



FAIR POLITICAL PRACTICES COMMISSION

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March 21, 2014

Jim Sutton
The Sutton Law Firm
o/b/o San Jose Silicon Valley Chamber of Commerce PAC and Robin Stephen, Treasurer

REDACTED

Advisory Letter

Re: FPPC No. 13/521, San Jose Silicon Valley Chamber of Commerce PAC and Robin Stephen, Treasurer

Dear Mr. Sutton:

The Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (“Act”),¹ found in Government Code section 81000, et seq. This letter is in response to a sworn complaint alleging that your client, San Jose Silicon Valley Chamber of Commerce PAC (“Chamber PAC”), sent out six mailers at the behest of Teresa Alvarado’s 2013 campaign for Santa Clara Board of Supervisors that resulted in violations of the Act’s provisions concerning disclosure.

The Commission has completed its investigation of the facts in this case, and has found that Jim Gonzalez negligently caused a violation of Section 84203 of the Act in connection with six mailers sent out at the behest of Candidate Alvarado’s campaign. However, in light of the mitigating circumstances discussed below, the Commission has decided to close its file on this matter without finding a violation of the Act on the part of the Chamber PAC and without initiating an enforcement action against your client.

The Act provides that independent expenditures are expenditures made by a person in connection with a communication that advocates for the election or defeat of a candidate or

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.

ballot measure, but which are not made to or at the behest of the affected candidate or committee. (Section 82031.). Section 85500, subdivision (b), provides that an expenditure is made at the behest of a candidate, and thus not independent, if the expenditure is made in concert with, or at the request or suggestion of, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate. The Act presumes an expenditure is made at the behest of a candidate if the expenditure is based on information provided to the expending person by the candidate or committee concerning the candidate's campaign needs or plans. An expenditure made at the behest of a candidate is considered a campaign contribution under the Act, and is subject to all applicable reporting requirements.

Under Section 84203, subdivisions (a) and (b), when a committee makes or receives a "late contribution," the committee must disclose that contribution within 24 hours of making or receiving the contribution. Section 82036 defines a "late contribution," in relevant part, as a contribution which totals in the aggregate one thousand dollars (\$1,000) or more that is made to or received by a candidate, controlled committee, or committee formed or existing primarily to support or oppose a candidate or measure within 90 days before the date of the election at which the candidate or measure is to be voted on.

Though purported to be independent, the mailers referenced in the complaint were sent out following a June 19, 2013 Chamber PAC Board Meeting in which an agent of Ms. Alvarado's campaign, Mr. Jim Gonzalez, presented specific details of Ms. Alvarado's overall campaign strategy to the Chamber PAC Board. Specifically, Mr. Gonzalez shared that data analyzed by Ms. Alvarado's campaign indicated that reaching out to various constituencies in San Jose as well as targeting ethnic groups, particularly Vietnamese voters, would be crucial for Ms. Alvarado's campaign. He further noted that Ms. Alvarado's campaign would target Vietnamese and high propensity voters through mailing campaigns, walking districts and making phone calls. As a result of his comments, the six mailers sent out by Chamber PAC following the June 19th meeting could have been considered campaign contributions.

However, in light of the efforts taken by Chamber PAC leadership to minimize the public harm resulting from Mr. Gonzalez's actions, the Commission has decided to close this case with an advisory letter. Among other factors influencing the Commission's decision were (1) the actions taken by Chamber PAC leadership to avoid coordination, (2) the fact that the financial details concerning the six mailers were disclosed prior to the election in timely filed independent expenditure reports, and (3) the evidence received by the Commission indicating that Chamber PAC leadership may have decided to send out the mailers prior to the June 19, 2013 Chamber PAC Board Meeting in reliance upon confidential polling, general knowledge, and other sources unrelated to communications with Ms. Alvarado's campaign.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

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Adam Silver
Commission Counsel
Enforcement Division