

December 20, 2013

Steven W. Martin  
1015 Samantha Drive  
Paso Robles CA 93446

Re: Your Request for Advice  
**Our File No. A-13-147**

Dear Mr. Martin:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when rendering advice. (*In re Oglesby* (1975), 1 FPPC Ops. 71.)

### **QUESTION**

Does the Act present limitations on your plan to start an Internet radio show that would host discussions about local issues?

### **CONCLUSION**

The Act does not prevent you from hosting a radio show, but does require reporting of certain payments as income.

### **FACTS**

You are a member of the city council in the City of Paso Robles. You also have a broadcasting background and you are considering establishing an Internet radio station that would feature programming focused on local events and issues. You would be the sole owner and broadcaster as you begin this venture. You do not plan to use public funds, to advocate for or oppose ballot measures or candidates, nor will you mention your own candidacy or office. You plan to have advertisers who will purchase on-air advertising space. This will be the

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<sup>1</sup> 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.

Internet radio station's sole source of income and advertisements will be sold at comparable prices to all interested parties.

### ANALYSIS

The Act defines "contribution" to include any payments made at the behest of a candidate unless it is clear from the surrounding circumstances that the payment was made for purposes unrelated to his candidacy for elective office. (Section 82015.) Section 82015 of the Act provides that a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities.

"(C) . . . For purposes of this subparagraph, 'election-related activities' shall include, but are not limited to, the following:

- (i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.
- (ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.
- (iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.
- (iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clause (i), (ii), or (iii).
- (v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.
- (vi) Preparing campaign budgets.
- (vii) Preparing campaign finance disclosure statements.
- (viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent."

(Section 82015(b)(2)(C).)

Regulation 18215 states:

“(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure . . .”

The definition of “contribution” excludes certain payments made at the behest of a candidate for a communication that does not expressly advocate the candidate’s election, does not refer to the election, and does not solicit contributions. Regulation 18215(c)(4) provides as follows:

“(c) Notwithstanding any other provision of this section, the term ‘contribution’ does not include:

\* \* \*

(4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:

(i) Does not contain express advocacy;

(ii) Does not make reference to the candidate’s candidacy for elective office, the candidate’s election campaign, or the candidate’s or his or her opponent’s qualifications for office; and

(iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate’s opponent.”

For purposes of the Act, “express advocacy,” as used above, refers to “a communication that ‘expressly advocates’ the nomination, election or defeat of a measure if it contains express words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” or, within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election. (Regulation 18225(b)(2), copy enclosed.)

Under Section 82015 and Regulation 18215(c)(4), the expenses incurred to air the radio show will not constitute reportable contributions to your campaign if it is clear from the surrounding circumstances that the payments were made for purposes unrelated to your candidacy for elective office. In general, radio shows fall under an exemption for broadcasting.

This exemption applies to a news source “that routinely carries news and commentary of general interest.” (Regulation 18215(c)(8), copy enclosed.) This exemption applies to news and commentary, but not to express advocacy. You have not provided information regarding other broadcasts or podcasts that your Internet radio station does or will produce.

Based on the above, and limited to your factual situation, payments made by you for your radio program are not contributions as long as the talk show (1) does not expressly advocate for your election (by urging listeners to vote for you or vote against your opponents); (2) does not make any reference to your candidacy for elective office, your campaign, or your or your opponent’s qualifications for office; and (3) does not solicit contributions for your campaign. (*Flick Advice Letter, A-11-106, copy enclosed.*)

You have described a radio show that will discuss local issues, but not your candidacy or campaign for office. Any payments that you make to start or support the radio will be from your own funds or you will also use advertising income. The advertisers will pay the station in exchange for air-time on your shows. Based on your facts, the payments are not contributions to your campaign as they are not made for political purposes. Provided the content of the Internet radio programming is limited as described above, the payments related to the Internet radio station are not reportable on your campaign reports.

The income you receive from advertisers would not be contributions, as they are made for commercial, rather than political purposes. The companies or individuals who will buy advertising space on your radio program are making payments in full consideration in exchange for air-time. (*See Section 82015(a).*) This income, however, must be properly reported on your Statement of Economic Interests (“Form 700”). Also, if you receive \$500 or more from any advertiser (or other source of income) during the 12 months prior to when you will be making, participating in, or using your official position to influence a government decision having a financial effect on that person, you may have a conflict of interest under the Act. (Section 87100.) For general guidelines regarding this analysis, see the Commission’s pamphlet, “Can I Vote?” at <http://www.fppc.ca.gov/index.php?id=37>.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Senior Counsel, Legal Division

HMR:jgl