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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Gómez, Wilson, and Wood

From: Dave Bainbridge, General Counsel
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Subject: Prenotice Discussion: Proposed Regulation 18400, Treasurer, Assistant Treasurer, Responsible Officer, and Principal Officer Competency.

Date: August 8, 2022

Executive Summary

At the Commission’s request, staff researched the legality of a minor serving as a campaign committee treasurer under the Political Reform Act (“Act”)¹. Staff has determined that the Act does not explicitly exclude a minor² from acting as a campaign or “recipient” committee treasurer,³ that enforcement issues would result if minors, who lack full legal capacity, acted in this important role, and that the Commission may set an 18 years of age or older requirement for the treasurer position through regulation. Staff presents proposed Regulation 18400 for the Commission’s prenotice consideration. Additionally, staff presents language in this regulation extending the age requirement to a campaign committee’s assistant treasurer, and an entity’s “responsible officer” or “principal officer,” because of the important campaign statement verification and reporting duties assigned to these roles under the Act.

Reason for Proposed Regulatory Action

The Act does not provide express qualifications for a recipient committee treasurer, assistant treasurer, or an entity’s responsible officer or principal officer; nor does it expressly prohibit a minor from acting in these roles. However, each role has important duties that are essential to meeting the Act’s specific purposes and necessitates that the person filling the role be publicly identified, have the ability to perform the duties, and the ability to be held responsible for violations in an administrative, civil, or criminal proceeding. As discussed below, the law does not consider a minor to be competent to fill these roles. A minor has a limited legal

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.

² A minor is defined as an individual under 18 years of age. (Family Code section 6500.)

³ A “campaign committee treasurer” is the common term for a Section 82013(a) “recipient committee” treasurer, and all references in this memorandum to committees and treasurers are to a recipient committee treasurer, unless otherwise indicated. (See Section 84100.) Non-recipient committees may name treasurers, but the treasurer has to be identified as a “responsible officer” to verify a filing. (Section 81004.)

capacity, reflecting concerns about a minor’s ability to understand financial transactions, contractual agreements, or the wrongfulness of their actions. If allowed to assume any of these roles, the Act’s penalties for wrongful reporting or statement verifications would likely be unenforceable against the minor. For these reasons, a regulatory prohibition on minors serving in these roles is necessary to ensure two of the Act’s purposes: the proper disclosure of campaign finance statements and adequate enforcement of violations.

Background

Current Law: Purpose of the Act is to Disclose Full and Truthful Campaign Finance Information

The Act seeks to address the influence of campaign contributions and abusive practices through effective campaign finance disclosure laws. (See Section 81001.) To this end, a stated purpose of the Act is that “[r]eceipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited.” (Section 81002(a).) An additional stated purpose of the Act is that “[a]dequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.” (Section 81002(f).)

Recipient Committee Treasurer: Duties & Penalties for Violations

To accomplish these purposes, the Act requires that every recipient committee⁴ shall have a treasurer, and the committee may neither accept a contribution nor make an expenditure if the office of treasure is vacant. (Section 84100(a).) This treasurer’s role is not that of a figurehead; it is a public role, essential to the functioning of a committee, with the responsibility for a committee’s compliance with the Act’s campaign finance rules and disclosures. For example, the treasurer’s authorization is required for a campaign expenditure. (Section 84100(a).) And it is the duty of each candidate, treasurer, and principal officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements maintained by the treasurer to establish that campaign statements were properly filed. (Section 84104; Regulation 18401.)

The treasurer must sign all the committee’s filings under the Act and verify under penalty of perjury “the filer has used all reasonable diligence in its preparation and that to the best of the filer’s knowledge it is true and complete.” (Section 81004(b).) A treasurer will be guilty of perjury if the document contains material matter that the person knows to be false. (*Ibid.*) In the committee’s statement of organization, the treasurer must be identified by name, address, email address, and telephone number,⁵ and acknowledge that they must comply with all applicable duties stated in the Act and the regulations of the Commission; and that a violation of these duties could result in criminal, civil, or administrative penalties. ((Section 84102(c) and (d).) Reporting violations may also result in the treasurer being held jointly and severally liable with the candidate and the committee. (Sections 83116.5 and 91005; Regulation 18316.)

