

August 24, 2012

Ms. Kathleen Shaffer
Councilmember
136 N. High Street
Sebastopol, CA 95472

Re: Your Request for Advice
Our File No. A-12-122

Dear Ms. Shaffer:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTION

What involvement may your spouse, who is treasurer of your city council reelection committee, have in the general purpose committee Sustainable Sebastopol, without that committee's being considered a controlled committee of yours?

CONCLUSION

Under Section 85201 of the Act, a candidate may only have one controlled committee for election to a term of office and one bank account for that committee. Under Section 82016, defining "controlled committee," you will not indirectly control Sustainable Sebastopol as long as (1) that committee does not act jointly with you or your council committee in the making of expenditures and (2) you and your campaign manager/treasurer do not have a significant influence on the actions or decisions of Sustainable Sebastopol.

FACTS

You are running for City Council in Sebastopol. You have a committee, Friends of Re-Elect Kathleen Shaffer for City Council 2012, ID # 1348149. Your campaign manager is Robert Green and he is also your husband.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

A general purpose city committee has applied to be qualified. They have not yet received their ID number. Their name is Sustainable Sebastopol.

From reading FPPC advice and several advice letters, you understand that your treasurer cannot be involved with the general purpose committees in the following capacities: with the decision making, with developing and/or implementing campaign strategy, or in making expenditures. However, you have some additional more specific questions about some possible roles Robert Green might have with Sustainable Sebastopol, addressed below.

ANALYSIS

Under the Act a candidate may have one controlled committee for election to office and one bank account for that committee. (Section 85201(a).) Your committee is Friends of Re-Elect Kathleen Shaffer for City Council 2012, ID # 1348149.

Section 82016 of the Act defines a “controlled committee” as follows:

“(a) ‘Controlled committee’ means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(b) Notwithstanding subdivision (a), a political party committee, as defined in Section 85205, is not a controlled committee.”

Section 82016 describes two ways in which a committee may become a controlled committee. First, if a candidate, his or her agent, or his or her controlled committee acts jointly with the committee in connection with the making of expenditures. Second, if a candidate, his or her agent, or his or her controlled committee directly or indirectly controls the committee by exerting significant influence on the actions or decisions of the committee. The term “candidate” as defined by the Act, includes elected officials at the state and local level. (Section 82007.)

To determine whether a candidate controls a committee under the second part of Section 82016(a), one looks at the degree of the candidate’s involvement in the committee’s activities. (*Madden Advice Letter, No. A-85-197.*) The applicable standard is whether an elected official exerts “significant influence” over the actions or decisions of a committee. There is a spectrum of an elected official’s involvement with another committee that runs from minimal or tangential involvement to full participation and control. The Commission’s advice letters determine, based on specific factual situations, whether a given elected official is so significantly influencing the activities of a committee that the official is considered to be controlling the committee.

The Commission has interpreted the definition of “controlled committee” broadly to include any significant participation in the actions of a committee by a candidate, his or her

agent, or representatives of any other committee he or she controls. (*Higdon* Advice Letter, No. I-94-189; *Kopp* Advice Letter, No. A-97-108.) We have advised that where a candidate is a voting member of an organization's leadership, the candidate is presumed to be the controlling candidate since the candidate exercises significant influence on the actions or decisions of the organization. (*Titus* Advice Letter, No. I-06-197; *Trimbur* Advice Letter, No. A-00-067; *Gastelum* Advice Letter, No. A-96-113; *Ferguson* Advice Letter, No. A-86-044.) We have also advised that an elected official who has extensive involvement in a committee's fundraising activities – by actively participating in its solicitation, fundraising events and fundraising strategy – is also exerting “significant influence” over the committee and controlling the committee within the meaning of Section 82016. (*Pirayou* Advice Letter, No. I-10-159, copy enclosed.) Other relevant factors which determine whether a candidate is controlling a committee include whether the candidate is involved with decisionmaking or developing or implementing campaign strategy for the committee. (*Helms* Advice Letter, No. I-91-390.)

The *Brainerd* Advice Letter, Nos. I-90-413 and I-90-551, copy enclosed, examined whether the treasurer of Senator Roberti's committee could sit on the board of directors of a political action committee called Respect Our Animals' Rights (“ROAR”) when he was on the letterhead of and solicited funds for ROAR, without that committee being considered a controlled committee of his. Given the degree of the elected officer's involvement, to ensure that ROAR was not characterized as a controlled committee, the letter concluded that no elected officer or candidate, no agent of an elected officer, and no person acting as a representative of a committee controlled by an elected officer or candidate could sit on the board of directors or participate in making decisions concerning the expenditures of ROAR.

On the other hand, where a candidate is merely an honorary member of a committee's governing body, who may appear in the letterhead, but does not vote, make decisions about committee funds, or otherwise influence the actions of a committee, we have advised that the candidate is not considered to “control” the committee. (*Lacy* Advice Letter, No. I-03-076; *Erenbaum* Advice Letter, No. I-01-242; *Madden* Advice Letter, No. A-85-197.)

In this case you are asking about the involvement of your council committee's treasurer and campaign manager in the activities of a new general purpose committee, Sustainable Sebastopol. Your understanding is correct that your treasurer may not be involved with decisionmaking, with developing or implementing campaign strategy, or in making expenditures for Sustainable Sebastopol. These activities would result in the committee being considered an additional controlled committee of yours under Section 82016, which is prohibited by the one bank account rule.

You ask, however, about certain other involvement of your treasurer in the activities of Sustainable Sebastopol:

1. *Can he make contributions to the committee?* Yes. Your treasurer's making typical contributions to Sustainable Sebastopol is not controlling the actions of the committee and would not mean the committee is controlled by you.

2. *Can he provide assistance in establishing email lists and website construction following the direction of the committee?* He may provide assistance in establishing email lists and website construction at the direction of Sustainable Sebastopol as long as in doing so he is not exerting significant influence on the actions or decisions of the committee.

3. *Can he attend meetings of the committee as a non-voting member?* He may attend meetings of Sustainable Sebastopol as a non-voting member, again as long as he is not exerting significant influence on the actions or decisions of the committee.

4. *Can he write postings to the committee's website and blog?* Writing postings to Sustainable Sebastopol's website and blog would be influencing the actions of the committee, and therefore could likely result in the committee's being considered a controlled committee of yours.

5. *Can Sustainable Sebastopol contribute to your campaign?* The general purpose committee Sustainable Sebastopol may contribute to your campaign. Sustainable Sebastopol makes an expenditure when it contributes to your Council committee. To avoid Sustainable Sebastopol's being considered a controlled committee of yours, your committee treasurer may not be involved in the committee's decision to make this or other expenditures.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl

Enclosures