



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

December 28, 2004

Donna J. Rogers, City Clerk  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

**Re: Your Request for Informal Assistance**  
**Our File No. I-04-255**

Dear Ms. Rogers:

This letter is in response to your request on behalf of the City of Palo Alto for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> We are treating this request as one for informal assistance (Reg. 18329(c)(1)).<sup>2</sup>

### QUESTION

Is the mail-out ballot and protest procedure required by Article XIII D, Section 4 of the California Constitution related to a storm drainage fee increase a "measure" within the meaning of section 82043?

### CONCLUSION

The mail-out ballot and protest procedure required under Article XIII D of the California Constitution is neither a measure nor an election under the Act.

---

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

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed.)

## FACTS

You have an upcoming city Proposition 218 protest hearing and ballot proceeding for a storm drainage fee increase. You ask whether the mail-out and protest procedure for assessment districts required by the California Constitution, Article XIII D is applicable to the fee increase and whether it is considered a measure or an election under the Act.

## ANALYSIS

Section 82043 of the Act defines a "measure" as "any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualified for the ballot."

The Act defines "election" as "any primary, general, special or recall election held in this state." (Section 82022.) However, the provisions pertaining to the requirements for an election are in the California Elections Code, which is under the jurisdiction of the Secretary of State's Office.

The mail-out ballot and protest is a procedure whereby ballots are mailed to all property owners in an assessment district to determine if there is a majority protest to an assessment. The requirement to conduct the mail-out ballot and protest includes increases in assessments for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. (Article XIII D, Section 5(a).)

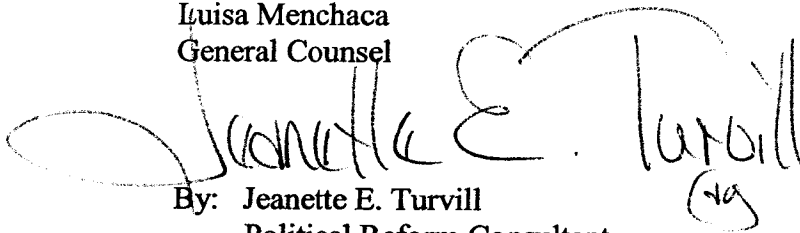
Property owners may vote only by mail-in ballot. At a public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. (Article XIII D, Section 4(e).) In our *Hicks* Advice Letter, No. I-98-007, we advised the City of Oakland that payments by the city in connection with its mail-out ballot and protest procedure was neither an "election" nor "measure" as defined by the Act. Elections held for general and special tax measures placed on a ballot for voter approval pursuant to Article XIII C of the California Constitution are considered "ballot measures" under the Act. (Also see, *Ewing* Advice Letter No. A-97-061.)

Based upon the definitions and interpretation of the Act, the mail-out ballot and protest procedure required under Article XIII D of the California Constitution is neither a measure nor an election. Therefore, as applied to the storm drainage fee increase, expenditures and contributions advocating the passage or defeat of the increase are not reportable under the Act.

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

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink, appearing to read "Jeanette E. Turvill". The signature is written in a cursive style with a large initial "J" and a circled "E".

By: Jeanette E. Turvill  
Political Reform Consultant  
Technical Assistance Division

JET:jg  
I:\AdviceLtrs\04-255