

February 26, 2014

Mr. John St. Croix, Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue Suite 220
San Francisco, CA 94102-6053

Re: Your Request for Advice
Our File No. A-13-159

Dear Mr. St. Croix:

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

QUESTION

May the City and County of San Francisco require the candidates for the two San Francisco seats on the Board of Directors for the Bay Area Rapid Transit District (“BART”) to file their campaign statements with the Ethics Commission, instead of with the San Francisco Director of Elections where they are currently filed?

CONCLUSION

No, under Section 84215 of the Act which governs where to file campaign reports, candidates for the BART Board of Directors, who are candidates in a multi-county district, are required to file the original and one copy of their campaign statements with the county with the largest number of registered voters – the Registrar of Voters of Alameda County. Section 84215 also requires BART candidates to file a copy of their campaign statements with the county in which the candidate or elected official is domiciled – which, for candidates in BART districts 8 and 9, is San Francisco.

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.

FACTS

The San Francisco Ethics Commission and Department of Elections requests the Fair Political Practices Commission's advice on whether the City and County of San Francisco may require the candidates for the two San Francisco seats on the Board of Directors for the Bay Area Rapid Transit District ("BART") to file their campaign statements electronically with the San Francisco Ethics Commission. You state that currently, the San Francisco Director of Elections serves as the filing officer for candidates for two seats on the BART Board of Directors that exclusively represent San Francisco. Candidates for these two offices file original paper campaign disclosure reports with the San Francisco Department of Elections.

The BART Board of Directors consists of nine elected officials from nine BART districts. (Cal. Pub. Util. Code §28745.) Two BART districts - districts 8 and 9 - are located wholly in San Francisco.² And only San Francisco voters may vote for candidates seeking to represent BART districts 8 and 9. Under Section 81009.5(b), you ask whether the Ethics Commission can serve as the filing officer for candidates for BART districts 8 and 9 because candidates for those offices are seeking election *only* in San Francisco.

You observe that one of the core purposes of the Act is to ensure that the financial activity of campaigns is "fully and truthfully disclosed in order that the voters may be fully informed." (Section 81002(a).) The Ethics Commission, on behalf of the City and County of San Francisco, has sought to accomplish this goal through its comprehensive and innovative online filing system for campaign statements. Under the Ethics Commission's current policies and procedures, campaign statements submitted to the Ethics Commission appear online instantly for any member of the public to view.

The Department of Elections, which has many additional responsibilities unrelated to campaign finance, has not developed its own online filing system.³ Thus, many of the statements filed with the Department of Elections are not made easily available for public review. BART Board candidates for districts 8 and 9 are currently filing original paper campaign statements with the San Francisco Department of Elections. You ask whether the filing officer responsibilities for the two San Francisco candidates on the BART Board of Directors can be shifted from the San Francisco Department of Elections to the San Francisco Ethics Commission so their campaign statements will be available online.

² <http://www.bart.gov/about/bod>

³ In fact, you state that it is unlikely that the Department of Elections would develop a second electronic filing system for the City and County of San Francisco to include candidates for the two BART seats; such a development would be prohibitively costly and create confusion among filers and members of the public.

ANALYSIS

BART is a three-county special district established pursuant to Public Utilities Code Section 28500, et seq. The constituent counties are San Francisco, Alameda and Contra Costa.

Section 84215 of the Act sets forth the places where candidates must file campaign disclosure statements. The introductory paragraph specifies that a candidate shall file a copy of his or her campaign statements in his or her county of domicile. Paragraph (b) states where candidates in multi-county special districts, like the BART Board, file campaign statements.

Section 84215 provides:

“All candidates and elected officers and their controlled committees, except as provided in subdivisions (d) and (e) [for city candidates and CalPERS or CalSTRS candidates], *shall file one copy of the campaign statements required by Section 84200 with the elections official of the county in which the candidate or elected official is domiciled*, as defined in subdivision (b) of Section 349 of the Elections Code. In addition, campaign statements shall be filed at the following places: . . .

“(b) Elected officers in jurisdictions other than legislative districts, State Board of Equalization districts, or appellate court districts that contain parts of two or more counties, candidates for these offices, their controlled committees, and committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one of these jurisdictions *shall file the original and one copy with the elections official of the county with the largest number of registered voters in the jurisdiction.*” (Emphasis added.)

Under Section 84215(b), candidates for BART Directors must file the original and a copy of their campaign statements with the county with the largest number of registered voters. BART is a three-county special district whose constituent counties are San Francisco, Alameda and Contra Costa. According to the Secretary of State Report of Voter Registration by County as of February 10, 2013, the number of registered voters in Alameda County was 816,942; the number of registered voters in Contra Costa County was 530,360; and the number of registered voters in San Francisco was 497,663. Accordingly, candidates for the BART Board of Directors are required to file the original and a copy of their campaign statements with the Alameda County Registrar of Voters.

In addition, the introductory paragraph to Section 84215 requires candidates to file one copy of their campaign statements with the elections official of the county in which the candidate or elected official is domiciled. Candidates for the BART seats representing districts 8 and 9, which are wholly within San Francisco, must file the original and one copy of their campaign statements with the Alameda County Registrar of Voters, and must file one copy of the campaign statement with the elections official in the candidate’s county of domicile, which is the San Francisco County Department of Elections.

This advice about where BART board candidates file is consistent with that provided in the *Smith* Advice Letter, No. A-86-345. In that letter, Arlo Smith, a BART director from District 8, entirely within the City and County of San Francisco, asked where he was required to file campaign statements. The FPPC advised him that “you must file the original and one copy of your campaign disclosure statements with the Registrar of Voters of Alameda County, the county with the largest number of registered voters in the BART special district, as well as [then-required] two copies with the Registrar of Voters of the City and County of San Francisco, your county of domicile.”

As to only the copy of campaign statements filed by candidates for BART districts 8 and 9 with the elections official of the county of domicile, the San Francisco Department of Elections may delegate to the Ethics Commission the authority to receive that copy.⁴ If the Ethics Commission wishes to pursue this, it should obtain agreement from the Department of Elections, with that agency assigning its role as filing officer to the Ethics Commission for the copies of these statements. But under the Act, the original statements for all BART board candidates are to be filed with the Alameda County Registrar of Voters.

The Alameda County Registrar of Voters permits candidates to file statements electronically or on paper, but all candidates are required to file an original of the statements in paper version with a wet signature. The paper and electronically filed statements are available on the Alameda County Registrar of Voter’s website here: <http://static.netfile.com/agency/coa/>. Therefore, the BART candidates’ campaign statements will be accessible on the Internet when filed with the Alameda County Registrar of Voters.

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

⁴ For purposes of candidates and committees solely within the city and county of San Francisco, the FPPC has permitted the city and county of San Francisco to designate the San Francisco Ethics Commission as the filing location for campaign statements in lieu of the city clerk as “a valid exercise of a local jurisdiction’s authority under Section 81009.5.” (*Sutton* Advice Letter, No. A-01-184.)