



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

September 16, 2003

Kimberly Smith  
City of Cupertino  
City Hall  
10300 Torre Avenue  
Cupertino, CA 95014-3255

**Re: Your Request for Advice  
Our File No. A-03-177**

Dear Ms. Smith:

This letter is in response to your request for advice on behalf of the City of Cupertino regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Under the provisions of the Act, is it permissible for the City of Cupertino to display on its web site photographs and biographies of candidates for city council, if not all of the candidates' photographs and biographies will be displayed?

### CONCLUSION

Under the Act, the City of Cupertino may display candidate photographs and biographies on its web site, provided that all candidates have equal opportunity to have their photographs and biographies included in the display.

### FACTS

The City of Cupertino traditionally publishes a photograph, biography and transcript of the candidate's statement for each candidate running for city council on its web site. You also link a PDF image of all campaign disclosure forms from each candidate.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

This year, out of a field of six candidates, one has declined to provide a photograph, and one has declined to provide both a photograph and a biography. You will have a candidate's statement and campaign disclosure forms for all candidates.

## ANALYSIS

### Mass Mailings

Section 89001 provides that "[n]o newsletter or other mass mailing shall be sent at public expense." Regulation 18901 interprets this provision. In pertinent part, Regulation 18901 provides:

"(a)(1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document." [Emphasis added.]

According to Regulation 18901, a publicly funded mailing is a prohibited mass mailing if, among other things, it is delivered as a tangible item to the recipient at his or her residence, place of employment or business, or post office box. (Regulation 18901(a)(1).) Consistent with subdivision (a)(1), web pages are not considered tangible items and therefore are not subject to regulation 18901 or section 89001. (*Peterson* Advice Letter, No. A-99-013; *Foote* Advice Letter, No. A-98-114.)

### Section 85300

Section 85300 restricts the use of public funds. Section 85300 provides:

"No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office."

Regulation 18530 interprets section 85300 to prohibit only "the payment of public moneys, in the form of matching funds or cash subsidies, for the public financing of elections." (Regulation 18530.) The city web site is neither matching funds nor a cash subsidy for the public financing of elections, and therefore is not subject to section 85300 or regulation 18530. (*Peterson* Advice Letter, *supra*.)

### Contributions

Professional services, including the creation and maintenance of a website for a candidate, could conceivably result in a contribution from the city to the candidate.

(*Peterson* Advice Letter, *supra*; *Foote* Advice Letter, *supra*.)<sup>2</sup> However, we have previously advised that where a forum is made available to all candidates for the same office, no contribution results. (*Mancuso* Advice Letter, A-94-370.) Adding candidate information to the city web site in the manner described in your letter would not result in a contribution from the city to the candidates for city council, as long as each candidate has the opportunity to be included in the display. It is not necessary that all candidates take advantage of the opportunity, so long as the opportunity is provided on the same terms and conditions to all candidates. (*Mancuso* Advice Letter, *supra*; *Morten* Advice Letter, A-88-293.)


### Other Laws

Laws outside the Act may be implicated by your website. *Stanson v. Mott* (1976) 17 Cal.3d 206, Government Code Section 8314 and Penal Code Section 424 are among the authorities proscribing the use of public moneys for campaign-related activities by a state or local governmental entity. Since we cannot provide advice regarding areas outside of the Act, we can only commend them for your review.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By:   
Hal Dasinger  
Technical Assistance Division

Enclosures

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<sup>2</sup> Please see regulations 18420 and 18423 (copies enclosed) to determine when a local government agency makes a contribution to a candidate.