



California Fair Political Practices Commission

November 20, 1987

Mr. N. Eugene Hill
Assistant Attorney General
State of California
1515 K Street
Sacramento, CA 95814

Re: Our File No. 87-269

Dear Mr. Hill:

Thank you for providing us with a copy of the opinion request letter which you received from Marcial "Rod" Rodriguez, Mayor Pro Tem of the City of Norwalk. Mr. Rodriguez has asked whether he may reimburse his personal account from campaign funds for a fine which he paid in a Commission enforcement matter. Mr. Rodriguez's question does not involve an interpretation of the Political Reform Act and thus has not been previously considered by the Commission. (Government Code Section 81000-91015.) However, upon reviewing the issue we believe it has an important impact upon the operation of the Commission. We offer the following comments:

Section 12400 et seq. of the Elections Code prohibit the personal use of campaign funds.^{1/} Section 12401 provides:

"A payment from campaign funds is for personal use if the payment creates a substantial personal benefit and does not have more than a negligible political, legislative or governmental purpose."

Payment of the Commission fine is a substantial personal benefit to the official. Furthermore, since neither the government nor the legislative process benefits from the expenditure of such funds for this purpose, the expenditure does not have a legislative or governmental purpose. (See Attorney General's letter to Steven L. Dorsey, dated January 30, 1986, copy attached.) The question then becomes

^{1/} All references are to the Elections Code unless otherwise indicated.

Mr. N. Eugene Hill
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whether such payment has a political purpose. We do not believe so.^{2/}

No Political Purpose

While the actions which resulted in Mr. Rodriguez being fined arose out of a campaign for public office, the personal use provisions of the Elections Code should not be read to allow campaign funds to be used to support illegal political purposes. A 1978 Attorney General's Opinion (61 Ops. Cal Atty. Gen. 342), which concluded that public funds could not be used to pay late filing penalties imposed under the Political Reform Act, noted the important enforcement aspects of holding public officials personally liable for violations of the Act:

It would appear clear, however, that there is no public purpose served in paying a fine assessed for a violation of state statute. One of the objectives of the Political Reform Act of 1974 is to provide the public with information concerning the private assets and interests of public officials. (Section 81002, subd. (d).) It provides that the reporting of financial interests must be made within a particular time schedule. It cannot be said that a public purpose is served by the failure of a public official to comply with the statutory requirements.

* * *

As expressed hereinabove, no public purpose can be served by a city's payment of a fine assessed by the State of California for a violation of state law.

* * *

^{2/} Section 12402 (a) allows campaign funds to be used for "settlements of civil actions" where there is a reasonable relationship to political, legislative or governmental purposes. As discussed above, the payment of Commission fines with campaign funds does not serve any political, legislative or governmental purpose. Furthermore, while the term "civil actions" is not defined in the Elections Code, the one statutory definition we have discovered of that term does not encompass administrative proceedings such as Commission enforcement proceedings. (Code of Civil Procedure Sections 22 and 30.)

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The purposes of the Political Reform Act are set forth in Section 81002. Subdivisions (d) and (g) of that section provide as follows:

"Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided." (Section 81002 subd. (d).)

"Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced." (Section 81002 subd. (g).)

Section 91013 is such an enforcement mechanism. Its purpose is to encourage prompt filing of financial disclosure statements and reports by public officials. Such filings are the personal obligation of the public official (Sections 82026, 87200-87207.) To permit the public official, in this case a city councilmember, to escape personal responsibility for filing would be contrary to the intent of the Political Reform Act of 1974.

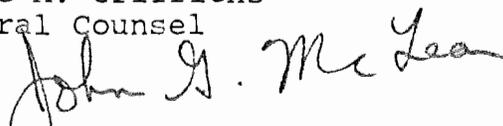
(61 Ops. Cal. Atty. Gen. 344, 345
(1978), emphasis added.)

