FAIR POLITICAL PRACTICES COMMISSION
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(916) 322-5660 • Fax (916) 322-0886

December 7, 2009

Ms. Phyllis Claassen
Yes On Measure B/Silicon Valley Leadership Group

REDACTED

Advisory Letter Re: FPPC Case No. 08/684, Yes On Measure B

Dear Ms. Claassen:

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 formal complaint filed against you that alleged that you received and failed to report nonmonetary campaign contributions from Valley Transit Authority ("VTA") on your campaign statements. Specifically, that VTA failed to report nonmonetary contributions of staff time, reports, maps, and information describing the social, financial, and environmental effects of transit use related to Measure B,

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that there is insufficient evidence to support a finding that a contribution was made by VTA which was reportable by the Yes on Measure B Committee under the Act.

The Act provides that failure to report nonmonetary contributions of $100 or more on a campaign statement is prohibited. Specifically, Section 84211, subdivision (f), provides that on each campaign statement filed by a committee, the statement must report information about any person who has contributed $100 or more to the committee during the reporting period covered by the statement. Section 82015, subdivision (a), defines "contribution" as any payment made for political purposes for which full and adequate consideration is not made to the donor and explains that a payment is "made for political purposes" if it is made to influence the actions of the voters for a particular decision regarding a ballot measure. FPPC Regulation 18420 provides that the payment of salary, reimbursement for personal services or other compensation by an employer to an employee who spends more than 10% of their compensated time in any one month rendering services for political purposes is a contribution. Under that regulation "political

[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.

purposes" include but are not limited to developing or distributing communications that expressly advocate the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure.

California Government Code, Section 54964, which regulates expenditure of any of the funds of local agencies to support or oppose the approval or rejection of a ballot measure, does not prohibit the expenditure of local agency funds to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency so long as the information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

California Government Code, Section 6253 et seq., gives the public the right to access and receive a copy of public records unless doing so is impracticable. "Records" include all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper,...magnetic or other media." (§ 6252(e)) Electronic records are included, but software may be exempt. (§§ 6253.9(a),(g), 6254.9 (a),(d)) Furthermore, the agency must provide assistance by helping to identify records and information relevant to the request, and suggesting ways to overcome any practical basis for denying access. (§ 6253.1) Copies of records can be obtained for the cost of duplication; a staff person's time in researching, retrieving, and mailing the record is not included in the direct cost of duplication. (§ 6253(b))

Your actions did not violate the Act because VTA made no contribution to the Committee. The information and records requested and received by the Committee from VTA were not "contributions" because they were public records provided in accordance with a legal request. Furthermore, the surrounding circumstances indicate that VTA was informing the public about possible effects of Measure B on their activities, operations, or policies. There is insufficient evidence to show that any single VTA employee spent more than ten percent (10%) of his or her compensated time in any one month providing services for "political purposes" to the Committee.

Our investigation discovered that the Committee requested information from VTA including electronic copies of maps, historic transit use data, transit use projections, financial reports, explanations for terms used in various documents, and a variety of other information. Requests were largely made to VTA through VTA's public affairs staff. VTA did produce the information and materials in response to public records requests from the Committee as required under California Government Code, Section 6250, et seq. In almost all instances, information was provided electronically. Because the Committee was provided information that were public records, these were not contributions under the Act.

VTA made public appearances and press releases. However, these activities were not "contributions" under Section 82015 of the Act, as they were not made to influence the actions of the voters for a particular decision regarding Measure B, but rather to inform the public about the possible effects of the measure on the activities, operations and policies of VTA.

Had you received a nonmonetary contribution without properly reporting it, you would have violated Section 84211, subdivision (f), of the Act. We have determined that an enforcement action for a violation is not warranted. 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.

The FPPC publishes forms and manuals to facilitate compliance with the disclosure requirements of the Act. If you need forms or manuals, or have questions regarding any of your filing obligations, please call the Technical Assistance Division at 916-322-5660, Monday through Friday between 8:00 a.m. and 5:00 p.m.

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.

Sincerely,

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Ty D. Moore
Commission Counsel
Enforcement Division