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

April 16, 2024

KC Jenkins
Bell, McAndrews, & Hiltachk LLP
On behalf of John McCann
Via email: kcjenkins@bmhlaw.com

**Re: Advisory Letter: FPPC Case No. 2021-00471, In the Matter of John McCann, Myllissa McCann, and McCann Legal Defense Fund**

Dear KC Jenkins,

The Enforcement Division of the Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act.[1] This letter arises from numerous complaints received in early 2021 alleging potential violations of the Act related to fundraising through a legal defense fund. After a review of the available evidence, the Enforcement Division is closing its file in this matter with this advisory letter as discussed below.

John McCann ("McCann") was a candidate for the Chula Vista City Council in 2014. That year, during the election cycle, campaign mailers were circulated by a local labor union. Weeks before the 2014 election, McCann filed a lawsuit against the source of the mailer, alleging that the mailer was defamatory. In response, the defendants in that civil matter filed a special motion to dismiss, also referred to as an anti-SLAPP. Their defense was that the campaign mailer was protected speech. SLAPP stands for "Strategic Lawsuit Against Public Participation" and is defined as "a lawsuit intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition." The anti-SLAPP only sought to dismiss his lawsuit, it did not seek damages or other recovery. The defendants in the case prevailed in the special motion to dismiss and the court ordered McCann to pay the defendant's costs and attorney fees.

In late 2015, McCann opened the committee, McCann Legal Defense Fund. Myllissa McCann served as the treasurer. As required, the statement of organization included a description of the relevant legal proceeding for which the legal defense fund ("LDF") was opened. Specifically, the proceeding was described, in part, as, "Defense of civil case for defamation SLAPP suit by AFL-CIO; Chula Vista Voters Against Corruption,…a proceeding initiated October 1, 2014." McCann personally lent the committee $90,250 on or around December 7, 2015. On the same campaign statement, the committee reported a payment to Chad Morgan, McCann's attorney, totaling $90,000. The committee reported that Morgan made a subvendor payment to Strumwasser & Woocher, LLP (the attorney for the defendants) in the same amount. These transactions occurred

[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.

in 2015. After this, McCann raised contributions and the committee repaid McCann for the cost of the loan and for the administration of the committee. In 2021, the loan was fully repaid, and the committee was terminated on March 20, 2021.

LDFs are authorized by the Act in Government Code Sections 85304 (for state candidates) and 85304.5 (local candidates.) A candidate may establish a separate account to defray attorney fees and other related legal costs incurred for the candidate's legal defense if the candidate is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental duties or activities. The funds may be used only to defray those attorney fees and other related legal costs.

After an investigation, the Enforcement Division found insufficient evidence to establish that a violation occurred within the statute of limitations.

Even though we are closing our file in the matter, please be advised of the rules and regulations regarding proper use of campaign funds and proper formation of LDFs. The rules have changed since 2015. If you need guidance regarding the Act's provisions, 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 use of campaign funds and LDFs available on the Commission's website, www.fppc.ca.gov.

Please do not hesitate to call, (279) 237-5960, if you have any questions.

Sincerely,

Theresa Gilbertson
Senior Commission Counsel
Enforcement Division

cc: Sworn Complainants: Theresa Acerro, Maty Adato, and Francisco Estrada