

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

June 25, 1997

Mark Sellers
City Attorney
City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, California 91362-2903

Re: Your Request for Advice
Our File No. A-97-264

Dear Mr. Sellers:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts as they have been presented to us. The Commission does not act as finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. In light of Proposition 208 and other state statutes regulating the financing of campaigns and the disclosure requirements for elected officials, what is a city's authority, based on Government Code Section 81013, to enact a local ordinance requiring, once a recall (or other local measure) process is formally commenced:

(a) that a written disclosure form be filed (FAX filing acceptable) with the City Clerk within twenty-four hours identifying (for all contributions in excess of \$250 received by any committee or person circulating a petition, any committee or person organized or opposing the circulation of a petition or any elected official subject to a recall) the receiving party, the payor and the amount of the contribution; and

(b) that in any flier or advertisement made by a group or person advocating support for or against a recall, referendum or initiative effort, the flier or

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

advertisement identify and list the groups or persons who had contributed \$6000 towards the recall, referendum or initiative effort?

2. Will the disclosures enumerated in (a) and (b), above, be interpreted by the courts as being unreasonably impeding or overly restrictive such that the ordinance containing these proposed requirements would be an unconstitutional burden on the freedom of speech, association or on the exercise of the petition circulation right?

CONCLUSIONS

1. Section 85706 (enacted by Proposition 208) allows a local jurisdiction to impose campaign disclosures that are as, or more, stringent than those set forth in the Act.

2. The FPPC is an state administrative agency existing to interpret and enforce the provisions of the Act and to promulgate regulations in furtherance of the Act. The FPPC has not been empowered, nor is it able, to render advice on possible judicial interpretations of any local, state or federal law.

FACTS

A councilmember for the City of Thousand Oaks (the "City") has suggested the City consider enacting a local ordinance requiring more stringent campaign contribution disclosure requirements than now required under state law. At this date, the proposed ordinance has not yet qualified and may not qualify for the ballot.

Specifically, the proposed ordinance would require that, once a petition for recall, initiative or other measure qualifies for circulation within the city, a written disclosure be filed (personally or by facsimile) with the City Clerk within 24 hours of any contribution in excess of \$250 being made to or received by any committee or person circulating the petition, any committee or person organized or opposing the circulation of the petition, or any elected official who is the subject of the recall.

The written disclosure would identify the receiving party, payor and amount. The disclosure form would then be an open public record for general public information. In addition, the ordinance would mandate that any flier or advertisement of a group or person advocating support for or against a recall, referendum or initiative effort, identify and list the groups or persons who had contributed \$6000 or more towards the effort.

ANALYSIS

1. Evaluation of the Proposed Ordinance Under 208.

Your question requests this office to provide advice regarding the City's authority to enact the proposed ordinance. The FPPC is an administrative state agency charged with

interpreting and enforcing the provisions of the Act and also with promulgating regulations to further the Act. Accordingly, the FPPC cannot, and will not, provide advice with respect to laws other than the Act and supporting regulations. Therefore, your specific questions seeking this office's opinions regarding whether the City is vested with the requisite authority to enact the proposed ordinance, and whether the proposed ordinance complies with laws other than the Act, are questions this letter cannot and will **not** address. We can and will address, however, the issue of Proposition 208's impact on the proposed ordinance.

Proposition 208, enacted by the voters on November 5, 1996, became effective on January 1, 1997. Proposition 208 contains numerous additions and amendments to the Act, including Section 85706(b) which grants authority to local jurisdictions to impose more stringent contribution limitations or campaign disclosures than those contained in Proposition 208 or the Act. Specifically, Section 85706(b) states:

“(b) The governing body of a local jurisdiction may impose lower contribution limitations or other campaign disclosures or prohibitions that are as **or more stringent** than set forth in this act....” [Emphasis added.]

Other provisions of the Act also give deference to local jurisdictions in structuring local laws and requirements governing campaign contributions and disclosures as long as those laws and restrictions do not conflict with the Act or prevent compliance with the Act (Section 81013) and apply only to candidates and measures being voted upon in that jurisdiction (Section 81009.5).

The City's proposed ordinance requires supplemental disclosures to be made in political advertisements concerning local measures and when contributions exceeding a threshold amount have been received regarding local measures. Chapter 4 of the Act (commencing with Section 84100) enumerates the general reporting and disclosure requirements under the Act applicable to candidates, committees and persons or committees making advertisements. Nothing contained in Chapter 4 prohibits the activity contemplated by the City's proposed ordinance. Additionally, the disclosures of the proposed ordinance do not appear to conflict with the requirements of Chapter 4 such that compliance with Chapter 4 (or any other provision of the Act) would be jeopardized. The disclosures of the proposed ordinance are simply cumulative to the requirements of the Act (e.g., more stringent) and, therefore, allowable under Section 85706(b).²

2. The Constitutionality of the Proposed Ordinance.

As stated previously, the FPPC is an state administrative agency. The FPPC has not been empowered, nor is it able, to render advice on possible judicial interpretations of any local, state

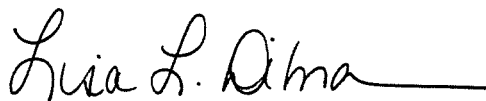
² The wording of the City's proposed ordinance is unclear as to who is required to submit the further disclosures. Please be advised that if the intent of the ordinance is to impose additional disclosure requirements on persons or committees **not** within the City's jurisdiction, the ordinance would violate Section 81009.5(b).

or federal law.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Lisa L. Ditora". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

By: Lisa Ditora
Staff Counsel, Legal Division

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