



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 15, 2021

Lori Stone
Murrieta City Councilmember
City of Murrieta
1 Town Square
Murrieta, CA 92562

Re: Your Request for Advice
Our File No. I-21-099

Dear Ms. Stone:

This letter responds to your request for advice regarding the campaign and conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature, we are treating your inquiry as a request for informal assistance.²

Please note that we are only providing advice under the campaign and conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Can you, as an elected member of the Murietta City Council whose professional occupation is political consulting, engage in providing consulting services to potential candidates for office in the City of Murrieta outside of your district?

CONCLUSION

As a candidate, you may have only one controlled campaign committee for each election, thus assuming you have a controlled committee for your candidacy, you are prohibited from controlling other committees that support or oppose candidates for elective office or make contributions to support or oppose candidates for elective office. Controlling a committee may include providing campaign management services such as developing or implementing campaign

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 18998 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).)

strategy. You may generally provide campaign management services only to the extent that you do not have significant influence over the committee's decisions and do not act jointly with the committee in making expenditures.

With respect to the conflict of interest rules, the Act does not prohibit you from being employed by or operating another entity such as a private business. However, you may not make, participate in making, or use your position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect on any financial interest you may have, including a financial interest in a source of income or a business entity.

FACTS AS PRESENTED BY REQUESTER

You are a District 4 Councilmember for the City of Murrieta ("Murrieta") and also a sole proprietor and owner of a political consulting business in Murrieta under the name of Innovative Political Solutions dba Lori Stone. You were elected to District 4 for the Murrieta City Council on November 3, 2020. For the past 15 years, you have provided political consulting services to a myriad of individuals throughout the region who were interested in local political office. Specifically, your services include, but are not limited to, campaign management and grass roots. Your services do not include fundraising. Recently, you were asked to provide services to a number of individuals in your own community who are considering pursuing local elected office in Murrieta in a city council district that is not your own. The Murrieta City Council is comprised of five districts. Before engaging in any contractual obligations with these individuals and in the spirit of transparency, you are seeking advice on this matter in order to avoid any potential conflicts of interest.

ANALYSIS

Candidate Controlled Committee

The Act prohibits a candidate from having more than one controlled committee for election to office. Section 85201(a) requires a candidate for elective office to establish one campaign bank account for that office and all contributions received and expenditures made by the candidate must be processed through that account. (Section 85201(c) and (e).) The Commission has consistently interpreted these provisions to prevent a candidate from controlling any committee other than the candidate's committee for election to a specific office, except a candidate may also control a ballot measure committee and committees for other previous or future elections. A candidate cannot simultaneously control a committee for elective office and a second committee that supports or opposes candidates for elective office or makes contributions to support or oppose candidates for elective office. (*Broadhurst* Advice Letter, No. I-11-120.)

Pursuant to Section 82007, a "candidate" means any elected officer, which includes members elected to city council.³ The Act's definition of "controlled committee" only applies to a committee controlled by a candidate. Section 82016 defines a "controlled committee" as:

³ Section 82007 states, in pertinent part, that "anyone who becomes a candidate retains candidate status until that status is terminated under Section 84214."

“[A] committee which is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.” (Section 82016.)

Thus, Section 82016 describes two ways in which a committee may become a controlled committee. First, by a candidate exerting significant influence on the actions or decisions of the committee. Second, by acting jointly with a candidate in connection with the making of expenditures. (*Mello* Advice Letter, No. A-91-150; *Muller* Advice Letter, No. A-89-305.)

