



FAIR POLITICAL PRACTICES COMMISSION

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July 16, 2008

Ben Davidian
Law Offices of Ben Davidian
P.O. Box 2642
Fair Oaks, California 95628

Re: Your Request for Informal Assistance
Our File No. I-08-104

Dear Mr. Davidian:

This letter responds to your request for advice on behalf of a county supervisor in California regarding the campaign reporting provisions of the Political Reform Act (the "Act").¹ Because your letter does not identify the supervisor, we are only able to provide you informal assistance.²

QUESTION

Do reporting requirements arise under the Act when a candidate for county supervisor sends a check to a consultant to pay for a political mailer, the consultant erroneously sends the mailer to voters in a district in which the candidate is not running, and the consultant either does not charge for the mailer by returning the check uncashed or cashes the check but provides a whole or partial refund to the candidate?

CONCLUSION

Yes. By issuing the check, the candidate made an expenditure that is reportable as such on Schedule E of the Form 460. If the check is returned, or the consultant cashes the

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

check and provides a whole or partial refund, neither the amount of the check or refund is a contribution to the candidate but the amount must be reported as a miscellaneous increase to cash on Schedule I of the Form 460.

FACTS

A county supervisor in California who was seeking reelection in an uncontested June 2008 primary race retained a consultant for certain campaign related services. Under the consulting contract the consultant prepared a ballot statement, assisted with responses to campaign position inquires, and prepared remarks for the supervisor for use in a candidate forum, and assisted with other campaign related duties.

Because the supervisor had no opponent, the supervisor and the consultant mutually decided to run a low-key, low-budget campaign and that campaign expenditures would be limited to purchasing space on slate mailers and distributing a single district-wide mailer to the voters in the supervisorial district.

On or about May 26, 2008, the supervisor reviewed a draft mailer prepared by the consultant and approved it for immediate distribution within the district. The supervisor believes the mailer was sent out within a few days of approval. The estimated cost of the district-wide mailer was approximately \$21,000.

On Monday, June 2, one day before the primary election, two residents of the neighboring supervisorial district informed the supervisor that they had received the mailer. The supervisor later received information from other voters in that district that they had also received the mailer.

Following a brief investigation, the consultant determined that the campaign mailer had been erroneously sent to the wrong district, and no voters in the supervisor's own district received the mailer.

Although the supervisor's campaign treasurer sent the consultant a check drawn from the campaign account for the entire cost of preparing and sending the mailer, the consultant has not yet cashed the check and is waiting for direction from your office on how to properly proceed. The consultant has offered to absorb some or all of the costs related to the misdirected mailer. However, the county has campaign contributions limits for supervisorial candidates that restrict individual contributions to \$1,000 per election. The supervisor is concerned that the consultant's decision to absorb any of the cost exceeding \$1,000 could result in an in-kind contribution to the supervisor in excess of the contribution limit. For that reason, after consulting with a political reform consultant in our technical assistance division who suggested you seek advice from the legal division, you are submitting this request.

ANALYSIS

The Act requires committees, including candidate controlled committees such as that controlled by the county supervisor, to report the committee's contributions and expenditures on its campaign statement. (Section 84211(a) and (b).) Your question presents two issues: (1) whether issuance of the check by the supervisor's campaign committee was a reportable expenditure even though the check is either returned uncashed to the supervisor's committee or is cashed but the committee is provided a whole or partial refund for the payment; and (2) whether returning the check or providing a whole or partial refund to the supervisor's committee will be a reportable contribution to the committee.

Expenditure

Section 82025 defines expenditure essentially as a payment made for a political purpose. It also provides that an expenditure is made "on the date the payment is made or on the date consideration, if any, is received, whichever is earlier."

Although you do not state the actual date on which it occurred, you indicate the supervisor's committee sent a check for approximately \$21,000 to the consultant for the cost of the district-wide mailer, and that services were rendered for the payment because the mailer was sent, although erroneously to the wrong district. If the consultant had returned the check or made a full refund to the committee within a short period after the committee sent the payment and rendered no services in relation to the payment, we do not think the committee would have made an expenditure. However, because the committee sent the check and the consultant rendered services, albeit erroneous, in relation to the payment, we think it best in these circumstances that the committee report the payment (on Form 460, Schedule E) as an expenditure made on the date the check was sent.³

Contribution

Section 82015 defines contribution as "a payment, ... except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for a political purpose."

A contribution can be either monetary or nonmonetary. Normally, if a vendor discounts the price charged for a service, the vendor has made an "in-kind" contribution to the campaign in the amount of the discount by providing services for which compensation would have ordinarily been provided in the normal course of business. Under the facts presented here, however, any return of the payment for the mailer would be in consideration for the fact that the campaign did not receive the benefit of the bargain under the contract, which provided for the mailer to be sent to registered voters in the supervisor's district. Therefore, adequate consideration exists for the return of the check sent to the consultant, or

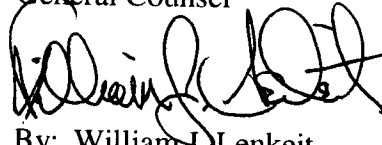
³ Whether an expenditure reported under these types of circumstances by a candidate for elective state office is subject to the Act's voluntary expenditure limits (see Sections 85400 - 85403) will be determined on a case-by-case basis.

a partial refund from the consultant of that payment. However, the amount of the returned check or any partial refund made must be reported as a miscellaneous increase to cash on Schedule I of the Form 460.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in black ink, appearing to read "William J. Lenkeit", written over the printed name below.

By: William J. Lenkeit
Senior Counsel, Legal Division

WL:jgl

Enclosure