



FAIR POLITICAL PRACTICES COMMISSION

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June 3, 2014

Marc G. Hynes, Special Counsel
ATKINSON FARASYN, LLP
660 West Dana Street
P.O. Box 279
Mountain View, CA 94042

Re: Your Request for Advice
Our File No. A-14-016 and A-14-016(a)

Dear Mr. Hynes:

We are enclosing Advice Letter No. A-14-016(a) as a reissued letter replacing our previous letter designated as A-14-016. The changes we have made correct references made to “contributions” under “Section 82013(a)” which should be “independent expenditures” under “Section 82013(b).” The sentence in the first paragraph of the “Analysis” section now reads:

“The Act requires candidates and committees to file periodic reports disclosing contributions received and expenditures made in connection with state and local elections. ‘Committee’ includes any person or group of persons that makes independent expenditures totaling \$1,000 or more in a calendar year for the purpose of supporting or opposing candidates or for the qualification, passage, or defeat of a ballot measure. (Sections 82013(b) and 82015; Regulation 18215.)”

Paragraph 11 has been changed to read:

“If and when the SFD’s expenditures are more than \$1,000, the SFD would qualify as a committee under Section 82013(b). If the SFD does qualify as a committee, it will need to file campaign reports under the LAFCO reporting provisions of Section 84252 and Regulation 18417.”

If you have any questions, please contact me at (916) 322-5783.

Sincerely,

Valentina Joyce
Counsel, Legal Division



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660 West Dana Street
P.O. Box 279
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Re: Your Request for Advice
Our File No. A-14-016(a)

Dear Mr. Hynes:

This letter responds to your request for advice on behalf of the Saratoga Fire Protection District (“SFD”) regarding the campaign reporting provisions of the Political Reform Act (the “Act”)¹ and is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, our advice is based solely on the provisions of the Act. We offer no opinion on the applicability of other laws.

QUESTIONS

1. Is the protest procedure under which written protests can force an action taken by a Local Agency Formation Commission (“LAFCO”) to be submitted to voters for confirmation or rejection a “measure” under Section 82043?
2. Is the SFD a “committee” under Section 82013 if it spends more than \$1,000 on paid circulators to gather sufficient written protests to force the LAFCO decision to be submitted to voters?

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.

CONCLUSIONS

1. Yes. The definition of “measure” includes a proposition that is intended to be submitted to a popular vote at an election by initiative, referendum or recall. The written protest procedure is substantially similar to the referendum procedure, as discussed below.
2. Yes.

FACTS

The SFD is the subject of a Special Study on dissolution being conducted by the Santa Clara LAFCO. Authority for Santa Clara LAFCO’s action to dissolve the SFD is established by the Cortese - Knox - Hertzberg Local Government Reorganization Act of 2000 (Sections 56000 – 57550.)

Government Code Section 57077.1(a) and (b)(3) provide, in pertinent part, that if a change of organization consists of dissolution, a LAFCO shall order the dissolution without confirmation by the voters except if the proposal meets the requirements of subsection (b). This latter subsection provides that the LAFCO must order dissolution subject to the confirmation of the voters if written protests have been submitted that meet the requirements of Section 57113. Section 57113 sets the number of written protests that are required by landowners or voters to have a LAFCO’s dissolution decision submitted to voters for confirmation.

In the event that Santa Clara LAFCO issues a dissolution order, the SFD intends to pay circulators to gather signatures on written protests within the short time frame provided by Government Code Section 57051.

ANALYSIS²

The Act requires candidates and committees to file periodic reports disclosing contributions received and expenditures made in connection with state and local elections. “Committee” includes any person or group of persons that makes independent expenditures totaling \$1,000 or more in a calendar year for the purpose of supporting or opposing candidates or for the qualification, passage, or defeat of a ballot measure. (Sections 82013(b) and 82015; Regulation 18215.)

