



FAIR POLITICAL PRACTICES COMMISSION

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October 6, 2016

Mr. Kevin Jensen
Kevin Jensen for Sheriff

[REDACTED]
[REDACTED]

Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014
Mr. Lance Scimeca, Treasurer

[REDACTED]
[REDACTED]

Re: Advisory Letter
FPPC Case No. 14/357

Gentlepersons:

The Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ In April 2014, we received a complaint involving a committee known as Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014. (For ease of reference, this committee is referred to as the PSW committee.) The complaint alleged that certain efforts/spending by the PSW committee to support Kevin Jensen's candidacy for Santa Clara County Sheriff in the June 2014 election were coordinated with the Jensen campaign. Also, the complaint contained allegations of improper reporting, including allegations that spending by the PSW committee should have been reported as non-monetary contributions to the Jensen campaign—rather than as independent expenditures. Ultimately, Jensen lost in the election to his opponent, Laurie Smith (who garnered approximately 59.34% of the vote). After conducting an investigation, we are closing this case with the following advisory letter.²

¹ The 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 The Act and its regulations are amended from time to time. The alleged violations in this case occurred during the first half of 2014 (and the latter part of 2013). For this reason, all legal references and discussions of law pertain to the Act's provisions as they existed at that time.

One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.³ Along these lines, the Act includes a comprehensive campaign reporting system.⁴ In order to properly report political spending, however, it is necessary to distinguish between “independent expenditures” and “contributions,” especially in cases where contribution limits might apply to contributions—but not to independent expenditures.

The definition of “independent expenditure” includes an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate, or taken as a whole and in context, unambiguously urges a particular result in an election—where the expenditure is not made to or at the behest of the affected candidate or committee.⁵

Generally speaking, a “contribution” includes 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 political purposes.⁶ When such a payment is made at the behest of a candidate or committee, it is a contribution to the candidate/committee.⁷

“Made at the behest of” means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.⁸

An expenditure is not an independent expenditure—and must be treated as a contribution to the candidate on whose behalf, or for whose benefit, the expenditure is made—if the expenditure is made under any of the following circumstances:⁹

- ❖ the expenditure is made with the cooperation of, in consultation with, in concert with, or at the request or suggestion of, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate; or
- ❖ the expenditure is made under any arrangement, coordination, or direction with respect to the candidate or the candidate’s agent and the person making the expenditure.

³ Section 81002, subdivision (a).

⁴ Sections 84200, et seq.

⁵ Section 82031.

⁶ Section 82015, subdivision (a).

⁷ Section 82015, subdivision (b).

⁸ Regulation 18225.7, subdivision (a).

⁹ Section 85500, subdivision (b).

Along these lines, there is a presumption that an expenditure funding a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate is *not* independent of the candidate when:¹⁰

- the expenditure is based on information about the candidate's campaign needs or plans provided to the expending person by the candidate;
- the expenditure is made by or through any agent of the candidate in the course of the agent's involvement in the current campaign;
- the person making the expenditure retains the services of a person who provides the candidate with professional services related to campaign or fundraising strategy for that same election; or
- the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

Such burden shifting presumptions help guard against circumvention of candidate contribution limits and disclosure obligations. The law would fail in its purpose if expenditures made at the behest of a candidate readily could be disguised as expenditures of a person not subject to the contribution limits and disclosure obligations designed for candidates.¹¹

In this case, our investigation revealed insufficient evidence to warrant prosecution, and we are closing this case with an advisory letter. However, the information in this file will be retained and may be used should an enforcement action become necessary due to newly discovered information or failure to comply with the Act in the future. Failure to comply with the Act in the future may result in the imposition of administrative or civil penalties against you by the Commission—and certain violations of the Act may be prosecuted by law enforcement agencies as criminal offenses.

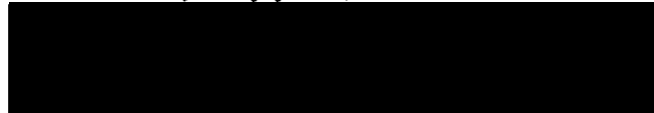
Please note that the Commission can provide advice and assistance for issues that may arise in the future. Should you have any questions, do not hesitate to request advice—either by emailing advice@fppc.ca.gov or by calling 1-866-ASK-FPPC (1-866-275-3772). Also, you may refer to the Commission's website at www.fppc.ca.gov for current information.

¹⁰ Regulation 18550.1, subdivision (b).

¹¹ See *Bieber Advice Letter* (I-04-014).

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. Thank you for your attention to this matter. Please do not hesitate to call if you have any questions.

Very truly yours,



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