



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 7, 2015

Michael Howerton  
Editor-in-Chief, SF Examiner  
VP of Editorial, San Francisco Media Company  
835 Market Street, Suite 550  
San Francisco, CA 94103

Re: Your Request for Advice  
**Our File No. A-15-122**

Dear Mr. Howerton:

This letter responds to your request for advice regarding the contribution provisions of the Political Reform Act (the “Act”).<sup>1</sup> The Fair Political Practices Commission (the “Commission”) does not advise on other areas of law, including applicable local laws or statements of incompatibility.

### **QUESTION**

Does allowing a columnist to write a column for the San Francisco Examiner about his own candidacy constitute a contribution under the Act?

### **CONCLUSION**

Yes. Unless an exception applies, paying a columnist who is also a candidate to write a column specifically about his candidacy is a contribution under the Act. If, however, The Examiner invites all candidates in the race, or at least two candidates appearing on the ballot for mayor to participate in the forum by offering each candidate similar space, as discussed below, this would qualify as an exception to the definition of contribution under Regulation 18215(c)(10).

### **FACTS**

You are the Editor-in-Chief of the San Francisco Examiner, which is a long-running daily newspaper distributed in and around San Francisco. Stuart Schuffman is a weekly columnist for

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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.

the Examiner and a candidate for San Francisco mayor. As part of his weekly column, Mr. Schuffman would like to use that column to write about his experiences running for mayor as well as his candidacy. There is one other candidate, the incumbent, who is also running.

## ANALYSIS

### Contribution

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 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, as defined below:

“(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).)

Further, 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 . . . .”

In the *Flick* Letter, No. A-11-106, we advised that a radio station would not give an in-kind contribution to a mayoral candidate who hosts a radio show if “it is clear from the surrounding circumstances that the payments were made for purposes unrelated to [the host’s] candidacy for elective office.” In that situation, the radio show host had no intention of discussing his candidacy on this radio show. Consequently, the show was not an in-kind contribution because it was unrelated to the host’s candidacy. The radio station also planned to produce a podcast wherein the same radio host would discuss his candidacy. Any reference to the host’s candidacy, the campaign, or his or her opponent’s qualifications, however, would qualify the radio show as an in-kind contribution because the exception does not apply to a candidate engaging in express advocacy and the payments would not be “unrelated to the campaign.” (Section 82015(b)(2)(C).)

Here, however, the columnist (akin to the radio show host), plans to specifically devote his newspaper column to discussing his candidacy and engaging in express advocacy. (See Regulation 18215(c)(4) [a contribution does not include a payment made at the behest of a candidate for a communication by the candidate unless it contains express advocacy or refers to the candidate’s candidacy for elective office].) While there is an exception to “contribution” for payments that a newspaper of general circulation makes if the newspaper “routinely covers news and commentary of general interest . . .,” it does not apply to the candidate him- or herself expressly advocating for his or her own candidacy, or against his or her opponent’s. (Regulation 18215(c)(8).) Allowing Mr. Schuffman space in the Examiner to discuss and promote his candidacy would therefore be an in-kind contribution unless an exception applies.

There are several exceptions to the definition of contribution. Other than the exception for newspapers of general circulation, discussed above and which does not apply, one exception that could apply is:

A payment for a debate or other forum sponsored by a nonpartisan organization in which at least two candidates appearing on the ballot for the same elective office were invited to participate.

(Regulation 18215(c)(10), copy enclosed.)

We have previously found that a voter pamphlet, a website that offers space to all candidates, and a radio show that offers other candidates an invitation to participate in a

discussion all fall under “other forum.” (See Advice Letters: *Jex*, A-00-271, *Johnson*, I-96-260, *Farthing*, I-95-390.) Similarly here, a newspaper that invites at least two candidates appearing on the ballot for the same elective office to participate by offering each candidate similar space would qualify under “other forum” for purposes of the exception above. This exception would not apply, however, if one or both of the candidates were paid to participate in the forum.

The Act does not require Mr. Schuffman to discontinue his weekly column in the Examiner. But any express advocacy or reference to his campaign in that column, unless falling within the exception under Regulation 18215(c)(10), will create a reportable contribution on the part of the Examiner.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: Heather M. Rowan  
Senior Counsel, Legal Division

HMR:jgl