



FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3000 • Sacramento, CA 95811

December 27, 2018

Via Email ONLY: scercone@lcwlegal.com
Santa Ynez Valley Union High School District
c/o Sue Cercone
Liebert Cassidy Whitmore, LLP
5250 N Palm Ave, Suite 310
Fresno, CA 93704

RE: Advisory Letter: Santa Ynez Valley Union High School District; FPPC No. 16/19768

Dear Ms. Cercone:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ This letter is in response to a sworn complaint alleging that Santa Ynez Valley Union High School District (the "District") sent two campaign related mailers regarding Measure K2016 at public expense, in violation of Section 89001. An examination of that mailer led to the Enforcement Division's decision to close its file on this matter without prosecution.

The Act prohibits sending newsletter or other mass mailing at public expense if the mailings are campaign materials.² Specifically, a newsletter and other mass mailing are prohibited if (1) the item is a tangible item; (2) the item expressly advocates the qualification, passage, or defeat of a clearly identified measure, or unambiguously urges a particular result in an election; (3) public moneys are paid to distribute the item, or to prepare the item, for more than \$50, with the intent of sending the item; and (4) more than 200 substantially similar items are sent during the course of an election.³ This prohibition limits the public subsidy of political campaigns, which would grant an unfair advantage to governmental bodies that desire to use their vast resources in pursuit of favorable election results.

A mailer unambiguously urges a particular result in two ways: (1) when it clearly is campaign material or campaign activity, such as bumper stickers, billboards, door-to-door canvassing, posters, advertising "floats," or mass media advertising;⁴ or (2) when the style, tenor,

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

² Section 89001.

³ Regulation 18901.1, subd. (a).

⁴ *Stanson v. Mott* (1976) 17 Cal.3d 206, 221.

and timing of the communication can be reasonably characterized as campaign material and not a fair presentation of facts serving only an informational purpose.⁵ Some factors to consider when assessing style, tenor, and timing include, but are not limited to whether the communication is (1) funded from a special appropriation related to the measure as opposed to a general appropriation; (2) consistent with the normal communication pattern for the agency; (3) consistent with the style of other communications issued by the agency; and (4) using inflammatory or argumentative language.⁶

A payment of public moneys by a local governmental agency made in connection with a communication that expressly advocates passage of a ballot measure, or that taken as a whole and in context, unambiguously urges a particular result in an election is an independent expenditure.⁷ Any person or combination of persons who, in a calendar year, makes independent expenditures totaling \$1,000 or more qualifies as an independent expenditure committee.⁸ An independent expenditure committee must file semi-annual campaign statements each year for the period ending June 30 and December 31 if it made independent expenditures during the 6-month period prior to those dates.⁹

Our investigation found that the mass mailing concerning Measure K2016 did not contain express advocacy. The mailing generally was informational, except for the few instances when it used adjectives such as “corroded,” “deteriorating,” “outdated,” “worn-out,” and “aging.” However, in this circumstance these descriptors are not sufficiently inflammatory or argumentative to constitute campaign activity. Given the above, the Enforcement Division cannot conclude that the mailers in question violated the Act’s prohibition against campaign mailers at public expense. Therefore, we are closing this matter with this advisory letter.

Although we are closing our file on this matter, please be advised of the provisions in the Act and regulations regarding campaign related mailings sent at public expense. Should you have any questions regarding this letter, please feel free to contact me at (916) 324-8787 or Bcastillo@fppc.ca.gov.

Sincerely,



Bridgette Castillo
Senior Commission Counsel
Enforcement Division

Cc: Michelle De Werd

⁵ *Stanson* at p. 222; *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 27.

⁶ Regulation 18901.1, subd. (e).

⁷ Section 82031; Regulation 18420.1, subd. (a).

⁸ Section 82013, subd. (b).

⁹ Section 84200, subd. (b).