



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

September 8, 2023

Rod Pacheco

On behalf of John Valdivia, Mayor John Valdivia Legal Defense Fund, and John Valdivia for Mayor 2022

Via email: rpacheco@pncounsel.com

Re: Warning Letter: FPPC No. 2022-00410, In the Matter of Mayor John Valdivia Legal Defense Fund and John Valdivia for Mayor 2022

Rod Pacheco:

The Enforcement Division of the Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act (the “Act”)¹ and the City of San Bernardino’s Pay to Play Restrictions.² The Enforcement Division received an anonymous complaint alleging improper transfers from John Valdivia’s (“Valdivia”) candidate-controlled committee to a legal defense fund. In addition, the Enforcement Division later commenced an investigation to determine whether Valdivia had violated the Pay to Play Restrictions. The Enforcement Division has determined to close these matters with this letter.

The anonymous complaint alleged improper transfers from a candidate-controlled committee to a legal defense fund. The committee, John Valdivia for May 2022, made several loans to the committee, Mayor John Valdivia Legal Defense Funds. The Act does not prohibit the transfer or loan of campaign funds to another committee. On January 1, 2021, certain local candidates, including Mayor, were subject to contribution limits.³ In addition, transfers from a candidate-controlled committees (when the candidate is subject to state contribution limits) to another candidate-controlled committee for elective office of the same candidate must be attributed to the original contributors using a “last in, first out” or “first in, first out” accounting method.⁴ However, contributions to Legal Defense Funds are not subject to contribution limits.⁵ In addition, attribution rules only apply when transfers, including contributions or loans, are made to a committee for state elective office. Additionally, on or around February 2, 2022, the City of San Bernardino passed a local campaign contribution limit. Therefore, the committees were no longer subject to the state rules regarding contribution limits and the FPPC would not have jurisdiction over questions of contribution limits or attribution. Therefore, the Enforcement Division has determined that there are no violations under the Act.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² City of San Bernardino’s Pay to Play Restrictions refers to Ordinance No. MC-1558. The City of San Bernardino entered into a contract with the FPPC to enforce these provisions, pursuant to Government Code Section 83123.6.

³ See generally, Sections 85300-85321.

⁴ Section 85306.

⁵ Section 85304.

The City's Pay-to-Play Restrictions prohibit an elected official from accepting, soliciting, or directing a contribution of more than \$250 from any party, or their agent, or from any participant, or their agent, while a proceeding involving a license, permit, contract, or entitlement for use is pending before the City and for three months following the date a final decision is rendered. In addition, prior to rendering any decision in a proceeding involving a license, permit, contract, or entitlement for use pending before the City, each elected official who received a contribution since their last campaign statement in an amount of more than \$250 from a party or from any participant shall disclose that fact on the record of the proceeding.

The candidate-controlled committee, John Valdivia for Mayor 2022, reported receipt of a \$500 contribution from Advanced Applied Engineering on December 28, 2021. This contribution was disclosed on the campaign statement for the reporting period of July 1, 2021 through December 31, 2021, filed on January 31, 2022. Subsequently, on or around February 2, 2022, the City Council considered and voted on an amendment to a contract agreement between the City and Advanced Applied Engineering. Valdivia, as Mayor, was required to disclose the contribution prior to voting on the agenda item involving Advanced Applied Engineering.

However, as the facts in this matter occurred close in time to the adoption of the Pay-to-Play Restrictions and the proceeding at issue was an amendment to an existing contract, the Enforcement Division has determined to close this matter with this warning letter.

This letter, with respect to the Pay to Play Restrictions, serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

Even though we are closing our file in the matter, please be advised of the local Pay-to-Play Restriction and the recently amended Section of the Political Reform Act Section 84308. As a member of the city council, you are now subject to the state's pay-to-play restrictions. If you need guidance regarding the Act, contact the Commission's Advice team by calling 1-866-275-3772 or sending an email to advice@fppc.ca.gov. There is also information pertaining to Section 84308 available on the Commission's website, www.fppc.ca.gov.

Please do not hesitate to call if you have any questions.

Sincerely,

Theresa Gilbertson
Senior Commission Counsel
Enforcement Division

CC: John Valdivia, Christopher Jones, Kelly Lawler