



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

January 24, 2024

William B. Tunick
Dannis Woliver Kelley
o/b/o Tamalpais Union High School District
Via E-mail Only: wtunick@DWKesq.com

Advisory Letter Re: FPPC No. 2020-00767, Tamalpais Union High School District

Dear Tamalpais Union High School 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 two sworn complaints alleging that the Tamalpais Union High School District (“Tam District”) sent prohibited campaign-related mailings at public expense by sending multiple mailers regarding Measures B and M. The Enforcement Division completed its investigation and decided to close its file on this matter without prosecution.

The Act prohibits sending a newsletter or other mass mailing at public expense.² Specifically, mass mailing is prohibited if (1) the item is a tangible item; (2) the item expressly advocates the qualification, passage, or defeat of a clearly identified measure, or unambiguously urges a particular result in an election; (3) public moneys are paid to distribute the item, or to prepare the item, for more than \$50, with the intent of sending the item; and (4) more than 200 substantially similar items are sent during the course of an election.³ This prohibition limits the public subsidy of political campaigns, which would grant an unfair advantage to governmental bodies that desire to use public resources in pursuit of favorable election results.

An item unambiguously urges a particular result in an election in one of two ways: (1) when it clearly is campaign material or campaign activity because it is related to an election and it is an item such as bumper stickers, billboards, door-to-door canvassing, posters, advertising “floats,” or mass media advertising;⁴ 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.⁵

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 89001.

³ Regulation 18901.1(a).

⁴ Regulation 18901.1(c)(1).

⁵ Regulation 18901.1(c)(2).

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.⁶ 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.⁷ An independent expenditure committee must file semi-annual campaign statements each year for the period ending June 30 and December 31 if it made independent expenditures during the 6-month period prior to those dates.⁸ Further, an independent expenditure committee must report its late independent expenditures within 24 hours of the time they are made to the appropriate filing officers.⁹

Our review and investigation found that the mailers regarding Measures B and M did not contain express words of advocacy, were generally informational, not argumentative, and mild in tone. The mailer regarding Measure B was generally informational and provided a fair presentation of facts both in favor and against the Measure, using a moderate tone and not containing inflammatory or argumentative language. Additionally, the mailer focused on providing a permissible explanation of the application of the relevant senior citizen exemption. The mailer regarding Measure M that was titled “Update on Providing a Quality Education in Tamalpais Union High School District” was sent before the parcel tax measure was approved for the ballot and was, therefore, not in violation of the Act. However, parts of all three mailers regarding Measure M came close to meeting the standard of unambiguously urging a particular result in an election. For example, the mailers include statements about Tam District providing quality education for students, that over 100 teachers will be laid off if the local parcel tax is not renewed, and that there will be significant program cuts; the mailers include primarily one-sided information, suggesting a clear preference that Measure M pass. Additionally, Measure M successfully passed in the November 2020 election. Further, Tam District spent approximately \$28,831.78 to design, print, and distribute approximately 47,175 mailers regarding Measure M. However, the statements in the mailers are not sufficiently inflammatory or argumentative to conclude that they constituted campaign activity rather than informational material. Thus, the Enforcement Division cannot conclude that the mailings violated the Act’s prohibition against campaign mailers at public expense. Therefore, we are closing this matter with this advisory letter.

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 and advertisement disclosure requirements available on the Commission’s website at www.fppc.ca.gov and www.fppc.ca.gov/learn/campaign-rules/campaign-related-communications-at-public-expense.html.

⁶ Section 82031; Regulation 18420.1(a).

⁷ Section 82013(b).

⁸ Section 84200(b).

⁹ Section 84204.

Should you have any questions regarding this letter, please feel free to contact me at vjimmy@fppc.ca.gov or (279) 237-5971.

Sincerely,

Vanessa Jimmy

Vanessa Jimmy
Commission Counsel, Enforcement Division

Cc: *Sworn Complainant*, Mimi Willard o/b/o Coalition of Sensible Taxpayers