



FAIR POLITICAL PRACTICES COMMISSION

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August 15, 2014

Mr. Michael J. Ogaz
City Attorney, City of Milpitas



Advisory Letter Re: FPPC No. 12/0515

Dear Mr. Ogaz:

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. As you know, the FPPC received a complaint against Mr. Robert Livengood and Ms. Debbie Giordano. After review of the complaint, communication with the FPPC Legal Division and correspondence with you, the Enforcement Division has decided to close its file on this matter with an advisory letter. The basis for this decision follows.

The complaint alleged that Mr. Robert Livengood and Ms. Debbie Giordano, accepted donations in excess of the \$350 campaign contribution limitation set forth in Milpitas Municipal Code Section I-210-3.10. Specifically, the complaint alleged a failure to 'aggregate' contributions received from multiple contributors with the same address, in violation of local contribution limits, and failure to disclose the total contributions received by those contributors as an aggregated entity.

After review of the complaint and applicable law, the Enforcement Division found the Act's aggregation requirements did not apply to the contribution limits of the City of Milpitas. At the time of the alleged violation, the City of Milpitas had not incorporated the Act's aggregation provisions into its local ordinances. The decision relied upon Sections 84211 and 85311 of the Act and Regulation 18215.1.

As to the reporting requirements, the Act requires the contributions of a person be added together when the cumulative amount of contributions (including loans) received from a person is one hundred dollars (\$100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement (Section 84211(f)(6)). Importantly, Section 84211(f)(6) does not give an indication as to which donor's contributions need to be added, only that each donor's contributions be cumulated when certain requirements are met. Alone, it does not create an obligation to add certain donor's contributions without the support of corresponding local aggregation rules.

Section 85311 of the Act defines when to aggregate the contributions to state candidates. Contributions are to be aggregated if each entity's contribution are directed and controlled by the same person(s), unless

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, Division 6 of the California Code of Regulations, unless otherwise indicated.

the entities act independently in their decision to make the contributions. (*In re Lumsdon (1976)* FPPC Ops. 140; *In re Kahn (1976)* 2 FPPC Ops. 151). The language of Section 85311 limits its application to state candidates. There is no mention of aggregation requirements being extended to local campaign contribution limits. Absent language in the local ordinance incorporating the provision of the Act, Section 85311 does not apply to the local contribution requirements of the City of Milpitas.

Regulation 18215.1 also defines when to aggregate the contributions of donors. While similar to Section 85311, the Regulation clarifies the aggregation rules for local jurisdictions *that have adopted* the Act's aggregation provision. Absent local language incorporating the Act's aggregation provisions, Regulation 18215.1 also does not apply to the City of Milpitas at the time the contributions were made.

At the time of the alleged violations, the local campaign ordinances of the City of Milpitas did not have a provision requiring the aggregation of campaign contributions, so it is up to the local authority to interpret the ordinance and determine how the ordinance applies. You, as the Milpitas City Attorney concluded, that aggregation as defined in FPPC Regulation 18215.1 was not applicable to the contribution limits set forth in the Milpitas Municipal Code at all times cited for the alleged violations (2007-2010). At the time of the alleged offences, the Milpitas City Code did not provide the public or candidates with any notification that donations will or may be aggregated in terms of determining compliance with the \$350 limit. However, it should be noted that best practices dictate that candidates and committees make a good faith investigation into the sources of contributions received by them. In any case, the City of Milpitas remedied this problem with the adoption of aggregation rules similar to that found in the Act in February, 2012.

For the above reasons, this matter has been closed by the Enforcement Division with this advisory letter. 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 Michael Battaglia at (916) 323-2689.

Sincerely,

A solid black rectangular redaction box covering the signature of Galena West.

Galena West
Commission Counsel IV,
Enforcement Division

cc: Mr. Robert Livengood
Ms. Debbie Giordano