FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

October 29, 2009

Mr. James F. Penman

REDACTED

Re: Advisory Letter
FPPC No. 07/694

Dear Mr. Penman:

As you may know, the Enforcement Division of the Fair Political Practices Commission (the "FPPC") has been investigating whether you violated certain provisions of the Political Reform Act (the "Act"). The allegations contained in the complaint contend that, while a candidate for Mayor of San Bernardino in 2005, you misused public resources and failed to report a non-monetary contribution from the San Bernardino Police Officers Association for a mailer they sent opposing another candidate for mayor. As to the first allegation, the misuse of public resources is beyond the purview of the Act. As to the second allegation, after completion of our investigation, we have determined that there is insufficient evidence to find that you violated the Act. As a result, we are closing this case with this advisory letter.

The FPPC enforces the provisions of the Act, found in Government Code section 81000, et seq. The Act requires candidates to report contributions received and expenditures made on campaign statements. (Section 84200.) A "contribution" is a payment made for political purposes for which full and adequate consideration is not received. (Section 82015(a).) A payment is made for "political purposes" if it is made to or at the behest of a candidate. (Regulation 18215(a)(2)(A).) A payment is made "at the behest of a candidate" if it is made "at the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" the candidate. (Regulation 18225.7.) A payment made at the behest of a candidate for a communication is a contribution to the candidate, unless the communication does not: 1) contain express advocacy; 2) make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; or 3) solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent. (Regulation 18215(c)(4).) There is insufficient evidence to establish the coordination element necessary to find that you received a non-monetary contribution from the San Bernardino Police Officers Association for the mailer referred to in the complaint.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act and provides guidance regarding filing obligations over the telephone and through written advice. For future guidance, please call the Commission's Technical Assistance Division at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Sincerely,

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Galena West
Senior Commission Counsel
Enforcement Division