



FAIR POLITICAL PRACTICES COMMISSION

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October 28, 2009

- ✓ Hermie Sunga
- ✓ Hermie Sunga for Vallejo City Council

REDACTED

Warning Letter Re: FPPC No. 05/778, Hermie Sunga

Dear Mr. Sunga:

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 complaint filed against you that alleged that you violated provisions of the Act, including the following:

- Failing to report names, employers and/or occupations of campaign contributors, in violation of Section 84211, subdivision (f)
- Failing to report the street addresses of payees to whom your campaign committee made expenditures, in violation of Section 84211, subdivision (k).

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that though you did not initially report all of the required names, employers, and/or occupations of your contributors on your campaign statements for the periods of January 1, 2005 through June 30, 2005; July 1, 2005 through September 24, 2005; and September 25, 2005 through October 22, 2005, you made diligent efforts to timely correct these violations by

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.

filing amendments to your statements within 70 days. The FPPC also found that you failed to disclose addresses for payees to which your campaign made expenditures for the period of January 1, 2005 through June 30, 2005. Additionally, during the course of the investigation, the FPPC found that you engaged in the practice of purchasing materials for your campaign from your personal funds and then were reimbursed from your campaign account. This letter serves as a written warning for the violations of the Act's reporting and disclosure requirements described below.

The Act provides that failing to report the name, employer and/or occupation information for all contributors is prohibited. Specifically the Act provides that candidates, committees, and their treasurers are required to include specified information on each campaign statement regarding a contributor if the cumulative amount of contributions received from that person is \$100 or more and a contribution has been received from that person during the reporting period covered by the campaign statement. The information required includes: 1) the contributor's full name; 2) the contributor's street address; 3) the contributor's occupation; 4) the name of the contributor's employer, or if self-employed, the name of the contributor's business; 5) the date and amount of each contribution received from the contributor during the reporting period; and, 6) the cumulative amount of contributions received from the contributor. (Section 84211, subdivision (f).) Regulation 18570(e) allows a committee to amend statements to provide missing contributor names, addresses, employers and occupations within 70 days following the filing deadline.

Based on the evidence obtained during our investigation, the Enforcement Division has determined that though you did not initially report all information required by Section 84211, subdivision (f), you amended your statements to provide the missing names, employers and occupations of your contributors within 70 days, and therefore, you are not in violation of the Act for this offense.

The Act provides that failing to disclose the street addresses of payees to whom a committee made expenditures of \$100 or more in connection with a campaign is prohibited. Specifically, the Act provides that candidates, committees, and their treasurers are required to report specified information on each campaign statement regarding the payees of expenditures of \$100 or more during the reporting period covered by a campaign statement. The information required includes: 1) the payee's full name; 2) the payee's street address; 3) the amount of each expenditure; 4) a brief description of the consideration for which each expenditure was made; and 5) certain additional information if the expenditure was a contribution to a candidate, elected officer, or committee, or if the expenditure was an independent expenditure. (Section 84211, subdivision (k).)

On your pre-election statement for January 1, 2005, through June 30, 2005, you disclosed all of the required information for the payees of expenditures of \$100 or more during

the reporting period except for the street addresses for nine of the payees. By failing to disclose this required information, you violated Section 84211, subdivision (k)(2).

During the course of our investigation, we discovered information that indicated that you engaged in the practice of purchasing materials related to your campaign from your personal funds and then were reimbursed by your campaign. Your committee retained diligent receipts and records for each of these campaign related payments. Candidates may use their personal funds to pay a filing fee or a ballot statement fee without first depositing the funds into the campaign account. However, campaign contributions may not be commingled with an individual's personal funds and all contributions must be deposited in, and expenditures must be made from, the campaign bank account, with some narrow exceptions discussed below. (Section 85201.)

A candidate must first deposit personal funds in the campaign bank account and make expenditures from that account instead of spending personal funds for the campaign and later seeking reimbursement from campaign funds. Candidates must first deposit personal funds to be used for the campaign, even if the candidate does not expect to be reimbursed. (See Regulation 18524.) An officeholder may use personal funds and be reimbursed for "officeholder" expenses, which does not include campaign expenses. (Section 89511.5.) Officeholders may be reimbursed for expenses related to holding office paid for from personal funds when the officeholder provides the committee's treasurer with a dated receipt and a written description of the expenditure and reimbursement occurs within 90 calendar days after the officeholder incurs the expense for a monetary expenditure and within 90 calendar days of the end of the billing period for a credit card or charge account. If the reimbursement does not occur within the 90-day period, the amount must be reported as a nonmonetary contribution from the officeholder to the committee and no reimbursement may occur. (Section 89511.5(d).)

An officeholder may be reimbursed from either the controlled committee campaign bank account established for election to the incumbent term of office, or from a controlled committee bank account established for a different election to the same office, if all of the conditions mentioned above are met. When reporting reimbursements to the officeholder subvendor payments of \$100 or more must be itemized on your campaign statements. For an example of how payments should be itemized please refer to Chapter 6 page 24 of the FPPC's Campaign Disclosure Manual, 2 under "Publications" on our website at www.fppc.ca.gov.

We have determined to close this case with a formal warning letter based on the following: 1) you have no prior enforcement history with the FPPC; 2) your voluntary

amendment of your statements provided all of the previously omitted name, occupation and/or employer information for contributors of \$100 or more; 4) the public harm caused by your failure to include street addresses in your otherwise compliant disclosure of expenditure payee information on your pre-election campaign statement for July 1, 2004, through September 30, 2004, was minimal; and 5) your campaign kept diligent records for the payments made in reimbursement to you and it appears that all expenses for which you were reimbursed were campaign related.

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.

Sincerely,

REDACTED

Sukhi K. Brar
Commission Counsel
Enforcement Division