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FAIR POLITICAL PRACTICES COMMISSION

December 17, 1996

Julia A. Moll
Deputy City Attorney
Fox Plaza
1390 Market Street, Fifth Floor
San Francisco, California 92553

**Re: Your Request for Advice
Our File No. A-96-315**

Dear Ms. Moll:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Does the Act preempt the City and County of San Francisco from designating in its charter that the Ethics Commission, rather than the Director of Elections, shall serve as the exclusive filing officer for the City and County under Government Code Section 84215?

CONCLUSION

The Act preempts the charter amendment. There is a genuine conflict between the Act's designation of a particular, easily identifiable place to file statewide campaign statements and reports, and City and County's attempt to change that designation in local law. This matter, one of the integrity of the electoral process, is of statewide concern. A straightforward designation of a particular person to receive the statewide filings in the very state law that imposes the filing requirements is reasonably related to the ends of statewide uniformity in statewide filing requirements, and narrowly tailored to accomplish that end.

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18000 - 18995, of the California Code of Regulations.

ANALYSIS

Introduction/Statement of law.

The Act requires the filing of campaign statements and reports by many persons. (See Sections 84200 et seq.) Section 84215 addresses where these campaign reports and statements must be filed. That section requires most filers to file copies of the required statements and reports in the county in which they are domiciled. Section 84215 also imposes additional requirements on persons running statewide campaigns.² This latter group must also file copies of the required statements and reports with the Secretary of State, the Registrar-Recorder of Los Angeles County, and the Registrar of Voters of the City and County of San Francisco. (Section 84215(a)(1)-(3).)

Thus, Section 84215 imposes upon Los Angeles and San Francisco responsibility for accepting the filings of not only local persons, but also of persons operating campaigns on a statewide level.

Section 81009.5(b) provides that no local government agency may impose filing requirements additional to or different from those set forth in Section 84215 (among others), unless the additional or different filing requirements apply only to local candidates and committees. You have informed us that the San Francisco City Charter has been amended to transfer the filing officer duties imposed by the Act upon the Registrar of Voters to the Ethics Commission. You have raised the issue of whether the Act preempts this transfer of responsibilities.

In *Johnson v. Bradley* (1992) 4 Cal. 4th 389 [14 Cal. Rptr. 2d 470], the Supreme Court summarized the analytical approach to resolving potential conflicts between city charter provisions and state statutes. First, it must be determined if there actually is a conflict. (*Id.* at 399 ["In broad outline, a court asked to resolve a putative conflict between a state statute and a charter city measure initially satisfy itself that the case presents as an actual conflict between the two. If it does not, a choice between the conclusions 'municipal affair' and 'statewide concern' is not required."].) As you have noted, careful analysis is required to avoid a finding of a conflict if possible. *Ibid.*

If there is indeed a conflict between the state and local provisions, the analysis proceeds to a second step:

² "... statewide elected officers, candidates for these offices, supreme court justices, their controlled committees, committees formed or existing primarily to support or oppose these candidates, elected officers, supreme court justices, or statewide measures, or the qualifications of state ballot measures, and all state general purpose committees" Section 84215(a).

"When the local matter under review "implicates a 'municipal affair' and poses a genuine conflict with state law, the question of statewide concern is the bedrock inquiry through which the conflict between state and local interests is adjusted. If the subject of the statute fails to qualify as one of statewide concern, then the conflicting charter city measure is a 'municipal affair' and 'beyond the reach of legislative enactment.' ... If, however, the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related [and 'narrowly tailored'] to its resolution, then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by article XI, section 5 [, subdivision] (a), from addressing the statewide dimension by its own tailored enactments." (*Johnson, supra*, 4 Cal. 4th at 399 [footnote omitted], citing *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal. 3d 1 [283 Cal. Rptr. 569] (*CalFed*) [bracketed material in original].)

This part of the analysis focuses on two issues. First, is the matter truly of statewide concern? If so, second, is the statute reasonably related to the statewide concern and narrowly tailored to its resolution? As to determining 'statewide concern,' the

"... inquiry regarding statewide concern focuses ... on 'the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations.'" (*Cawdrey v. City of Redondo Beach* (1993) 15 Cal. App. 4th 1212, 1226 [19 Cal. Rptr. 2d 179] [emphasis added].)

There is a genuine conflict between the charter amendment and Section 84215.