⁴ A “recipient committee” includes any person or combination of persons who receives contributions totaling \$2,000 or more in a calendar year. (Section 82013(a).)

⁵ This requirement applies to slate mail organizations as well. (Section 84108(b)(2).)

Note that Section 84100(b) provides that a campaign committee may designate one “assistant treasurer” on the statement of organization and this assistant treasurer may sign and verify committee campaign statements “if the assistant uses reasonable diligence to prepare and review the statement” and signs to that effect under penalty of perjury as required by Section 81004. Therefore, the treasurer’s verification duties also attach to the assistant treasurer role.

Responsible Officers & Principal Officers: Duties and Penalties for Violations

The role of “responsible officers” and “principal officers” identified under the Act are similarly public, essential to the functioning of a committee, and with responsibilities for an entity’s compliance with the Act’s campaign finance rules and disclosures. Section 81004(b), noted above for its requirement that campaign committee treasurers must sign and verify any report or statement, also specifies the verification requirements for other situations, stating:

[A] report or statement filed by any other person shall be signed [under penalty of perjury]and verified by the filer. If the filer is an entity other than an individual, the report or statement shall be signed and verified by *a responsible officer* of the entity or by an attorney or a certified public accountant acting as agent for the entity. (*emphasis added.*)

Regulation 18402.2 defines a “responsible officer” of a limited liability company that qualifies as a major donor or independent expenditure committee as the individual primarily responsible for approving the political activity of the limited liability company including, authorizing expenditures, including contributions, on behalf of the limited liability company; and developing or approving campaign strategy on behalf of the limited liability company. This responsible officer must be identified on each statement and report filed under Chapter 4 or 5 of the Act, and may be held liable for a violation of the Act under Section 83116.5.⁶ (Regulation 18402.2(a) and (c).)

A “principal officer” is similarly defined in Section 82047.6 as the individual primarily responsible for approving the political activities of a committee, including, authorizing the content of communications made by the committee, expenditures, including contributions on behalf of the committee and determining the committee’s campaign strategy. (Section 82047.6(b).)⁷ All committees, other than a candidate controlled committee, must disclose the full name, address, and telephone number of its principal officer in its statement of organization.⁸ (Regulation 18402.1.) As noted above, in addition to imposing a recordkeeping duty on a candidate and treasurer, Section 84104 also imposes

⁶ Section 83116.5 imposes administrative liability on any person who violates the Act, applicable “only to persons who have filing or reporting obligations under this title, or who are compensated for services involving the planning, organizing, or directing any activity regulated or required by this title.” Note that a person not charged administratively could be charged with a criminal or civil violation of the Act under Sections 91000 or 91004.

⁷ Note: A treasurer may serve as a principal officer as well. (Section 84102(c)(2).) If two or more individuals share the primary responsibility for approving the political activities of a committee, each individual is a principal officer. (Section 82047.6(b).)

⁸ This requirement applies to slate mail organizations as well. (Sections 84108(b)(2), 84102(c).)

this duty on each principal officer. Lastly, if a committee is required to file a campaign statement or report disclosing an independent expenditure, a principal officer of the committee must sign a verification with the language set forth by the Commission in Section 84213(b).

Minor's Legal Capacity

Given the important reporting, accounting and accountability role of a campaign committee treasurer, assistant treasurer, and an entity's responsible officer or principal officer, we must consider the legal implications if a minor were to fill any of these roles. As discussed below, because of a minor's limited capacity under the law, it is likely the verification and signature under penalty of perjury, resting on a child's knowledge and understanding of the Act's requirements, is not enforceable against a minor. It is equally a concern that a minor could be improperly placed in these roles by design in order to avoid the purposes of the Act's campaign reporting laws.