Regulation 18420.1 specifically governs the reporting of contributions and expenditures made by state or local government agencies. Subdivision (f) provides that “A state or local

² We frequently receive questions about the permissible extent of a public agency’s involvement in supporting or opposing a ballot measure that is sponsored by or that affects the agency. Because the law concerning the use of public funds is outside the scope of the Act, the Commission does not advise on it. Accordingly, we limit our discussion to reporting requirements under the Act.

governmental agency that qualifies as a committee under Section 82013 shall file campaign statements and reports pursuant to Chapter 4 and any other relevant provisions of the Act.”

The term “measure” is defined in Section 82043 as follows:

“‘Measure’ means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote *at an election by initiative, referendum or recall procedures* whether or not it qualifies for the ballot.” (Emphasis added.)

An initiative, referendum, or recall procedure becomes a “measure” under the Act when the proponents begin to circulate signature petitions to qualify the measure for the ballot.

A preliminary question in determining whether the protest procedure is a “measure” is whether the drive to place the LAFCO’s dissolution action on the ballot is a proposition intended to be submitted to a popular *vote at an election by initiative, referendum or recall procedure*.

The protest procedure does not fall neatly in the definitions of “initiative” or “referendum.” As noted in the Commission’s *Fontana* Opinion (1976 2 FPPC Ops. 25), “The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.” (Cal. Const. Art. 2, Sec. 8.) “The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.” (Cal. Const. Art. 2, Sec. 9.) “The initiative and referendum powers may be exercised by the electors of each city and county under procedures that the Legislature provides.” (Cal. Const. Art. 2, Sec. 11.)

However, the written protest procedure closely resembles a referendum. If the requisite number of protests is gathered, the protests will give the electorate the power to adopt or reject the LAFCO’s action of ordering the dissolution. We have previously advised that a local referendum pursuant to the Berkeley City Charter was a “measure.” The advice was based, in part, on the fact that the legislative body had no discretion to refuse to place the matter on the ballot once the requisite number of signatures had been obtained. (*Numainville* Advice Letter, No. I-10-049.) Here, the LAFCO has no discretion to refuse to place its action on the ballot once the requisite number of signed protests has been obtained. In both cases, the power of the electorate to vote on the matter depends entirely on the outcome of the petition or protest drive. The protest procedure is substantially similar to the referendum procedure. Accordingly, the proposal to place LAFCO’s dissolution order on the ballot is a measure.

Once a proposal becomes a measure, all contributions received and expenditures made must be reported, including those received and made before the campaign reporting requirements were triggered. (*Angus* Advice Letter, No. A-97-173.)

Having established that the proposal to place the LAFCO action on the ballot constitutes a “measure,” we must next determine whether SFD’s payments to gather signatures on written protests are “expenditures.” The terms “contribution” and “expenditure” are defined as payments made for “political purposes.” (Sections 82015 and 82025.) “Political purpose” means that the payment was made for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Regulations 18215(a)(1) and 18225(a)(1).)

Payments for the gathering of signatures on written protests are made for the purpose of influencing voters to reject the LAFCO action. Although a vote to place the LAFCO action on the ballot does not expressly advocate the rejection of the LAFCO action, it does so by implication. If a voter agrees with the LAFCO action, there would be no need for the voter to sign a written protest. Accordingly, since these payments are made for political purpose, they are “expenditures.”

If and when the SFD’s expenditures are more than \$1,000, the SFD would qualify as a committee under Section 82013(b). If the SFD does qualify as a committee, it will need to file campaign reports under the LAFCO reporting provisions of Section 84252 and Regulation 18417.

Also, as stated above, there are statutes and court rulings governing the expenditure or use of public resources by state and local agencies. (See, e.g., Sections 8314, 54964 and 85300; Penal Code Section 424; and *Stanson v. Mott* (1976 17 Cal.3d 206).) Generally, these rules permit agencies to expend or use their resources for public purposes within the express and reasonably implied parameters of their governing statutes but specifically prohibit them from using their resources for private or campaign purposes. The SFD is urged to review such laws since the Commission does not advise on them.

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Valentina Joyce
Counsel, Legal Division

VJ:jgl