



FAIR POLITICAL PRACTICES COMMISSION

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March 20, 2013

Mr. James C. Harrison
o/b/o Fred Maas

REDACTED

Re: Closure Letter
FPPC Case No. 12/397; Fred Maas

Dear Mr. Harrison:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act") found in Government Code Section 81000, and following. As you are aware, the Commission initiated an investigation into your client concerning possible violations of the campaign disclosure provisions of the Act. Specifically, the investigation focused on whether your client incurred filing obligations as a result of payment to an investigator for obtaining information concerning the partner of a candidate for public office. The Commission has decided to close this case without further action.

Under the Act, an individual or entity will qualify as a "committee" if it receives contributions totaling \$1,000 or more in a calendar year or makes independent expenditures totaling \$1,000 or more in a calendar year (Section 82013). A contribution is defined as a payment for political purposes

A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the actions of the voters for or against the qualification or passage of any measure. (Regulation 18225(a)(1).) A payment made in connection with a communication is considered to be made for political purposes if the communication expressly advocates the qualification, passage or defeat of a clearly identified ballot measure. (Regulation 18225(b).)

In the *Winkler* Advice Letter, A-86-035, the Commission concluded that a survey, purportedly conducted for business decision making purposes, which included questions about voter attitudes towards elected officials, was conducted for political as well as business purposes. However, whether expenditures incurred in connection with conducting a survey are considered independent expenditures will depend on the *use* of the survey results rather than the *purpose* of the survey.

The *Winkler* Letter went on to state that the survey results would need to be used in a communication, such as an advertising campaign, to influence voters in connection with an election, in order for the costs of the survey, as well as the costs of the communication, to be considered independent expenditures. Merely providing the information to the media would not constitute a "communication" under the Act.

In the *Bauer Advice* Letter, I-90-569, the Commission addressed a recipient committee's plans to conduct a public opinion poll in an elected state officer's district to determine the voters' attitudes regarding the incumbent legislator. The Commission stated that if the survey results were given to a newspaper, this action would not qualify as either a contribution or independent expenditure.

However, if a committee used the results of a poll in a communication, such as an advertising campaign, that expressly advocates the qualification or passage of a ballot measure, then the cost of conducting the survey, as well as the cost of making the communication, would be a reportable expenditure at the time the communication is distributed.

Our investigation has revealed that your client, along with the San Diego Firefighters Local 145, the San Diego Municipal Employees Association, and the Sycuan Band of the Kumeyaay Nation, paid an investigative journalist to conduct research on Carl DeMaio and Jonathan Hale. Some of this research was provided to a newspaper reporter; and subsequently used in the publication of an article focusing on Mr. Hale. As such, the information uncovered in the investigation was not used for political purposes as defined by the Act.

If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED

Zachary W. Norton
Commission Counsel
Enforcement Division