

October 5, 2012

Ash Pirayou
RUTAN LLP
Attorneys at Law
3000 El Camino Real, Suite 200
Palo Alto, CA 94306

Re: Your Request for Advice
Our File No. A-12-135

Dear Mr. Pirayou:

This letter responds to your request for advice on behalf of the United Way Silicon Valley (“UWSV”) regarding the campaign provisions of the Political Reform Act (the “Act”).¹

QUESTION

Does UWSV have to disclose its donors pursuant to Regulations 18412 and 18215 if it makes non-monetary contributions to a local ballot measure committee through the use of its general treasury funds that are not received from any donor in the form of a donation but are obtained through organizational revenues such as investment income and fees for service?

CONCLUSION

No. If UWSV makes contributions from non-donor revenues such as investment income and fees for service, it would only incur reporting obligations under the Act if it meets the thresholds for an independent expenditure or major donor committee under either Section 82013 (b) or (c).

FACTS

UWSV is a 501(c)(3) nonprofit organization that aids individuals by mobilizing community resources to meet local health and human services needs. To do this, UWSV employs five enabling strategies to improve community conditions: programmatic work, strategic grants to local nonprofits, advocacy, partnerships and volunteerism.

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.

UWSV's fiscal year runs from July 1 to June 30. Most of its revenue is derived from contributions from donors in the community. However, over 10 percent of UWSV's unrestricted revenue is derived from two distinct sources: first, "investment income" is derived from investment of its revenues into various investment vehicles. Second, "miscellaneous income" is derived from fees for service and rent from a building owned by UWSV. In Fiscal Year 2011-12, unrestricted revenue from "investment income" totaled \$26,651 and the "miscellaneous income" totaled \$742,410 for a combined total of \$769,061.

UWSV recently endorsed Measure D in the City of San Jose (minimum wage measure) and intends to support the measure by making non-monetary contributions to a local (primarily formed) ballot measure committee from September 1, 2012 through November 6, 2012 as follows:

<u>Item/Activity</u>	<u>Quantity/Hours</u>	<u>Projected Cost</u>
Staff Time (i.e., coordinating and staffing phone banks, drafting and placing earned media, educating voters about the measure via electronic communications (email and social media) and public presentations, recruiting coalition members, and canvassing neighborhoods). Staff time calculated at approximately \$33.05/hour.	100-150	\$3,305 -\$4,958
Copies (.10 cents per copy)	1,000 -5,000	\$100-500
Bulk Mail (postage) (0.17/piece using the formula set forth in <i>McAndrews</i> Advice Letter A-99-267)	100,000 - 400,000	\$17,000-68,000
Total		\$20,405-73,458

Less than four years ago, in 2010, UWSV made a \$154,256 non-monetary contribution to the Measure A campaign in Santa Clara County and filed a Form 461 as a county major donor pursuant to the Act's disclosure rules. UWSV has never received any funds "earmarked" for political purposes. Moreover, the funds derived from investment income and actually used to make the proposed expenditures will not be replaced by UWSV with funds from other sources after the expenditures are made.

ANALYSIS

The Act requires a nonprofit or other multipurpose organization which is actively contributing to or spending on California candidates or ballot measures, and qualifies as a committee under Section 82013(a) and Regulation 18215(b)(1), to file disclosure reports in

California showing the sources of the funds used for the contributions or expenditures. Regulation 18412, adopted in April of 2012, establishes rules for such a nonprofit or multipurpose organization to use in identifying funding sources for the contributions or expenditures it has made on California elections.

When an organization like UWSV makes contributions or expenditures solely from a source such as investment income or fees for services, however, it will not qualify as a recipient committee under the Act or be required to attribute the payments to or disclose the payments as contributions received from its donors. In particular, Regulation 18412(e)(3) provides “[a]n organization that makes expenditures from income-producing revenues (such as sales of goods or services or investment income) shall file reports as a committee pursuant to Section 82013(b) or (c).”² Furthermore, as referenced in your letter, we have advised that an organization such as UWSV “will not qualify as a recipient committee if funds derived solely from investment income are used to finance the contributions made by TCP provided: (1) the contributions or expenditures are made solely from its operating reserve generated from investment income; (2) TCP’s contributions or expenditures do not exceed the funds derived from the investment income and the funds derived from investment income and actually used to make contributions or expenditures are not replaced with funds from other sources after the contributions or expenditures are made; and (3) no donations made to TCP are earmarked for political purposes.” (*Fishburn Advice Letter*, No. A-06-075.)

Under Regulation 18412, donors to a nonprofit organization are required to be disclosed as sources of funds when a nonprofit organization uses member donations to make contributions to a ballot measure. However, when a nonprofit uses investment income to make contributions or expenditures, the nonprofit logically is not required to disclose its donors as the source of these funds. The nonprofit organization will report as a major donor if its contributions total \$10,000 or more in a calendar year, and will report independent expenditures of \$1,000 or more.

Based on the facts provided, for the fiscal year ending 2012, the revenue generated by UWSV from investment income, fees for service and rent from a building totaled \$769,061. From September 1, 2012 through November 6, 2012, UWSV intends to make non-monetary contributions to a local ballot measure committee in an amount ranging from \$20,405 to \$73,458 through the use of this organizational revenue. Additionally, you stated that the funds used to make the proposed expenditures will not be replaced with funds from other sources after the expenditures are made, and that UWSV has never received any funds “earmarked” for political purposes.

² Section 82013(b) concerns major donor committees while 82013(c) concerns independent expenditure committees.

Accordingly, UWSV will not have to disclose donors under the Act. However, it will incur independent expenditure or major donor reporting obligations under the Act if it meets the thresholds under Section 82013 (b) or (c).

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Senior Counsel, Legal Division

JW:jgl