



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

August 2, 2019

Mr. Jeffrey A. Walter
City Attorney, City of Martinez
Walter & Pistole LLC
o/b/o City of Martinez
Via email at: [REDACTED]

Re: Advisory Letter: City of Martinez; FPPC No. 2019-00568

Dear Mr. Walter:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act¹ (the “Act”). This letter is in response to a sworn complaint alleging that the City of Martinez (the “City”) mailed a campaign mailer regarding Measure X at public expense, in violation of Section 89001, prior to the November 6, 2018 General Election. The complaint also alleged that the mass mailing constituted an independent expenditure under Regulation 18420.1 and, therefore, required campaign finance disclosure reports. The Enforcement Division completed its review of the case and has decided to close its file on this matter without prosecution.

The Act prohibits sending a newsletter or other mass mailing at public expense.² Specifically, a mass mailing is 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 public resources in pursuit of favorable election results.

A mailing 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, 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)

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 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 89001.

³ Regulation 18901.1, subd. (a).

⁴ Regulation 18901.1, subd. (c)(1).

⁵ Regulation 18901.1, subd. (c)(2).

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 periods ending June 30 and December 31 if it made independent expenditures during the 6-month period prior to those dates.⁹

The Enforcement Division found that the mass mailing concerning Measure X did not contain express advocacy. However, parts of the mailing came close to meeting the standard of unambiguously urging support for a measure. For example, the mailing included pictures, signatures and statements of non-elected officials, such as the chief of police, that stated and expounded upon the positive impacts of Measure X. However, these statements are not sufficiently inflammatory and argumentative to conclude the mailing constituted campaign activity rather than informational material.

Further, after our review of the matter, we found insufficient evidence to establish that the subject mailer constituted an independent expenditure to require the City of Martinez to register as a campaign committee and file campaign disclosure reports. Therefore, we are closing this matter with this advisory letter.

Although we are closing our file, please be advised of the provisions in the Act and regulations regarding campaign related communications. We encourage you to request advice from the Commission's Legal Division before sending future mailings. Should you have any questions regarding this letter, you may contact Chloe Hackert at (916) 322-8190 or chackert@fppc.ca.gov.

Sincerely,



Galena West, Chief
Enforcement Division

GW/ch

cc: Mr. Jason Bezis, sworn complainant

⁶ Regulation 18901.1, subd. (e).

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

⁸ Section 82013, subd. (b).

⁹ Section 84200, subd. (b).