To accomplish this purpose, we reviewed the district's activities during the period of July 1979 through June 1982. In conducting our review, we interviewed district staff and examined materials produced in connection with the canal. To determine the expenses of the Public Information Division, we reviewed purchase requisitions and purchase orders, invoices, and accounting records and reports to determine the production costs of materials related to the canal. We also reviewed district records to determine the staff costs in producing materials dealing with the canal. To determine the district's expenses for its Speakers Bureau, we examined a sample of expense claims of speakers who had presented information related to the canal. Based on this sample, and using a 90 percent confidence level as our criterion, we projected a maximum total for the expenses paid by the district to employees and directors for all presentations related to the canal. In addition, to determine the district's lobbying expenses in connection with the canal, we reviewed reports on lobbying expenditures that the district filed with the Secretary of State. Finally, to determine whether the district's expenditures for information related to the canal were consistent with state and local laws, we obtained an opinion from the Legislative Counsel. A copy of the opinion is attached.

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ANALYSIS

During the period of July 1979 through June 1982, The Metropolitan Water District of Southern California spent funds to provide the public with information related to the Peripheral Canal. In the following sections of this report, we discuss the district's activities in providing the public with information through its Public Information Division, its Speakers Bureau, and its lobbying program. We also discuss the district's policy and procedures for ensuring that information provided by the district conforms to applicable law.

Public Information Division Expenditures

During the period July 1979 through June 1982, the Public Information Division paid outside vendors for production services on pamphlets, brochures, exhibits, and films to provide information on district operations and programs. The division also incurred internal costs for staff work on these materials. Although many of these materials were concerned with other issues, some items provided information only on the Peripheral Canal.

By reviewing purchase requisitions, purchase orders, and vendor's invoices, and by verifying the district's accounting for these expenditures, we determined that during this period the Public Information Division paid approximately \$83,000 to outside vendors to provide typesetting, printing, film processing, and other production services for materials specifically related to the Peripheral Canal.

In addition to outside production costs, the division incurred internal costs for materials specifically related to the Peripheral Canal. Division staff wrote pamphlets and brochures, took photographs, prepared exhibits, produced films, and led tours of the Sacramento/San Joaquin River delta in connection with the canal. During the period covered by our review, division staff also prepared materials in connection with other issues of importance to the district. For example, division staff prepared materials to inform the public about the importance of conserving water.

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Although, we were able to identify how much money the division paid to outside vendors for producing materials and services in connection with the Peripheral Canal, we could not identify the division's internal costs for preparing such materials. The division does not maintain records of staff costs associated with specific issues such as the Peripheral Canal. Moreover, the chief of the division could not estimate the division's labor costs associated with work on that issue. We did determine that the division's labor expenditures for all of its activities during the period of our review ranged from \$563,000 in fiscal year 1979-80 to \$784,000 in 1981-82.

Speakers Bureau Expenditures

The district maintains a program known as the Speakers Bureau that provides information on district operations to community organizations. Speakers Bureau members (that is, district employees and members of the board of directors) attend meetings of community organizations and present information on issues of importance to the organizations and the district. During the period of July 1979 through June 1982, most of the presentations were related to the Peripheral Canal. Of the 1,552 presentations of the Speakers Bureau during this period, we estimate that approximately 76 percent pertained to the canal. In some cases, the district paid for expenses that the speakers incurred. We reviewed a sample of claims filed by employees and directors for expenses incurred in connection with presentations they made on the canal. Based on our sample, we estimate that during this period the district paid less than \$8,800 to members of the Speakers Bureau for food and travel costs in connection with presentations pertaining to the Peripheral Canal.

Lobbying Expenditures

During the three years covered by our review, the district lobbied in connection with the Peripheral Canal and other issues. However, the district's records do not identify costs related to lobbying in connection with specific issues, nor is the district required to report to the Secretary of State on lobbying expenditures related to specific issues. Therefore, we could not identify the district's lobbying expenditures made in connection with the Peripheral Canal.

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The Secretary of State requires lobbyists' employers to file periodic reports on lobbying expenditures and activities. We reviewed 15 of these reports and found that the district paid a total of \$207,608 in lobbying expenses for the three-year period, the total comprising \$64,198 in fiscal year 1979-80, \$79,009 in 1980-81, and \$64,401 in 1981-82.

