

GARY S. WINUK
Chief of Enforcement
MELLONIE S. YANG
Assistant Chief of Enforcement
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660
Facsimile: (916) 322-1932

Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of	) FPPC No. 08/113
	)
	)
SAN BERNARDINO COUNTY SAFETY	) STIPULATION, DECISION and
EMPLOYEES' BENEFIT ASSOCIATION,	) ORDER
LOCAL PAC; COLIN MCKENZIE; and	)
WILLIAM ABERNATHIE,	)
	)
Respondents.	)

Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission, and Respondents San Bernardino County Safety Employees' Benefit Association, Local PAC ("Respondent Local PAC"); Colin McKenzie ("Respondent McKenzie"); and, William Abernathie ("Respondent Abernathie"), hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Section 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents Local PAC, Abernathie, and McKenzie,
4 violated the Political Reform Act by failing to disclose required information regarding cumulative
5 contributions of \$100 or more in the calendar year, received from union members, on a semi-annual
6 statement for the reporting period from July 1, 2007, through December 31, 2007, by the January 31,
7 2008, due date, in violation of Section 84211, subdivision (f) (Count 1). Count 1 is described in Exhibit
8 1, which is attached hereto and incorporated by reference, as though fully set forth herein. Exhibit 1 is a
9 true and accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
12 of Three Thousand Dollars (\$3,000). A cashier's check from Respondents in said amount, made
13 payable to the "General Fund of the State of California," is submitted with this Stipulation as full
14 payment of the administrative penalty, to be held by the State of California until the Commission issues
15 its Decision and Order regarding this matter. The parties agree that in the event the Commission refuses
16 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
18 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
19 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
20 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
21 shall be disqualified because of prior consideration of this Stipulation.

22 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

23 Dated: _____

Colin McKenzie, Treasurer, Respondent Local PAC

24 Dated: _____

William Abernathie, Assistant Treasurer, Respondent Local
PAC

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of San Bernardino County Safety
3 Employees’ Benefit Association, Local PAC; Colin McKenzie; and, William Abernathie, FPPC No.
4 08/113,” including attached Exhibit 1, is hereby accepted as the final Decision and Order of the Fair
5 Political Practices Commission, effective upon execution below by the Chairman.

6 **IT IS SO ORDERED.**

7 Dated: _____

8 _____
9 Ross Johnson, Chairman
Fair Political Practices Commission

EXHIBIT 1

This matter involves Respondent San Bernardino County Safety Employees' Benefit Association, Local PAC ("Respondent Local PAC"). Respondent Local PAC is sponsored by San Bernardino County Safety Employees' Benefit Association ("SEBA"). At all relevant times, Respondent Colin McKenzie ("Respondent McKenzie") served as treasurer for Respondent Local PAC, and Respondent William Abernathie ("Respondent Abernathie"), served as assistant treasurer for Respondent Local PAC.

For purposes of this Stipulation, the violation of the Political Reform Act ("Act")¹ is stated as follows:

COUNT 1: Respondents Local PAC, Abernathie, and McKenzie failed to disclose required information regarding cumulative contributions of \$100 or more in the calendar year, received from union members, on a semi-annual statement for the reporting period from July 1, 2007, through December 31, 2007, by the January 31, 2008, due date, in violation of Section 84211, subdivision (f).

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that contributions and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Duty to Disclose and Itemize Contributions Received

Section 84211, subdivision (a) requires a committee to disclose in each of its campaign statements the total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received. All contributions received by a committee are required to be reported to, and disclosed by, the committee's treasurer no later than the closing date of the next campaign statement the committee is required to file. (Regulation 18421.1, subdivision (c).) The total amount of contributions received during the period covered by the campaign statement must be disclosed from persons who have given a cumulative amount of one hundred dollars (\$100) or more. (Section 84211, subdivision (c).) Generally, "cumulative amount" means the amount of contributions received or expenditures made in the calendar year. (Section 82018, subdivision (a).)

Section 84211, subdivision (f), requires a committee to report in each of its campaign statements the following information about a person if the cumulative amount of contributions received from that person is one hundred dollars (\$100) or more and a contribution has been received

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.

from that person during the reporting period covered by the campaign statement: (1) the contributor's full name; (2) the contributor's street address; (3) the contributor's occupation; (4) the name of the contributor's employer, or if self-employed, the name of the contributor's business; (5) the date and amount of each contribution received from the contributor during the reporting period; and (6) the cumulative amount of contributions received from the contributor.

Treasurer Liability

As provided in Section 84100, every committee shall have a treasurer. Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF FACTS

The San Bernardino County Safety Employees' Benefit Association, Local PAC ("Respondent Local PAC"), is sponsored by San Bernardino County Safety Employees' Benefit Association, ("SEBA"). SEBA is a labor union representing law enforcement officers in the County of San Bernardino. At all relevant times in this matter, Respondent Colin McKenzie ("Respondent McKenzie") served as treasurer for Respondent Local PAC, and Respondent William Abernathie ("Respondent Abernathie"), served as assistant treasurer for Respondent Local PAC.

In this matter, Respondent Local PAC received contributions from SEBA's members for political activity. For the relevant reporting period from July 1, 2007, through December 31, 2007, the campaign statement disclosed the total amount of contributions received from SEBA members for the reporting period, and the total cumulative amount of contributions received from SEBA members for the calendar year. However, the campaign statement did not disclose the required information when the cumulative amount per union member reached the \$100 threshold for the calendar year.

Specifically, according to records provided by Respondents, the reporting threshold for individual union dues of \$100 was reached on August 21, 2007; and by the end of the year, the contribution amount per union member, for a majority of the membership, was \$170. There were more than two thousand union members that reached the threshold in this reporting period.

COUNT 1

Failure to Disclose Required Contributor Information

Respondents Local PAC, Abernathie, and McKenize, had a duty to disclose information on individuals who contributed a cumulative amount of \$100 or more in the calendar year, on Respondent Local PAC's semi-annual statement for the reporting period from July 1, 2007, through December 31, 2007.

By failing to disclose the required information related to these contributions, Respondents Local PAC, Abernathie, and McKenzie, violated Section 84211, subdivision (f).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“Commission”) considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. One of the primary purposes of the Act is to ensure that the public is provided with complete and accurate information regarding campaign financing. The administrative penalty that has typically been imposed by the Commission for failure to report contributions has varied depending on the circumstances.

Aggravation

The failure to properly disclose information regarding contributions received from individual law enforcement personnel deprived the public of timely and accurate campaign financing information. The contribution amount per member went over the \$99 limit, and reached \$170 for most of the members contributing, by the end of the reporting period. There were more than two thousand members contributing in this reporting period.

Mitigation

The Respondents were fully cooperative during the investigation into this matter. The failure to disclose contributions was a result of inadvertent errors in accounting. The tracking of contributions totaling \$100 or more required an accounting system capable of tracking thousands of small membership contributions through a series of transactions. According to Respondents, the accounting system used was not adequate for this purpose. However, a new accounting system was acquired subsequent to the relevant reporting period to accurately track and report membership contributions. The total contributions for the reporting period, and the total cumulative amount for the calendar year, were reported.

The public harm was minimal because the total contribution amounts received were disclosed to the public, and the individual contributions received from the members of SEBA were relatively small. Once the reporting error was discovered, an amended statement was filed to include the missing data for the relevant reporting period.

Administrative Penalty

The facts of this case justify imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000) for Count 1.