



## FAIR POLITICAL PRACTICES COMMISSION

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January 9, 2001

Thomas D. Jex, Esq.  
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**Re: Your Request for Advice  
Our File No. A-00-271**

Dear Mr. Jex:

This letter is in response to your request for advice on behalf of the City of Laguna Woods ("city") regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. May the city cover all or part of the costs of printing, handling, translating and mailing candidate statements to be included in the voter's pamphlet?
2. If the city pays for all or part of these costs for each candidate, would the payment be a "contribution" to the candidates?

### CONCLUSION

1. Nothing in the Act prohibits the city from covering all or a part of the costs of printing, handling, translating or mailing candidate statements in the voter's pamphlets.
2. No. The payment would not be a contribution.

### FACTS

Your request concerns candidate statements that are included in a voter's pamphlet and distributed to all registered voters in a particular geographical area. Elections Code Section 13307 provides that a candidate for a non-partisan office may submit a statement of qualifications and that the city must send the statement in a voter's pamphlet with the sample

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<sup>1</sup> Government Code sections 81000 – 91015. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

ballot. Under the statute, the city may bill each candidate for the cost of printing, handling, translating and mailing the statement.

Typically, cities require each candidate filing a statement to pay for the costs associated with printing, handling, translating and mailing the statement as a condition of having it included in the voter's pamphlet. The City of Laguna Woods would like to pay for some or all of the costs associated with printing, handling, translating and mailing of each candidate's statement submitted for publication. The city is a general law city that was incorporated in 1999.

## ANALYSIS

### Use of Public Funds

The Act contains two provisions regarding the misuse of public funds.<sup>2</sup> First, Section 85300 prohibits the payment of public moneys for the public financing of elections if the payment is in the form of matching funds or cash subsidies. (Reg. 18530.) Section 85300 is not relevant to your facts.

The second provision, Section 89001, provides: "No newsletter or other mass mailing shall be sent at public expense." As interpreted by the Commission, Section 89001 prohibits a mass mailing at public expense if all of the following apply:

1. The mailing is a written document and delivered to the recipient at his or her residence. (Reg. 18901(a)(1).)
2. The mailing includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing, and is prepared or sent in cooperation with that officer. (Reg. 18901(a)(2).)
3. Any of the costs of distribution are paid for with public moneys. (Reg. 18901(a)(3).)
4. More than 200 substantially similar items are sent in a single calendar month. (Reg. 18901(a)(4).)

The candidate statements in the voter's pamphlets will meet all four criteria if any of the candidates are incumbents. However, Regulation 18901(b) enumerates exceptions to the prohibition including any "legal notice or other item sent as required by law" in which use of the elected officer's "name, office, title or signature" is necessary in the notice. (Reg. 18901(b)(7).) This exception applies here. Elections Code Section 13307(b) requires the city to send a voter's pamphlet with the candidate statements to all registered voters. Therefore, under the legal-notice exception in Regulation 18901(b)(7), the city may send publicly funded candidate statements in voter's pamphlets without violating the prohibition in Section 89001.

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<sup>2</sup> Other areas of law outside of the Act also prohibit the misuse of public funds. (See e.g., Penal Code § 424.)

Accordingly, nothing in the Act prohibits the city from covering all or a part of the costs of printing, handling, translating and mailing candidate statements to be included in the voter's pamphlet.

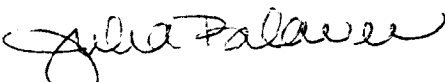
### **Candidate Contribution**

Under the Act, when a government agency makes campaign contributions, it may be required to file campaign statements. (Reg. 18420(d).) In general, a payment made to or at the behest of a candidate is a "contribution" for purposes of the Act. (Section 82015; Reg. 18215.) However, the definition excludes payments made by a nonpartisan organization for a debate or "other forum" in which at least two candidates appearing on the ballot for the same elective office are invited to participate. (Reg. 18215(c)(10).) This exception applies to your facts. We conclude that the voter's pamphlet is an "other forum" in which at least two candidates will be participating. As such, the payment by the city for the cost of printing, handling, translating and mailing the candidate statements is not a contribution to the candidates as long as this benefit is provided on an equal basis to each candidate.

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

Sincerely,

Luisa Menchaca  
Assistant General Counsel

  
By: Julia Bilaver, Staff Counsel  
Legal Division

JB:jg