STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 30, 2020

Jesse Mainardi
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315 Montgomery St., 9th Floor
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. A-20-075

Dear Mr. Mainardi:

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

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

If a slate mailer organization retains the same primary campaign consultant as one of the slate mailer's endorsed candidates, will the slate mailer organization's expenditures be considered coordinated with the candidate?

CONCLUSION

No. The Act provides that payments made by a slate mailer organization for the production and distribution of the slate mailer are not considered contributions to, or expenditures on behalf of, the candidates or measures supported or opposed in the slate mailers. Therefore, slate mailer organizations may employ the same campaign consultant as a candidate featured on its slate, despite engaging in what otherwise would be considered coordination.

FACTS AS PRESENTED BY REQUESTER

[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.

Your firm represents the Edwin M. Lee Democratic Club Voter Guide (the "Voter Guide"), a slate mailer organization based in the city of Novato. The Voter Guide intends to support a number of state and local candidates in connection with the November 2020 election. The Voter Guide expects to receive payment from certain candidates who wish to appear on the slate mailer, as well as from third parties wishing to support certain candidates and measures. Aside from producing slate mailers for distribution via traditional mail (postal service), the Voter Guide intends to produce a variety of electronic slate mailers.

The Voter Guide is considering retaining as its primary campaign consultant—for design, publishing, etc.—the same individual or firm who will also be the primary campaign consultant for one of the Voter Guide's endorsed candidates. The Voter Guide and endorsed candidate would fully coordinate their strategy and activities through the shared consultant. You seek guidance as to whether this proposed arrangement would result in coordinated expenditures under the Act.

ANALYSIS

The Act defines a slate mailer as a mass mailing (more than 200 substantially similar pieces of mail sent in a calendar month) that supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.) A slate mailer organization (SMO), meanwhile, is any person who directly or indirectly:

- Is involved in the production of one or more slate mailers and exercises control over the selection of candidates and measures to be supported or opposed in the slate mailers; and

- Receives or is promised payments totaling $500 or more in a calendar year for the production of one or more slate mailers.

(Section 82048.4**)**

Here, the Voter Guide is a SMO. The question is whether, if Voter Guide uses the same campaign consultant for design, publishing, and campaign strategy as a candidate whom the Voter Guide has endorsed on its slate, it would be coordinating with the candidate's campaign and thus making a nonmonetary contribution.

Ordinarily, payments made at the behest of a candidate are considered a contribution to the candidate's committee unless full and adequate consideration is received from the candidate's committee for making the payment. (Section 82015.) A payment is made "at the behest" of a candidate if it is made at the direction of; in cooperation, consultation, coordination, or in concert with; at the request or suggestion of; or with the express, prior consent of the candidate or the candidate's agent. (Regulation 18225.7.) Where the person making the expenditure retains the services of a person who also provides the candidate with professional services related to campaign strategy for the same election, the law presumes that the expenditure is made at the behest of a candidate and is a contribution to the candidate. (Regulation 18225.7(d)(3) and (g).)

However, Section 82048.4 explicitly provides that payments made by an SMO for the production and distribution of the slate mailer are <u>not</u> considered contributions to, or expenditures on behalf of, the candidates or measures supported or opposed in the slate mailers for purposes of

Section 82013 subdivisions (b) and (c). Therefore, slate mailer organizations such as the Voter Guide may employ the same campaign consultant as a candidate featured on its slate, without making coordinated expenditures.[2]

Please note, however, that a SMO may also qualify as a general purpose recipient committee if it receives contributions of more than $2,000 in a calendar year. (Section 82013(a).) Payments received by a SMO are not considered contributions if the payments are from candidates or ballot measure committees who wish to appear on the slate, or from a third party paying to feature a candidate or measure on a slate. (Section 82048.4.) Such payments count toward qualification as a SMO, but not toward qualification as a recipient committee. By contrast, payments received by a slate mailer for general production or distribution of slate mailers, or for the purpose of making contributions or independent expenditures, are considered contributions to the SMO, which would qualify the SMO as a recipient committee if the SMO receives $2,000 or more in contributions in a calendar year. If a SMO that has qualified as a recipient committee employs the same campaign consultant as a candidate featured on its slate, the SMO would be making coordinated expenditures. (Regulation 18225.7(d)(3) and (g).)

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

Sincerely,

Dave Bainbridge
General Counsel

By: Toren A. Lewis
Counsel, Legal Division

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[2] We caution, however, that under Section 82048.4(b)(1), a slate mailer organization shall not include a "candidate or officeholder or a candidate's or officeholder's controlled committee." Accordingly, our conclusion applies only to the extent that the impetus for establishing the slate mailer organization is independent of the candidate. Our conclusion does not apply where the slate mailer organization is initially established by the candidate or at the direction of a campaign consultant working in coordination with the candidate.