Legality of District Expenditures
in Connection With the Peripheral Canal

According to the Metropolitan Water District Act that established the district, the district may spend money to disseminate public information. However, it may not engage in activities to influence the voters in connection with ballot issues. We found that the district has implemented a program to ensure that its public information activities comply with the law. In August 1980, the district's legal department prepared a memorandum outlining the criteria for proper presentation of public information. To ensure that the district adheres to these criteria, Public Information Division staff submit copies of many public information materials to the legal department for review. Although legal department staff told us that they keep no formal records of materials reviewed, the chief of the Public Information Division told us that all materials produced by the division in relation to the Peripheral Canal were sent to the legal department for review.

To determine whether district expenditures in connection with the Peripheral Canal complied with applicable laws, we requested from the Legislative Counsel a legal opinion on materials prepared by the district specifically related to the canal. According to the Legislative Counsel, nothing in the materials we submitted clearly constituted improper campaign activity.

CONCLUSION

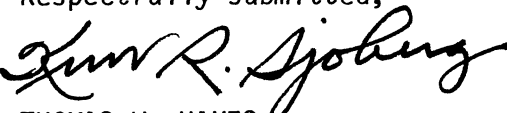
During the period of July 1979 through June 1982, the district's Public Information Division spent approximately \$83,000 for outside production services in connection with the Peripheral Canal. In addition, for its Speakers Bureau, the district paid less than \$8,800 to employees and directors for expenses incurred during presentations related to the Peripheral Canal. However, although the division engaged in

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public information activities specifically related to the canal, we were unable to identify the division's internal labor costs relating to development and presentation of information. The district also lobbied in connection with the Peripheral Canal; however, we could not determine how much the district spent on this activity. Finally, we found that the district has procedures for determining whether its public information activities comply with applicable laws. In the opinion of the Legislative Counsel, none of the materials that we submitted for review clearly constituted improper campaign activity.

We conducted this audit under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specifically contained in the audit request.

Respectfully submitted,


for THOMAS W. HAYES
Auditor General

Audit Completion Date: June 13, 1983

Staff: Thomas A. Britting, Audit Manager
Anthony F. Majewski
Marina Murphy

Attachments: Response to the Auditor General's Report
The Metropolitan Water District
of Southern California
Legislative Counsel Opinion

Thomas W. Hayes


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June 3, 1983

2. In the last sentence of the first full paragraph on page 6, it is indicated that the District's Public Information Division submits all materials produced by that division to the Legal Department for review. In fact, not all materials produced by the Public Information Division are routinely sent to the Legal Department for review, but any questionable or sensitive material is, and all material relating to the Peripheral Canal issue was, in fact, submitted to the Legal Department for review.*

Again we thank you for the opportunity to review the draft report and look forward to the issuance of your final report.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "E. Thornton Ibbetson".

E. Thornton Ibbetson
Chairman of the Board

ETI:db

cc: E. Griffith
D. Kennedy
R. Gough
C. Boronkay
J. Lundgren

*Auditor General's Note: We have changed the text on page 6 of our report to reflect this clarification.

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California

May 26, 1983

Mr. Thomas W. Hayes
Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Expenditure of Public Funds - #9622

Dear Mr. Hayes:

You have submitted to us certain pamphlets and other printed materials prepared by the Metropolitan Water District of Southern California which contain information relating to the proposed peripheral canal and other water resources matters. You have asked two questions which we shall answer separately.

QUESTION NO. 1

May a metropolitan water district lawfully expend public funds to promote the passage of a ballot measure?

OPINION NO. 1

A metropolitan water district may not lawfully expend public funds to promote the passage of a ballot measure. It may, however, expend public funds to provide the public with a "fair presentation" of relevant information relating to the ballot measure, as discussed below.

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ANALYSIS NO. 1

In the leading case of Stanson v. Mott, 17 Cal. 3d 206, 209-210, the California Supreme Court ruled that "... at least in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign... ." In reaching this conclusion, the court (supra, pp. 217-220) stated:

"Underlying this uniform judicial reluctance to sanction the use of public funds for election campaigns rests an implicit recognition that such expenditures raise potentially serious constitutional questions. A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office (see e.g., Madison, The Federalist Papers, Nos. 52, 53; 10 Richardson, Messages and Papers of the Presidents (1899) pp. 98-99 (President Jefferson)); the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process.

