



December 22, 2023

City of Crescent City
c/o Martha Rice, City Attorney
mrice@crescentcity.org

Advisory Letter re: FPPC Case No. 2021-00422; City of Crescent City

Dear Martha Rice:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act.¹ This case arises from an anonymous complaint, alleging that the City of Crescent City used public funds to pay for ads in support of a sales tax measure known as Measure S, which was on the ballot in 2020. In November of that year, Measure S passed with approximately 64.57% of the vote. In particular, this case was opened with respect to an alleged mass mailing in support of Measure S, which potentially was sent by the city at public expense.

In terms of being inflammatory/argumentative, the mailing was mild in tone. Although it was informational, it was somewhat one-sided. Nevertheless, at this time, we are closing the matter with this advisory letter on grounds that there is insufficient evidence to support a finding that the city violated the Act.

Please note that Section 89001 provides: “No newsletter or other mass mailing shall be sent at public expense.” This prohibition extends to campaign-related mass mailings, as described in more detail in Regulation 18901.1, which provides:

(a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

(1) The item sent is a tangible item, such as a written document, videotape, record, or button and is delivered, by any means, to the recipient's residence, place of employment or business, or post office box.

(2) The item sent either:

(A) Expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure. . . .

(B) When taken as a whole and in context, unambiguously urges a particular result in an election.

¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in California Code of Regulations, title 2, sections 18104 through 18998. Unless otherwise noted, all statutory and regulatory references are to these sources.

(3) Public moneys are paid for either of the following:

(A) The costs of distributing the item.

(B) Costs, exceeding \$50, that are reasonably related to designing, producing, printing, or formulating the content of, the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants, and the costs are paid by the agency with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent during the course of an election, including items sent during the qualification drive or in anticipation of an upcoming election, but excluding any item described in subdivision (b).

(b) Notwithstanding subdivision (a), a mailing of the following items is not prohibited by Section 89001:

(1) An agency report providing the agency's internal evaluation of a measure sent to a member of the public upon the individual's request.

(2) A written argument sent to a voter in the voter information pamphlet.

(3) A communication clearly and unambiguously authorized by law.

(c) For the purposes of subdivision (a)(2)(B), an item unambiguously urges a particular result in an election if it meets either of the following criteria:

(1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television, electronic media or radio spots.

(2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.

(d) For purposes of subdivision (a)(4), an item is "substantially similar" to another item if both items expressly advocate or unambiguously urge the election or defeat of the same candidate or measure.

(e) For purposes of subdivision (c)(2), when considering the style, tenor, timing of an item, factors to be considered include, but are not limited to, whether the item is any of the following:

(1) Funded from a special appropriation related to the measure as opposed to a general appropriation.

- (2) Is consistent with the normal communication pattern for the agency.
- (3) Is consistent with the style of other communications issued by the agency.
- (4) Uses inflammatory or argumentative language.
- (f) A mailing sent at public expense that features, or includes the name, office, photograph, or other reference to, an elected officer affiliated with the agency which produces or sends the mailing may also be prohibited under Section 89001 as provided in Section 89002.

A payment of public moneys by a local governmental agency made in connection with a communication (whether it is a mass mailing or not) that expressly advocates passage of a ballot measure, or that taken as a whole and in context, unambiguously urges a particular result in an election is an independent expenditure. Any person or combination of persons who, in a calendar year, makes independent expenditures totaling \$1,000 or more qualifies as an independent expenditure committee.²

An independent expenditure committee must file campaign statements and reports, as described in more detail in “Campaign Manual 6 – Information for Independent Expenditure Committees,” which is available on our website here: <https://www.fppc.ca.gov/learn/campaign-rules/campaign-disclosure-manuals.html#title6>.³

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 (or you may visit our website at www.fppc.ca.gov/advice.html or call the Commission’s Toll-Free Advice Line at 1-866-ASK-FPPC). Also, a helpful summary of the law regarding campaign advertisements by government agencies is available on our website here: <https://www.fppc.ca.gov/learn/campaign-rules/campaign-related-communications-at-public-expense.html>.

Thank you for your attention to this matter. Do not hesitate to call if you have any questions.

Very truly yours,

Neal P. Bucknell

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² See Sections 82013, subdivision (b); 82031; and Regulation 18420.1.

³ Also, see Sections 84200, *et seq.*