



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

September 19, 2023

Metropolitan Transportation Commission/Bay Area Toll Authority
via email: abockelman@bayareametro.gov and rrentschler@bayareametro.gov

Alameda-Contra Costa Transit District
c/o James Harrison
Olson Remcho, LLP
via email: JHarrison@olsonremcho.com

No Action Closure Letter: FPPC No. 2019-00913; Metropolitan Transportation Commission, Bay Area Toll Authority, and Alameda-Contra Costa Transit District (AC Transit)

Dear Metropolitan Transportation Commission, Bay Area Toll Authority, and Alameda-Contra Costa Transit District:

The Enforcement Division of the Fair Political Practices Commission (the “Commission”) enforces the provisions of the Political Reform Act (the “Act”).¹ This letter is in response to a sworn complaint regarding whether Metropolitan Transportation Commission (“MTC”), Bay Area Toll Authority (“BATA”), and Alameda-Contra Costa Transit District (“AC Transit”), made campaign-related communications to promote passage of Regional Measure 3 (RM3), a bridge toll increase in the nine-county San Francisco Bay Area. The Enforcement Division completed its review of this matter and has decided to close its file without prosecution.

When a state or local governmental agency uses public moneys for a communication that (1) expressly advocates for or against a clearly identified candidate or ballot measure, or taken as a whole and in context, unambiguously urges a particular result in an election, or (2) the communication is made at the behest of the affected candidate or committee, the Act identifies that payment as either a contribution or an independent expenditure.² A communication paid for with public moneys by a state or local governmental agency unambiguously urges a particular result in an election if (1) the communication clearly is campaign material or campaign activity, such as bumper stickers, billboards, door-to-door canvassing, posters, advertising “floats,” or mass media advertising; or (2) when the style, tenor, and timing of the communication can be reasonably characterized as campaign material and not a fair presentation of facts serving only an informational purpose.³ Some factors to consider when assessing style, tenor, and timing include, but are not limited to whether the communication is (1) funded from a

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 18104 through 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 82015, subd. (b)(3); Regulation 18420.1, subd. (a)(2).

³ Regulation 18420.1, subd. (b).

special appropriation related to the measure as opposed to a general appropriation; (2) consistent with the normal communication pattern for the agency; (3) consistent with the style of other communications issued by the agency; and (4) using inflammatory or argumentative language.⁴ If a state or local government agency makes expenditures or contributions, as those terms are defined in the Act, the state or local government agency must file campaign statements.⁵

Our review found that MTC, BATA and AC Transit posted a video on the agency website regarding RM3, and placed posters in AC Transit buses which featured phone numbers that led to audio recordings. None of these contained express advocacy. Additionally, the video, posters and telephone recordings were informational, not argumentative, and moderate in tone. Thus, the Enforcement Division cannot conclude the video, posters and telephone recordings in question were contributions or independent expenditures. Therefore, we are closing this matter with no further action.

Although we are closing our file, please be advised of the provisions in the Act and regulations regarding campaign related communications. If you need additional guidance, you may contact the Commission's Advice team by sending an email to advice@fppc.ca.gov. There is also information pertaining to campaign related communications available on the Commission's website, www.fppc.ca.gov. Should you have any questions regarding this letter, please feel free to contact me at (916) 322-5771 or abrereton@fppc.ca.gov.

Sincerely,

Angela J. Brereton

Angela J. Brereton
Assistant Chief, Enforcement Division

⁴ Regulation 18420.1, subd. (d).

⁵ Regulation 18420, subd. (d).