

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18427. Duties of Treasurers and Candidates with Respect to Campaign Statements.

(a) Treasurers. The treasurer of a committee shall verify that to the best of his or her knowledge the committee campaign statements are true and complete and use all reasonable diligence in the preparation of the statements. To comply with these duties the treasurer shall do all of the following:

(1) Establish a system of record keeping sufficient to ensure that receipts and expenditures are recorded promptly and accurately, and sufficient to comply with regulations established by the Commission related to record keeping.

(2) Either maintain the records personally or monitor record keeping by others.

(3) Take steps to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds and the reporting of funds.

(4) Either prepare campaign statements personally or review with care the campaign statements and underlying records prepared by others.

(5) Correct inaccuracies or omissions in campaign statements of which the treasurer knows, and cause to be checked, and, if necessary, corrected, information in campaign statements a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer is aware or should be aware by reason of his or her duties under this regulation and the Act.

(b) Candidates with respect to candidate campaign statements. A candidate shall verify that to the best of his or her knowledge his or her own campaign statements are true and complete and use all reasonable diligence in the preparation of the statements. To comply with

these duties the candidate shall be subject to the same duties imposed upon treasurers as stated in subdivision (a).

(c) Candidates with respect to campaign statements of committees they control. A candidate shall verify to the best of his or her knowledge that the campaign statements filed by a committee he or she controls are true and complete and that the treasurer has used all reasonable diligence in the preparation of the statements. To comply with these duties, the candidate shall do all of the following:

(1) Ascertain whether the treasurer is exercising all reasonable diligence in the performance of his or her duties including those duties specified under subdivision (a).

(2) Take whatever steps are necessary to replace the treasurer or raise the treasurer's performance to required standards, if the candidate knows or has reason to know that the treasurer is not exercising all reasonable diligence in the performance of his or her duties.

(3) Review with care the campaign statements prepared for filing by the committee.

(4) Correct any inaccuracies and omissions in campaign statements of which the candidate knows, and cause to be checked, and, if necessary, corrected, any information in campaign statements a person of reasonable prudence would question based on all the surrounding circumstances of which the candidate is aware or should be aware by reason of his or her duties under this regulation and the Act.

(5) Perform with due care any other tasks assumed in connection with the raising, spending or recording of campaign funds insofar as the tasks relate to the accuracy of information entered on campaign statements.

(6) Unless such steps are required to meet the standards set forth in subdivision (c)(1) through (4), a candidate is not responsible for establishing a record keeping procedure for a

committee, monitoring committee record keeping, reviewing campaign finance records other than campaign statements, or personally taking steps to corroborate any information contained on a campaign statement.

(d) Committees where no treasurer is designated. If a committee fails to designate a treasurer as required by Government Code Section 84100, the individual or group of individuals primarily responsible for approving the political activity of the committee, as defined in Regulation 18402.1(b), will be considered the treasurer or treasurers and will be subject to all the duties set forth in subdivision (a).

COMMENT. This regulation sets out the duties of candidates and treasurers only with respect to campaign statements. Among the duties imposed by this regulation on candidates and treasurers with respect to committee campaign statements is to "cause to be checked, and, if necessary, corrected, any information . . . which a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer [candidate] is aware or should be aware by reason of his or her duties under this regulation and the Act." The circumstances that trigger a duty to inquire under this standard are limited to those circumstances actually known to the candidate or treasurer and to those circumstances the candidate or treasurer should be aware of in carrying out his or her duties under the Act and regulation. They do not include circumstances a candidate or treasurer "might" or "should have known" if the candidate or treasurer had gone beyond his or her required duties. For example, Mr. Jones gives Mr. Smith \$100 in cash and instructs him to write a check to the candidate's controlled committee and to conceal the true source of the contribution. The committee reports the contribution received from Smith. If neither the candidate nor treasurer has knowledge of the questionable nature of the contribution and neither, through performance of their respective duties (such as monitoring campaign

records or reviewing campaign statements), could have learned facts that would lead one to question the contribution, the candidate and treasurer have no duty of inquiry with respect to the contribution. There is no duty of inquiry even though Smith would have revealed the true source of the funds if he had been asked.

Once circumstances are known that raise a question concerning the accuracy of information on a campaign statement, an inquiry is required. It is not possible in a regulation to describe with particularity every factual situation that might trigger a duty to inquire because the circumstances that could arise with respect to any particular campaign transaction are endless. For example, a duty to inquire may be triggered in the case of a contribution as a result of the size of the contribution, the reported source, the likelihood of that source making a contribution of the size reported, the circumstances surrounding receipt, or the manner in which the contribution is recorded in campaign records.

The burden of inquiry is likely to fall more heavily upon the treasurer because it is the treasurer, rather than the candidate, upon whom the major record keeping and reporting responsibility falls. Therefore, the treasurer is more likely than the candidate to be the person who, by reason of performance of duties, is aware of or should be aware of facts which would give rise to a duty of inquiry.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 81004, 84100, 84213 and 91004, Government Code.

HISTORY

1. New section filed 12-13-77 as an emergency; effective upon filing (Register 77, No. 51).

For prior history, see Register 77, No. 17.

2. Repealed 4-13-78 by operation of Section 11422.1(c), Government Code.
(Register 79, No. 16).
3. New section filed 4-20-79; effective thirtieth day thereafter (Register 79, No. 16).
4. Amendment of subsection (d) filed 1-25-80; effective thirtieth day thereafter
(Register 80, No. 4).
5. Editorial correction of section title filed 1-9-81 (Register 81, No. 2).
6. Amendment of section heading filed 2-17-82; effective thirtieth day thereafter
(Register 82, No. 8).
7. Amendment filed 10-31-2008; operative 1-1-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).
8. Editorial correction of effective date in History 7 (Register 2008, No. 49).