



FAIR POLITICAL PRACTICES COMMISSION

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January 20, 2011

Mr. Fred L. Starrh
Kern County Water Agency
c/o Starrh & Starrh Cotton Growers
17422 Poplar Avenue
P.O. Box 1537
Shafter, California 93263

Re: Your Request for Advice
Our File No. I-10-205

Dear Mr. Starrh:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Because you seek general information about the campaign provisions of the Act, we are treating your request as one for informal assistance.² In addition, we may only advise on and interpret provisions of law contained in the Act.

QUESTIONS AND ANSWERS

1. *As a sitting Board member on the Kern County Water Agency, you are subject to reelection. In the course of your reelection campaigns, can you, consistent with the Act, accept public endorsement by one or more local water districts, districts subject to and falling within the jurisdiction of the Kern County Water Agency? For example, assuming the Rio Bravo-Rosedale Water Storage District were to endorse your candidacy for reelection, can you accept such a public endorsement while you are a sitting Board Member?*

The Act does not contain any provisions restricting from whom a candidate may receive an endorsement.³ In addition, an endorsement itself does not constitute a "contribution" to a

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).)

³ Agency policies or other laws outside the Act may affect whether a particular public agency may endorse candidates.

candidate. Under the Act, a contribution is defined as *any payment* made for political purposes for which full and adequate consideration is not received. (Sections 82015(a) and 82044; Regulation 18215(a).) A payment is made for political purposes if it is received by or made at the behest of a candidate. (Section 82015(b)(2); Regulation 18215(a)(2).) Because an endorsement is not a “payment,” an endorsement by itself is not considered a “contribution” to a candidate’s campaign.

As discussed in Campaign Manual 2 for Local Candidates, however, an endorsement of a candidate may become a contribution or an independent expenditure when a payment is made in connection with the endorsement. Campaign Manual 2 for Local Candidates (2007) provides the following example concerning endorsements in Chapter 3: “The president of a police officers’ association announces at its annual meeting that the association endorses John Law for county sheriff. Merely making an oral endorsement is not a contribution or independent expenditure to John Law. Closer to the election, at the request of candidate John Law, the association mails a special flyer to the voters announcing its endorsement of him. Since the mailing was made at the behest of the candidate, the association has now made a nonmonetary contribution to John Law.”

In addition, you, as a candidate, may make expenditures from your campaign funds for newspaper advertisements publicizing endorsements you have received.

2. As a related question, and assuming that it is permissible for you to accept public endorsement, can the local water district (such as, for example, Rio Bravo-Rosedale Water Storage District) purchase political advertisements in local newspapers announcing the water district’s endorsement of your candidacy and reelection bid over that of another candidate for the same board seat? Stated another way, can the local water agency use public monies to purchase newspaper advertisements supporting and endorsing your candidacy and reelection?

Generally public agencies may not use public funds to purchase advertisements supporting and endorsing a candidate’s election. For example, Government Code Section 54964 prohibits the use of local agency funds to support or oppose candidates or ballot measures.⁴ These provisions are outside the Political Reform Act, so we cannot advise on them, but provide them to you as a reference.

Under the Act, if the agency makes a payment to publicize its endorsement of a candidate in a newspaper advertisement the payment will be considered either a contribution to the candidate if it is made “at the behest” of the candidate or an independent expenditure. A payment is made “at the behest” of a candidate if it is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request of or suggestion of, or with the express, prior consent of the candidate. (Regulation 18225.7(a).)

⁴ Section 54964(a) provides: “An officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any of the funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.” See also Section 8314 and Penal Code Section 424.

The Act's definition of "contribution" was amended in 2009 to clarify that a state or local agency's expenditure of public funds to expressly advocate the election or defeat of a candidate or measure constitutes a contribution. Section 82015(h) provides:

"(h) 'Contribution' further includes the payment of public moneys by a state or local governmental agency for a communication to the public that satisfies both of the following:

"(1) The communication expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or, taken as a whole and in context, unambiguously urges a particular result in an election.

"(2) The communication is made at the behest of the affected candidate or committee."

The Commission in 2009 adopted the Regulation 18420.1 concerning payments by state or local agencies for a campaign related communication. The regulation provides in part, as follows:

"(a) A payment of public moneys by a state or local governmental agency, or by an agent of the agency, made in connection with a communication to the public that expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Regulation 18225(b)(1), or that taken as a whole and in context, unambiguously urges a particular result in an election is one of the following:

"(1) A contribution under Section 82015 if made at the behest of the affected candidate or committee.

"(2) An independent expenditure under Section 82031."

The Comment to Regulation 18420.1 provides as follows:

"Nothing in this regulation should be read as condoning or authorizing use of public moneys for campaign related activities by a state or local governmental agency. Under many circumstances these activities may be illegal. (See Penal Code Section 424; Government Code Sections 8314, 54964, and 89001; Education Code Section 7054; and *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.)"

Another new regulation adopted in 2009, Regulation 18901.1, prohibits campaign related mailings sent at public expense. Section 89001 of the Act prohibits newsletters or other mass mailings featuring elected officers sent at public expense. Regulation 18901.1 applies this prohibition to government agencies sending campaign related mailing. Regulation 18901.1, copy enclosed, prohibits the sending of a tangible item such as a written document to a recipient at his or her residence, business or post office box, if the item sent expressly advocates the

election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or when taken as a whole and in context, unambiguously urges a particular result in an election, and public moneys are paid for the costs of distributing the item or for designing, producing, or printing, or formulating the contents of the item, and more than 200 substantially similar items are sent during the course of the election.

3. *Assuming the local water district cannot use public monies to make such an endorsement, can a third party purchase that same political advertisement in the name of or on behalf of the local water district so that the local water district may advertise in local media the fact of its endorsement but do so without expending public monies in furtherance of the same?*

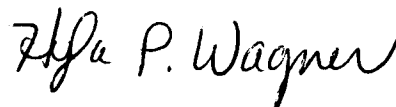
We cannot provide specific advice on your third question, because the facts are not clear as to who is actually making the contribution or expenditure in this case, and you are requesting advice about the actions of a third party. We can only provide advice to you about your own duties and actions under the Act; we cannot provide advice concerning the actions of a third party without being authorized to do so by that person. (Regulation 18329(b)(8)(B).) The person who is interested in purchasing a newspaper advertisement to publicize your endorsement by a water district may seek advice by calling the Commission's advice line at (866) ASK-FPPC, or writing to the Commission.

As a general summary of the law, other than the restrictions on the use of public funds discussed in question 2, the Act does not prohibit a person from purchasing an advertisement publicizing an endorsement of a candidate. If the publication of the endorsement is made at the request or suggestion of or with the cooperation of the candidate, the publication of the endorsement constitutes a contribution to the candidate. (See Regulation 18225.7; Dennis Advice Letter, No. A-98-029 and *Parisi* Advice Letter, No. A-98-269.) If the publication is not made at the behest of a candidate, it will be considered a reportable independent expenditure. An "independent expenditure" is defined as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or taken as a whole unambiguously urges a particular result in an election but which is not made at the behest of the affected candidate. (Section 82031.)

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

Sincerely,

Scott Hallabrin
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

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