



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 5, 2004

Dennis Zell
Janet Fogarty & Associates
1633 Bayshore Highway, Suite 232
Burlingame, CA 94010

**Re: Your Request for Advice
Our File No. A-04-142**

Dear Mr. Zell:

This letter is in response to your request on behalf Nano Maldonado for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Do any laws or regulations enforced by the FPPC prohibit Mr. Maldonado from leasing his billboard space for \$10,000 per side per month to a candidate for California Assembly?
2. Assuming the answer to question number 1 is "no," would Mr. Maldonado have to report any amount as a contribution, or would the \$10,000 per side per month cost simply constitute an expenditure of the campaign?
3. For purposes of FPPC reporting, may the fair market value of a billboard that is restricted to non-commercial advertising be established by the highest bid received for the particular lease period, where use of the billboard has been offered on equal terms to all candidates in the district who have reported that they have raised at least as much as the minimum bid for the billboard?

CONCLUSIONS

1. Yes. Based on the facts as presented in your letter, the fair market value of the billboard is more than \$10,000 per month per side. The difference between the fair

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

market value and the price paid would be a contribution from Mr. Maldonado in excess of the limits provided in Government Code section 85301.

2. Mr. Maldonado would have to report contributions if his contributions to or at the behest of state or local candidates or committees total \$10,000 or more in a calendar year.
3. No. Fair market value may not be established as described in your question.

FACTS

An injunction with the Superior Court of California currently restricts Mr. Maldonado from placing commercial advertisements on his billboard. Mr. Maldonado is challenging the constitutionality of the law upon which the injunction is based.

Meanwhile, Mr. Maldonado has attempted to rent the billboard for non-commercial (not pertaining to a good or service), purely political advertising.

To date, only one of the recipients of the rental offer has contacted Mr. Maldonado regarding political advertising. During negotiations, the campaign asked Mr. Maldonado to state the fair market value of his advertising space for purposes of reporting expenditures and contributions.

After consulting an advertising company, you determined that the fair market value for similarly situated *commercial* billboards of the same approximate size was between \$25,000 and \$40,000 per side, per month. However, nobody (not even a professional real estate appraiser) could calculate the fair market value of comparable *non-commercial* billboards because such a market does not exist.

Your client is concerned that if the billboard is rented to the campaign at substantially less than the \$25,000 to \$40,000 per month fair market value for *commercial* billboards, your client would have to report the difference as an in-kind contribution and/or would be prohibited from renting the billboard because the difference between the *commercial* fair market value and the actual rental charge would exceed the maximum campaign contribution allowed.

It is your opinion that the fair market value of the billboard under these circumstances is whatever someone is willing to pay. Moreover, since your client offered the billboard to all legitimate candidates in the area (virtually the entire viable market for political advertising) and only one candidate submitted an offer, the fair market value of the billboard equals the amount of the offer.

ANALYSIS

Fair Market Value

Fair market value is whatever it would cost the candidate or committee to obtain the same or similar goods or services on the open market. (*Sremaniak* Advice Letter, No. A-03-092; *Zakson* Advice Letter, No. A-00-182; *Miller* Advice Letter, No. I-96-243; *In re Hopkins* (1977) 3 FPPC Ops. 107.) Your letter indicates that billboard advertising space is available to candidates on the open market for \$25,000 to \$40,000 per side, per month. Your client is willing to rent his billboard to a candidate for Assembly for \$10,000 per side, per month. We cannot act as the finder of fact. We cannot advise you that your client's willingness to engage in this transaction establishes the fair market value for the billboard. We are therefore unable to advise you that the fair market value is other than the \$25,000 to \$40,000 charged for similarly located billboards of similar size.

Contributions

Under the Act, a "contribution" is a payment made for political purposes unless full and adequate consideration is received. (Section 82015(a).) "Nonmonetary" contributions include goods and services provided at a discount from the fair market value to a candidate or committee (unless the same discount is given in the regular course of business to members of the public). (Section 82015(c); regulation 18215(b)(3).)

For Mr. Maldonado to provide billboard space worth \$25,000 to \$40,000 to a candidate for Assembly in exchange for a payment of \$10,000 from the candidate would constitute a significant discount from the fair market value. The difference between the amount paid by the candidate and the fair market value would be a nonmonetary contribution from Mr. Maldonado to the candidate.

Contributions from individuals to candidates for Assembly are limited to \$3,200 per election. (Section 85301; regulation 18545.) A payment of \$10,000 per month for space worth \$25,000 per month would constitute a nonmonetary contribution valued at \$15,000 from Mr. Maldonado, which would exceed the statutory limit.

Contributor Reporting

The Political Reform Act requires contributors to file reports once their contributions to or at the behest of state or local candidates and committees total \$10,000 in a calendar year. (Section 82013(c).) Contributions to candidates in the form of advertising space sold below fair market value would count toward the \$10,000 threshold.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Hal Dasinger
Political Reform Consultant

LM:HD:jg
I:\AdviceLtrs\04-142