To determine whether a candidate controls a committee under the first part of Section 82016(a), one looks at the degree of the candidate’s involvement in the committee’s activities. (*Madden* Advice Letter, No. A-85-197; *Kopp* Advice Letter, No. A-97-108.) The Commission has interpreted the definition of “controlled committee” broadly to include any significant participation in the actions of a committee by a candidate, the candidate’s agent, or representatives of any other committee the candidate controls. (*Higdon* Advice Letter, No. I-94-189; *Kopp* Advice Letter, No. A-97-108.) We have advised that where a candidate is a voting member of an organization’s leadership, the candidate is presumed to be the controlling candidate since the candidate exercises significant influence on the actions or decisions of the organization. (*Titus* Advice Letter, No. I-06-197; *Trimbur* Advice Letter, No. A-00-067; *Gastelum* Advice Letter, No. A-96-113; *Ferguson* Advice Letter, No. A-86-044.) Other relevant factors which determine whether a candidate is controlling a committee include whether the candidate is involved with decisionmaking or developing or implementing campaign strategy for the committee, including discretion when authorizing expenditures. (*Helms* Advice Letter, No. I-91-390; *Lyman* Advice Letter, No. I-19-163.)

On the other hand, where a candidate is merely an honorary member of a committee’s governing body, who may appear in the letterhead, but does not vote, make decisions about committee funds, or otherwise influence the actions of a committee, we have advised that the candidate is not considered to “control” the committee. (*Lacy* Advice Letter, No. I-03-076; *Erenbaum* Advice Letter, No. I-01-242; *Madden* Advice Letter, No. A-85-197.) Further, we have advised that a committee would not be controlled by a candidate so long as the candidate only advises on the reporting of contributions and expenditures, including bookkeeping, money management, recordkeeping, and advising the committee on its filing obligations and no other duties. (*Lyman* Advice Letter, No. I-19-163.)

You would be providing political consulting services for individuals who are interested in running for public office, who in turn would have established committees. These consulting services will include campaign management and grassroots. In your situation, the committees of other individuals you provide consulting services to will be controlled by you if you have significant participation in the actions of the committee or act jointly with the committees in connection with the making of expenditures. Generally speaking, you may provide campaign management services only to the extent that you do not have significant influence over the committee’s decisions and do not act jointly with the committee in making expenditures. But whether a candidate is exercising control over a committee’s activities and expenditures is a factual question determined on a case-by-case basis.

Conflicts of Interest

In the case that you provide the permitted consulting services discussed above, you may not make, participate in making, or use your official position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect on any financial interest you may have. We limit our advice to the requirements of the Act. However, there may be other laws outside of the Act that restrict you from outside employment or business activities. Moreover, agencies are required to have a “statement of incompatible activities” that also may be implicated. (Gov. Code Sections 19990 and 1126 et seq.) We urge you to check with your agency counsel to see whether your agency has adopted a statement of incompatible activities.

Section 87100 prohibits public officials from making, participating in making, or using one’s official position to influence a governmental decision in which they have a financial interest. (Regulations 18702.1-18702.4.) A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a)). As a District 4 Councilmember for the City of Murrieta, you would be called upon to make, participate in making or influence governmental decisions. Therefore, your decisionmaking activities would be covered by the Act’s conflict of interest rules. (Regulation 18700.)

Section 87103 identifies interests from which a conflict of interest may arise including, as relevant to your facts: 1) “[a]ny business entity in which the public official has a direct or indirect investment worth \$2,000 or more” (Section 87103(a)); and 2) “[a]ny source of income... aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(c)).⁴

Here, you have a business interest (assuming your ownership interest is valued at \$2,000 or more) and a source of income interest in your political consulting business (assuming you will receive income of \$500 or more within a 12-month period). You will also have a source of income interest in any client from which you receive \$500 or more within 12 months prior to any relevant government decision that may come before you as a Murietta City Councilmember.

To the extent that a decision may have a financial effect on your consulting business or a client of your consulting business, you should seek additional advice prior to taking part in the decision.

⁴ In addition, a public official’s personal finances are deemed to be directly involved in a governmental decision that will have any financial effect on their personal finances or those of their immediate family. (Section 87103.)

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

Sincerely,

Dave Bainbridge
General Counsel

Katelyn L. Greene

By: Katelyn L. Greene
Counsel, Legal Division

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