



FAIR POLITICAL PRACTICES COMMISSION

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April 14, 2010

Ms. C. April Boling, Treasurer

✓ Citizens for a Better San Diego County

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REDACTED

Warning Letter re: FPPC Case No. 08/799, Citizens for a Better San Diego County, et al.

Dear Ms. Boling:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code section 81000, et seq. This letter is in response to a written complaint that we received in November 2008, which pertained to payments made by Citizens for a Better San Diego County to various slate mailer organizations during the reporting period of January 1, 2008, through May 17, 2008.

The FPPC has completed its investigation of the facts in this case and found at least one violation of the Act. During the above-described reporting period, you and the committee reported numerous payments to various slate mailer organizations as independent expenditures in support of certain candidates, including Tony Krvaric (who was running for San Diego County Republican Central Committee). However, during our investigation, you admitted that these payments actually were a nonmonetary contribution to Tony Krvaric—not independent expenditures. Since then, you have filed the required amendment to reflect this.

¹ The 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.

Section 82031 provides:

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

Section 82015 provides that a payment made for political purposes at the behest of a candidate is a contribution to that candidate—unless full and adequate consideration is received for making the payment or it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the candidate's candidacy.

It is important to correctly differentiate between independent expenditures and contributions in order to comply with the filing requirements of Section 84211. Section 84211, subdivision (k)(1)-(5), provides:

(k) For each person to whom an expenditure of one hundred dollars (\$100) or more has been made during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) The amount of each expenditure.

(4) A brief description of the consideration for which each expenditure was made.

(5) In the case of an expenditure which is a contribution to a candidate, elected officer, or committee or an independent expenditure to support or oppose a candidate or measure, in addition to the information required in paragraphs (1) to (4) above, the date of the contribution or independent expenditure, the cumulative amount of contributions made to a candidate, elected officer, or committee, or the cumulative amount of independent expenditures made relative to a candidate or measure; the full name of the candidate, and the office and district for which he or she seeks nomination or election, or the number or letter of the measure; and the jurisdiction in which the measure or candidate is voted upon.

Section 83113 authorizes the FPPC to prescribe forms for the filing of campaign statements and reports. As stated above, our investigation revealed that you and the committee failed to accurately identify at least one group of expenditures as contributions to Tony Krvaric on the campaign statement form prescribed by the FPPC.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Very truly yours

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Neal P. Bucknell
Senior Commission Counsel

cc: Dr. Mary Rose Consiglio
Dr. Thomas J. Sherman