The state of California has made certain contracts entered into by minors void or voidable since at least 1874. (*I.B. v. Facebook, Inc.*, (2015) 82 F. Supp. 3d 1115, 1118, citing former Sections 33 and 34 of the Civil Code, now located in Family Code sections 6701(c) and 6710.) A minor cannot give a delegation of power, nor make a contract relating to real property, or relating to any personal property not in their immediate possession or control. (*Ibid.*) A minor may make any other contract, in the same manner as an adult, subject to the minor's power of disaffirmance. (Family Code section 6700, 6710.) California courts interpreting these statutes have stated, in broad terms, that they reflect both a strong public policy in favor of protecting minors, and, even more so, of discouraging adults from contracting with minors. "This rule exists to protect minors against their own improvidence and the designs of others. The policy of the law is to discourage adults from contracting with an infant and they cannot complain if as a consequence of violating the rule they are injured by the exercise of the right of disaffirmance vested in the infant." (*Chui v. Chui*, (2022) 75 Cal. App. 5th 873, 902, citing *Burnand v. Irigoyen* (1947) 30 Cal.2d 861, 866.) Civil Code section 1556 states a minor, along with persons of unsound minds and persons deprived of civil rights, is a type of person that is not capable of contracting.⁹

We note additionally that in the event that enforcement proceedings were brought against a minor, due to a minor's lack of legal capacity, the representation of a guardian or the appointment of a guardian ad litem must be appointed by the court in a civil matter. (Civil Code section 372.) As to the possibility of a criminal proceeding, children under the age of 14, as a class, are not considered to be capable of committing crimes in the absence of clear proof that at the time the crime was committed they knew its wrongfulness. (Penal Code section 26.) And, for

⁹ Note: an "emancipated minor" is considered an adult for purposes of the capacity to enter into a binding contract or give a delegation of power. (Fam Code section 7050.) An "emancipated minor" is a person under the age of 18 that satisfies any of the following: has entered into a valid marriage, is on active duty with the Armed Forces of the United States or has received a declaration of emancipation under Family Code section 7122. (Fam Code section 7002.) The declaration of emancipation may be granted by a court if the minor establishes: to be at least 14 years of age, willingly living apart from parents or guardian, managing their own financial affairs and with a source of income not derived from criminal activity. (Fam Code section 7120.)

criminal matters, minors between the ages of 12 and 17 years are within the jurisdiction of the juvenile court. (Wel & Inst Code section 602.)

Authority of the Commission to Set Age Requirements for Treasurers, Assistant Treasurers, Responsible Officers and Principal Officers

The Commission is charged with the authority to adopt, amend and rescind rules and regulations to carry out these purposes and the related provisions of the Act. (Section 83112.) In addition to the purpose of providing campaign finance statements, the Act has the additional purpose relevant here, that “[a]dequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.” (Section 81002(f).) Generally, the authority of the Commission extends to those powers expressly conferred by the Act as well as an implied power to take action necessary for the administration of powers expressly granted by law. (*Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal.2d 796, 810 [It is well settled in this state that governmental officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may fairly be implied from the statute granting the powers.]) Considering the inherent problems outlined above, a prohibition on minors serving as a treasurer, assistant treasurer, a responsible officer or principal officer for a committee or entity required to have such persons verify campaign reports and statements under the Act is necessary to ensure the proper disclosure of campaign finance statements and adequate enforcement of violations. Therefore, the Commission has the implied authority to set qualifications for these roles so that the purposes of the Act may be realized and effectively enforced.

Proposed Regulation

To address these issues, staff proposes Regulation 18400, Treasurer, Assistant Treasurer, Responsible Officer, and Principal Officer Competency, to state:

An individual must be a minimum of 18 years of age to serve as a treasurer, assistant treasurer, responsible officer, or principal officer.

Conclusion

The proposed regulation will establish that a recipient committee treasurer or assistant treasurer as well as an entity’s identified responsible officer or principal officer must be of a full legal capacity, and thus competent for the role. This will allow for the effective enforcement of the Act’s campaign finance requirements and promote the filing of accurate campaign finance statements.

Attachment:
Proposed Regulation 18400