The intention that campaign funds are not to be used to dull the impact of punitive fines is evidenced by the fact that Section 12403 specifically prohibits the payment of criminal fines with campaign funds. Payment of Commission fines with campaign funds is not consistent with this intention and does not serve a political purpose. Such payment is therefore prohibited.

Thank you for the opportunity to comment on this issue. If you have any questions, please contact me at 2-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: John G. McLean
Counsel, Legal Division

Diane -
FYI. Ted has
asked if we want
to submit - *mm*

City of Norwalk

12700 NORWALK BOULEVARD, NORWALK, CALIFORNIA 90650

213/929-2677

MARGARET L. "PEG" NELSON
Mayor

MARCIAL "ROD" RODRIGUEZ
Mayor Pro Tempore

GRACE F. NAPOLITANO
Councilwoman

LUIGI A. VERNOLA
Councilman

ROBERT E. "BOB" WHITE
Councilman

J. RICHARD STRENG
City Administrator

September 29, 1987

Mr. H. Eugene Hill
Assistant Attorney General
State of California
1515 "K" Street
Sacramento, CA 95814

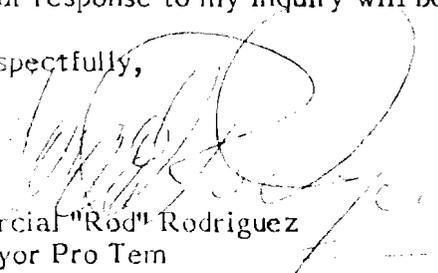
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As these monies were paid by me, personally, I am requesting clarification on whether or not I can reimburse my personal account from funds from my campaign checking account.

Your response to my inquiry will be greatly appreciated.

Respectfully,


Marcial "Rod" Rodriguez
Mayor Pro Tem

MR:sh

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ROGER BROWN
SANDRA MOOREHEAD
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 800
Sacramento, CA 95814
Telephone: (916) 322-6441

Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of) FPPC No. SI-86/71
)
Marcial "Rod" Rodriguez,) DECISION AND ORDER
Committee to Re-Elect)
Mayor Rod Rodriguez,)
)
Respondents.)
_____)

This matter was submitted to the Fair Political Practices Commission by written Stipulation on September 9, 1987, in Sacramento, California. The complainant, Executive Director Gregory W. Baugher, was represented by Enforcement Counsel Sandra Moorehead. Complainant appeared in person before the Commission; respondents appeared by written stipulation.

DECISION

The Stipulation submitted by the parties in this matter was accepted and approved by the Commission. The Commission finds that respondents Marcial "Rod" Rodriguez and the

1 Committee to Re-Elect Mayor Rod Rodriguez committed the
2 violations of the Political Reform Act as described in the
3 stipulation and exhibit thereto. This Stipulation is attached
4 to and made a part of this decision and order.

5
6 ORDER

7 The Commission hereby orders respondents Marcial "Rod"
8 Rodriguez and the Committee to Re-Elect Mayor Rod Rodriguez to
9 pay a monetary penalty of One Thousand Dollars (\$1,000).
10 Respondents shall be jointly and severally liable for this
11 penalty.

12 Respondents shall submit payment in the form of a
13 cashier's check for One Thousand Dollars (\$1,000) made payable
14 to the General Fund of the State of California. Payment shall
15 be made on or before the effective date of this Order.

16 This decision and order is effective upon execution by
17 the Chairman of the Commission.

18 DATED: September 15, 1987

19
20 John H. Larson
21 John H. Larson
22 Chairman
23 Fair Political Practices Commission
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SANDRA MOOREHEAD
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4 Attorneys for Complainant
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7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
8 STATE OF CALIFORNIA

9 In the Matter of) FPPC No. SI-86/71
10)
11 Marcial "Rod" Rodriguez,) STIPULATION
Committee to Re-Elect)
12 Mayor Rod Rodriguez)
Respondents.)
13

14 The complainant and Executive Director of the Fair
15 Political Practices Commission, Gregory W. Baugher, and the
16 respondents, Marcial "Rod" Rodriguez and the Committee to
17 Re-Elect Rod Rodriguez, hereby stipulate and agree that:

18 The parties are entering into this stipulation to resolve
19 all factual and legal issues raised in this matter and to reach
20 a final disposition without the necessity of holding an
21 administrative hearing to determine the liability of the
22 respondents.