There is a genuine conflict between the Act's identification of a particular filing officer for statewide purposes and the charter amendment transferring those responsibilities to another agency. We respectfully disagree with your assertion that the identity of the agency receiving the filings is not an integral part of the Act's uniformity requirements. A person running a statewide campaign, whether in San Diego or Fort Bragg, will reasonably look to the Act, not to the city charter, to learn where he/she/it must file statements and reports required by the Act. Allowing piecemeal local changes to any of the Act's filing requirements which have statewide impact, including the prescribed places to file, would introduce confusion and uncertainty on the part of the statewide filers, and thereby undermine the Act's clear intent to have uniform, easily identifiable requirements. (Section 81009.5.) In short, changing the place where a statewide campaign statement or report is filed fundamentally changes the filing requirement; this is forbidden by Section 81009.5.

We believe your reliance on Regulation 18227 is misplaced. That regulation merely provides that the filing officer designated in the Act must delegate responsibility to a particular

official (presumably within the filing officer's agency) for handling the filings. It is not support for the proposition that the filing officer's duties may be transferred to another agency. In this context, there is a significant difference between delegation of duties and outright transfer of those duties.

The designation of the filing officer in the Act is a matter of statewide concern.

Given that there is a genuine conflict between the Act's designation of the Registrar as the filing officer and the charter amendment's transfer of those responsibilities, we must next examine whether the issue is indeed of statewide concern. (*Johnson, supra*, 4 Cal. 4th at 399 [footnote omitted].) As explained above, the inquiry concerning statewide concern focuses on the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible pragmatic considerations. (*Cawdrey, supra*, 15 Cal. App. 4th at 1226.)

The integrity of the electoral process is a matter of statewide concern. (*Johnson, supra*, 4 Cal. 4th at 409 ["the integrity of the electoral process, at both the state and local level, is undoubtedly a statewide concern."].) Indeed, one court wrote,

"The ... purpose ... of the Political Reform Act of 1974 is to inform the electorate and to prevent the corruption of the political process. The achievement of these objectives promotes a compelling state interest." (*Socialist Workers 1974 California Campaign Committee v. Brown* (1976) 53 Cal. App. 3d 879, 888-889 [125 Cal. Rptr. 915, 921].)

As explained above, the conflict between the Act (Section 84215(a)) and the charter amendment originates in extramunicipal concerns. Changing the filing officers affects not only local candidates and committees, but also statewide candidates and committees, for this latter group must also file in San Francisco. It is sensible and pragmatic to have a particular filing officer clearly identified in state law when the filing responsibilities are imposed statewide.

Section 84215(a) is reasonably related to the statewide concern, and narrowly tailored to serve that concern.

Even if there is a genuine conflict between the statute and the local provision, and even if the issue is a matter of statewide concern, the statute must still be found to be reasonably related to the concern, and narrowly tailored to serve that concern. (*Johnson, supra*, 4 Cal. 4th at 399 [footnote omitted].) The statewide concern at issue here is statewide uniformity of filing requirements imposed by state law on persons running statewide campaigns; more specifically, the concern is that a person running such a campaign may easily and logically determine where to file the reports and statements required by the Act. It seems self-evident that designating in state law a particular, easily identified person to receive the filings is reasonably related to that

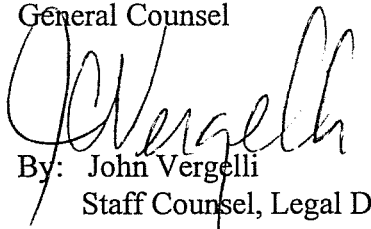
end.

We must respectfully disagree with your assertion that "the State's interest in having a regional filing officer is served by a more general provision that merely designates the City and County of San Francisco to receive the filings, and thereby allows San Francisco to assign these duties to an appropriate agency or official." If such were the case, a person running a statewide campaign would have to consult the Act and San Francisco's charter (and perhaps Los Angeles' local laws) to ascertain his/her/its filing responsibilities; whereas, as the law stands, such a person may ascertain his/her/its filing responsibilities by consulting the Act only. The current law, by virtue of its clarity and simplicity in this regard, is more narrowly tailored to the ends of statewide uniformity in filing requirements than would be the alternative you propose. Indeed, we are hard pressed to conceive a more narrowly tailored alternative than a straightforward designation of a particular person to receive the filings in the very law that imposes the filing requirements.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel


By: John Vergelli
Staff Counsel, Legal Division

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