"Defendant contends, however, that while the use of public funds to support a particular candidate may be impermissible, the use of such funds to promote a ballot measure or bond issue should be upheld by analogy to the more generally accepted practice of expending public funds for legislative 'lobbying' efforts. (See, e.g., Crawford v. Imperial Irrigation Dist. (1927) 200 Cal. 318 [253 P. 726]; Powell v. City & County of S.F. (1944) 62 Cal.App.2d 291 [144 P.2d 617].) As we have already seen, past authorities have not drawn such a distinction between 'ballot

measure' and 'candidate' campaigning; to date the judicial decisions have uniformly held that the use of public funds for campaign expenses is as improper in bond issue or other noncandidate elections as in candidate elections.

* * *

"In the instant case, however, we need not resolve the serious constitutional question that would be posed by an explicit legislative authorization of the use of public funds for partisan campaigning, because the legislative provisions relied upon by defendant Mott certainly do not authorize such expenditures in the 'clear and unmistakable language' required by Mines. (201 Cal. at p. 287.) Nothing in either section 512 of the Public Resources Code or in any other legislative provision of which we are aware purports to sanction election campaign expenditures by the Department of Parks and Recreation; in the absence of such explicit authorization, we conclude that defendant could not properly authorize the department to spend public funds to campaign for the passage of the bond issue.

"It does not necessarily follow, however, that the department was without power to incur any expense at all in connection with the bond election. In Citizens to Protect Pub. Funds v. Board of Education, supra, 98 A.2d 673, the New Jersey decision discussed above, the court, while condemning the school board's use of public funds to advocate only one side of an election issue, at the same time emphatically affirmed the school board's implicit power to make 'reasonable expenditures for the purpose of giving voters relevant facts to aid them in reaching an informed judgment when voting upon the proposal.' (98 A.2d at p. 676.)

* * *

"While, as we have seen, section 512 does not authorize the department to spend funds for campaign purposes, we believe that, reasonably construed, the section does provide the department with authority to spend funds, budgeted for informational purposes, to provide the public with a 'fair presentation' of relevant information relating to a park bond issue on which the agency has labored."

Metropolitan water districts are organized and governed under the provisions of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969). Section 126 of that act authorizes a metropolitan water district to disseminate information and reads as follows:

"Sec. 126. A district may disseminate information concerning the activities of the district, and whenever it shall be found by two-thirds vote of the board to be necessary for the protection of district rights and properties, the district may disseminate information concerning such rights and properties, and concerning matters which, in the judgment of the board, may adversely affect such rights and properties. Expenditures during any fiscal year for the purposes of this section shall not exceed one-half of one cent (\$.005) for each one hundred dollars (\$100) of assessed valuation of the district."

Thus, we think that a metropolitan water district is authorized to expend funds, budgeted for informational purposes, to provide the public with a "fair presentation" of relevant information relating to a ballot measure. It is clear, however, that these provisions do not constitute a clear and explicit legislative authorization to expend funds for campaign purposes, as discussed in the Stanson case.

The court in the Stanson case (supra, pp. 221-222) further discussed the distinction between improper "campaign" expenditures and proper "informational" expenditures as follows:

"Problems may arise, of course, in attempting to distinguish improper 'campaign' expenditures from proper 'informational' activities. With respect to some activities, the distinction is rather clear; thus, the use of public funds to purchase such items as bumper stickers, posters, advertising 'floats,' or television and radio 'spots' unquestionably constitutes improper campaign activity (see, e.g., Mines v. Del Valle, supra, 201 Cal. at p. 276; Porter v. Tiffany, supra, 502 P.2d at p. 1386), as does the dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure. (See 51 Ops.Cal.Atty.Gen. 190, 194 (1968); Stern v. Kramarsky, supra, 375 N.Y.S.2d 235.) On the other hand, it is generally accepted that a public agency pursues a proper 'informational' role when it simply gives a 'fair presentation of the facts' in response to a citizen's request for information (see Citizens to Protect Pub. Funds v. Board of Education, supra, 98 A. 2d 673, 677; Stern v. Kramarsky, supra, 375 N.Y.S.2d 235, 239-240; 51 Ops.Cal.Atty.Gen. 190, 193 (1968)) or, when requested by a public or private organization, it authorizes an agency employee to present the department's view of a ballot proposal at a meeting of such organization. (See Ed. Code, § 1073; cf. Citizens to Protect Pub. Funds v. Board of Education, supra, 98 A.2d 673, 677.)