23 Respondents acknowledge having been served with a copy of
24 the Report in Support of Probable Cause dated July 20, 1987. A
25 finding of Probable Cause has not been made.

26 Respondents understand that they have the following rights
27 in any administrative hearing in this matter:

- 1 1) To appear personally;
- 2 2) To confront and cross-examine all witnesses testifying
- 3 at the hearing;
- 4 3) To subpoena witnesses on their own behalf;
- 5 4) To present evidence on their own behalf; and
- 6 5) To have an impartial administrative law judge present
- 7 to act as a hearing officer, ruling on legal matters such as
- 8 questions concerning the admissibility of evidence.

9 Respondents expressly waive each of the five rights set
10 forth above, including the right to have an evidentiary hearing.

11 Respondents stipulate and agree that this Stipulation may
12 be considered by the Fair Political Practices Commission and, if
13 the Commission accepts the Stipulation, it may issue an order
14 pursuant to Section 83116 without holding an evidentiary
15 hearing.

16 Respondents stipulate and agree that Exhibit I, attached
17 and incorporated by reference, is a true and accurate summary of
18 the facts in this matter, and respondents admit to the violation
19 of the Political Reform Act as described in Exhibit I.

20 For the violations of the Political Reform Act admitted
21 herein, respondents stipulate and agree to the issuance of an
22 order by the Commission finding respondents to have violated the
23 Political Reform Act in the manner described in Exhibit I and
24 imposing a monetary penalty in the amount of One Thousand
25 Dollars (\$1,000). Respondents shall be jointly and severally
26 liable for this penalty. Respondents shall submit payment in
27 the form of a cashier's check for One Thousand Dollars (\$1,000)

1 made payable to the General Fund of the State of California.
2 Respondents shall submit payment of penalty, together with this
3 signed Stipulation, prior to consideration of this matter by the
4 Commission.

5 In the event that the Commission refuses to accept the
6 Stipulation, it shall become null and void. Respondents
7 stipulate and agree that in the event a full evidentiary hearing
8 becomes necessary, no member of the Commission shall be
9 disqualified because of prior consideration of the Stipulation.

10 Respondents also agree that in the event of an evidentiary
11 hearing, the Stipulation may not be considered by the Commission.

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13 Dated 5/25/87


Gregory W. Baugher, Executive Director,
Fair Political Practices Commission,
Complainant

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16 Dated 8/17/87

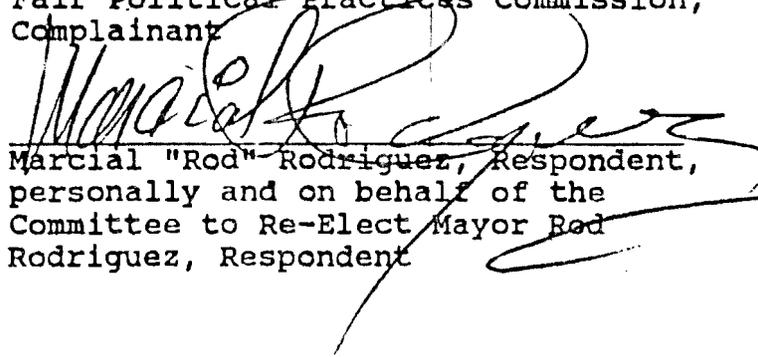

Marcial "Rod" Rodriguez, Respondent,
personally and on behalf of the
Committee to Re-Elect Mayor Rod
Rodriguez, Respondent

