



FAIR POLITICAL PRACTICES COMMISSION

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May 26, 2010

Van Tran

✓ David Bauer

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Van Tran

David Bauer

o/b/o Van Tran for Assembly 2008

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**Re: In the Matter of Van Tran; Van Tran for Assembly 2008; David Bauer, Treasurer
FPPC No. 09/682**

Dear Mr. Tran, Mr. Bauer, and Van Tran for Assembly 2008:

The Fair Political Practices Commission (the "Commission") enforces the provisions of the Political Reform Act (the "Act")¹ found in California Government Code Section 81000 and following. On May 30, 2008, the Commission received a complaint alleging violations of the Act pertaining to independent expenditures and in-kind contributions. Specifically, the complaint alleged that a mailer sent to Orange County residents in early 2008 by Van Tran For Assembly 2008, regarding Janet Nguyen was either an independent expenditure or an in-kind contribution to Dina Nguyen. As you will recall, Janet Nguyen was the incumbent candidate for Orange County Supervisor which Dina Nguyen challenged in the 2008 election.

Section 82031 of the Act defines an independent expenditure as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, 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. Under Section 85501, a candidate may not make an independent expenditure to another candidate.

¹The 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.

Based on our review and investigation, the evidence revealed no violation of the Act. The mailer was not an independent expenditure because the mailer did not contain express advocacy, and it did not, taken as a whole, unambiguously urge a particular result in the election. (Section 82031.) Additionally, there is no evidence that the mailer was an in-kind contribution made at the behest of Dina Nguyen because even if it had been made at the behest of Dina Nguyen, the mailer did not qualify as an in-kind contribution because it did not: 1) contain express advocacy; 2) make reference to Dina Nguyen's candidacy for elective office, her election campaign, or her or her opponent, Supervisor Janet Nguyen's qualifications for office; or (3) solicit contributions to Dina Nguyen or to third persons for use in support of her or in opposition to her opponent, Supervisor Janet Nguyen. (Regulation 18215(c)(4).) Therefore, we have determined that you did not violate the Act, and our file in this matter has been closed.

The complaint also alleged that the mailer, as a in-kind contribution, violated the local contribution limits ordinance. The Commission has no authority to enforce local campaign contribution limits rules and ordinances, and therefore the Commission has made no determination in this regard.

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

Sincerely,

REDACTED

Angela J. Brereton
Senior Commission Counsel
Enforcement Division