FAIR POLITICAL PRACTICES COMMISSION
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February 18, 2010

Mr. Romeo Agbalog
Mr. Mark Abernathy
Western Pacific Research
c/o Mr. Brian Hildreth, Esq.
Bell, McAndrews & Hiltachk, LLP

REDACTED

Ms. Dorothy Andaya, Treasurer
Romeo Agbalog for Delano Union Elementary School Board Trustee

REDACTED

Re: Advisory Letter
FPPC Case No. 07/545

Gentlepersons:

The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act (the "Act").[1] As you know, the Enforcement Division of the FPPC received a complaint involving you. After conducting an investigation, the Enforcement Division has decided to close its file on this matter without initiating an enforcement action.

Our investigation revealed: (a) during reporting periods ending September 30, 2004 and October 16, 2004, Western Pacific Research ("WPR," owned by Mark Abernathy) paid to have Mr. Agbalog put on slate mailers; (b) these payments were never reported by WPR, Mr. Abernathy, Mr. Agbalog, or Mr. Agbalog's committee; (c) during the reporting period ending December 31, 2004, Mr. Agbalog's committee reported making payments totaling approximately $4,000 to WPR for campaign consulting; (d) this payment *may* have covered some of the cost of the slate mailers; (e) some or all of this payment, which went unreported until after the election,

[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.

was for accrued expenses that may have been required to be reported before the election; and (f) no subvendor information was provided in connection with the payment.

We found insufficient evidence to determine whether WPR's payments to slate mailer organizations were independent expenditures to Mr. Agbalog, contributions to Mr. Agbalog, or expenditures by Mr. Agbalog's committee in connection with WPR's consultancy. Therefore, we were unable to determine who had the duty to report the slate mailer payments.

Also, with respect to the $4,000 payment to WPR for campaign consulting expenses, the exact date upon which these expenses started to accrue is unclear, and we cannot determine whether Mr. Agbalog's committee had a duty to report these campaign expenditures as accrued expenses prior to the election.

Mr. Agbalog and Ms. Andaya, please note that expenditures must be reported on campaign statements. (See Section 84211, subds. (b), (i) and (k).) For future reference, please be aware that "[a]n expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier." (Section 82025.) Thus, if Western Pacific Research provided services to Mr. Agbalog before Mr. Agbalog paid for the services, the cost of the services was an accrued expense as of the date that the services were provided—and this accrued expense should have been reported by Mr. Agbalog's committee as of the date that the services were provided. (See Regulation 18421.6.)

Also, please be aware that Section 84303 provides that no expenditure of $500 or more shall be made, other than for overhead and normal operating expenses, by an agent or independent contractor on behalf of, or for the benefit of, any committee, unless the expenditure is reported by the committee as if the expenditure were made directly by the committee. This type of information reported by a committee is commonly referred to as "subvendor information." Section 84211, subdivision (k)(6), requires the disclosure of such subvendor information as part of the contents of any campaign statement required to be filed by the committee. Specifically, the following information must be provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subds. (k)(1)-(4) and (6).)

Additionally, with respect to WPR's payments to slate mailers, if these were contributions to Mr. Agbalog, then Mr. Agbalog's committee should have reported receiving them. (Section 84211, subds. (a), (c), (d), and (f).)

Mr. Abernathy, I do not believe I need to summarize the law with respect to reporting independent expenditures, since you are familiar with the issue from the recent stipulation that we reached in related FPPC Case Nos. 07/36, 07/117 and 08/202.

Although we have decided not to pursue an enforcement action in this matter, you are advised that your failure to comply with the provisions of the Act in the future could result in an enforcement action. In addition, the information in this case will be retained and may be used against you should an enforcement action become necessary based on future conduct and/or newly discovered information.

Our Legal Division and Technical Assistance Division can provide advice and assistance for issues which may arise in the future. You may contact either division by calling our toll-free number: 1-866-ASK-FPPC (1-866-275-3772). Also, you may refer to the FPPC website at www.fppc.ca.gov for current information.

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.

Very truly yours,

REDACTED

Neal P. Bucknell
Senior Commission Counsel

cc: Mr. Paul Stine