"Frequently, however, the line between unauthorized campaign expenditures and authorized informational activities is not so clear. Thus, while past cases indicate that public agencies may generally publish a 'fair presentation of facts' relevant to an election matter, in a number of instances publicly financed brochures or newspaper advertisements which have purported to contain only relevant factual information, and which have refrained from exhorting voters to 'Vote Yes,' have nevertheless been found to constitute

improper campaign literature. (See 35 Ops. Cal. Atty. Gen. 112 (1960); 51 Ops. Cal. Atty. Gen. 190 (1968); cf. 42 Ops. Cal. Atty. Gen. 25, 27 (1964).) In such cases, the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case."

Thus, the determination of the propriety or impropriety of an expenditure would be a factual question to be determined by a court upon a careful consideration of all relevant factors (see also Miller v. Miller, 87 Cal. App. 3d 762).

In summary, therefore, a metropolitan water district may not lawfully expend public funds to promote the passage of a ballot measure. It may, however, expend public funds to provide the public with a "fair presentation" of relevant information relating to the ballot measure.

QUESTION NO. 2

Do any of the printed materials submitted to us, as they relate to Proposition 9 at the 1982 Primary Election, constitute improper campaign expenditures?

OPINION AND ANALYSIS NO. 2

The provisions of Senate Bill No. 200 of the 1979-80 Regular Session of the Legislature were submitted to the electors as a referendum measure and constituted Proposition 9 of the 1982 Primary Election. The provisions of S.B. 200, which were not approved by the voters and did not take effect, would have authorized certain additional facilities as units of the State Water Resources Development System, including a Peripheral Canal Unit around the eastern and southern rim of the Sacramento-San Joaquin Delta, and would have prescribed various related matters.

As indicated in Analysis No. 1, the determination of the propriety or impropriety of an expenditure is a factual question to be determined by a court upon a careful consideration of all relevant factors. Various evidentiary factors such as style, tenor, and timing of publication may influence a court's determination in this regard.

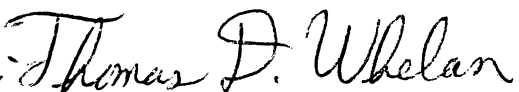
The printed materials here in question relate to a variety of water issues affecting southern California, and include materials specifically relating to Proposition 9 of the

Mr. Thomas W. Hayes - p. 7 - #9622

1982 Primary Election. These materials purport to be of an informational nature. There is nothing in these materials which, in our opinion, clearly constitutes improper campaign activity as discussed by the court in the Stanson case (see supra, pp. 221-222). The determination as to whether the materials constitute a "fair presentation" of relevant information is, as we have seen, a factual question to be determined by a court on the basis of all relevant factors.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Thomas D. Whelan
Deputy Legislative Counsel

TDW:kh

cc: Honorable Art Agnos, Chairman
Joint Legislative Audit Committee



The Metropolitan Water District of Southern California

Office of Board of Directors

June 3, 1983

E. Thornton Ibbetson, *Chairman*
Glenn P. Allen, *Vice Chairman*
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Samuel C. Rue, *Secretary*

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, California 95815

Dear Mr. Hayes:

Letter Report P-241

We wish to thank you for submitting a draft of your letter report concerning The Metropolitan Water District of Southern California's expenditures in connection with the Peripheral Canal. Our review of the draft leads us to conclude that your staff has made a fair and objective review of the matter and has reached the proper conclusions. We also concur in the opinion of the Legislative Counsel of May 26, 1983, which is attached to the report.

We do have some comments and suggested modifications to the draft report which we believe will lead to a more complete and accurate report:

1. In the last paragraph of the first page and in the conclusion on page 6, it is indicated that your staff, because of the District's accounting system, was unable to determine the extent of the District's staff costs for activities related to the Peripheral Canal. From these comments, it might be inferred, erroneously, that the District does not keep accurate or sufficient records. In fact, as you recognize, there is no legal requirement that the District keep staff-time record by project, nor has the District found that such detailed record keeping would be useful. We believe it would be more accurate for your report to indicate that under the District's accounting system no "precise" costs of District staff could be determined.