



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

January 22, 2024

Mayor Scott Nassif
Town of Apple Valley
c/o Thomas Rice, Town Attorney
thomas.rice@bbklaw.com

Advisory Letter re: FPPC Case No. 2017-00564; Town of Apple Valley; Scott Nassif

Gentlepersons:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act.¹ This case arises from a sworn complaint, alleging “inappropriate campaign expenditures” by the Town of Apple Valley and Mayor Scott Nassif to pay for advertisements in support of Measure F, a ballot measure that was approved by Apple Valley voters in June 2017. Measure F authorized the town to finance the acquisition of the Apple Valley water system (then owned and operated by Liberty Utilities), by incurring debt up to \$150,000,000 (provided that the debt be repaid from revenues generated by the water system, not from taxes—and that the town conduct an annual independent audit).

Our investigation focused on determining whether the town sent prohibited mass mailings at public expense—and whether the town qualified as a committee under the Act, such that the town should have been required to file campaign statements/reports and include “paid for by” disclosures on any political advertisements. Investigation to date has revealed insufficient evidence to support a finding that the Act was violated, and we are closing this case with an advisory letter.

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. Generally, a mailing is prohibited by Section 89001 if all of the following criteria are met:²

- (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.

² Regulation 18901.1, subdivision (a).

(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 200 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).

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.³

An item unambiguously urges a particular result in an election if it meets either of the following criteria:⁴

(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.

When considering the style, tenor, and timing of an item, factors to be considered include, but are not limited to, whether the item is any of the following:⁵

(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.

However, a mailing of the following items is not prohibited by Section 89001:⁶

(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 Regulation 18901.1, subdivision (d).

⁴ Regulation 18901.1, subdivision (c).

⁵ Regulation 18901.1, subdivision (e).

⁶ Regulation 18901.1, subdivision (b).

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

A mailing sent at public expense that features/includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing may also be prohibited under Section 89002.⁷

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 either: a contribution (if it is made at the behest of the affected ballot measure committee)—or an independent expenditure (if it is not made at the behest of the affected committee). If the agency makes one or more independent expenditure payments aggregating at least \$1,000 in a calendar year, then the agency qualifies as an independent expenditure committee. In the alternative, if the agency makes one or more contribution payments aggregating at least \$10,000 in a calendar year, then the agency qualifies as a major donor committee.⁸

However, payments for the following are not considered to be contributions or independent expenditures:⁹

- (1)** An agency report providing the agency's internal evaluation of a measure made available to a member of the public upon the individual's request.
- (2)** The announcement of an agency's position at a public meeting or within the agenda or hearing minutes prepared for the meeting.
- (3)** A written argument filed by the agency for publishing in the voter information pamphlet.
- (4)** A departmental view presented by an agency employee upon request by a public or private organization, at a meeting of the organization.
- (5)** A communication clearly and unambiguously authorized by law.

If an agency qualifies as a major donor committee or as an independent expenditure committee, then it must file campaign statements and reports as described in Campaign Manuals 5 or 6, respectively—which are available on our website here: www.fppc.ca.gov/learn/campaign-rules/campaign-disclosure-manuals.html#title6.¹⁰ Also, if an agency qualifies as either type of committee, then its political advertisements must include required “paid for by” disclosures, as summarized in Chapter 3 of Campaign Manual 5 and Chapter 2 of Campaign Manual 6.

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

⁷ Regulation 18901.1, subdivision (f).

⁸ See Sections 82013; 82031; and Regulation 18420.1.

⁹ Regulation 18420.1, subdivision (e).

¹⁰ Also, see Sections 84200, *et seq.*

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,

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cc: Diana Carloni (sworn complainant)