EXHIBIT I
STIPULATED STATEMENT OF FACTS

Respondents Manual "Rod" Rodriguez ("Rodriguez") and the Committee to Re-Elect Mayor "Rod" Rodriguez ("CR-MRR") stipulate and admit to violating Government Code Section 84305^{1/} as stated herein:

I
THE RESPONDENTS

Rodriguez has been a member of the Norwalk City Council since 1982 and presently serves as a legislative staff member to Senator Cecil Green. Prior to his election to the city council, Rodriguez served on the Norwalk Planning Commission for eight years.

The admitted violation occurred on or about January 27, 1986. At that time, Rodriguez was serving as mayor^{2/} and campaigning for re-election to the city council. CR-MRR was Rodriguez' controlled campaign committee. On April 8, 1986, Rodriguez was re-elected to the city council.

^{1/} Government Code Section 84305 is part of the Political Reform Act of 1974 ("Act"); the Act is located in Title 9 of the Government Code and includes Sections 81000-91015. All further statutory references are to the Government Code unless otherwise noted.

^{2/} Rodriguez served as mayor from April, 1985 to April, 1986.

II
ADMITTED VIOLATIONS

Count 1: Violation of Section 84305

Section 84305 requires candidates or committees sending mass mailings^{3/} to properly identify themselves by name, address and city. In addition, if the sender of the mass mailing is a controlled committee, the name of the person controlling the committee must be included in the identification.

Rodriguez and CR-MRR admit that, on or about January 27, 1986, they violated Section 84305 by mailing 7000 pieces of identical campaign literature without identifying the controlling candidate, Rodriguez, or the sender, CR-MRR, on the exterior of the mailer.

The exterior of the January 27th mailer stated "Important! Voter Information Enclosed" and provided "Office of the Mayor, Norwalk, CA., 90650" as the sole sender identification. The mass mailer's enclosures included (1) a letter informing the reader that Mayor Rodriguez had filed for re-election and asking for support, (2) a card for the reader to indicate a pledge of financial support or volunteer services, and (3) an invitation to an open house for the mayor.

The mailer was designed, reviewed and approved by Rodriguez and paid for by his controlled committee, CR-MRR. Rodriguez acknowledges that he was aware of the identification provisions of Section 84305 and that he had sent previous mailers which conformed with these requirements. Rodriguez admits, however, that he failed to ensure that the January 27th mailer conformed with his statutory obligations.

^{3/} A "Mass mailing" is defined by Section 82041.5 to mean two hundred (200) or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry.

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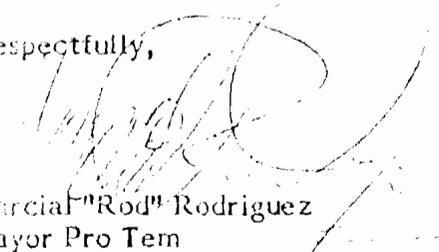
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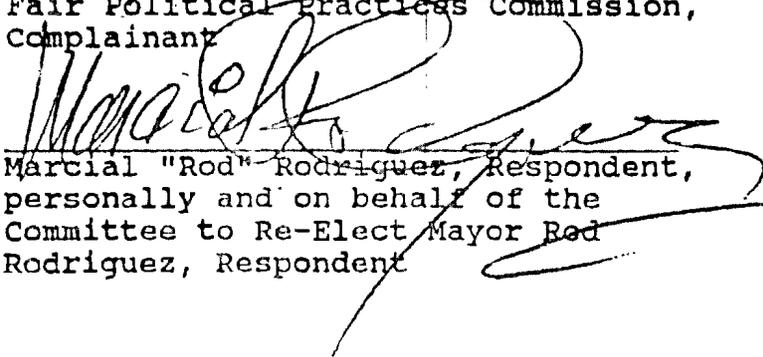
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