



FAIR POLITICAL PRACTICES COMMISSION

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October 12, 2007

Mr. Tony Miller
Chief, Political Reform Division
Office of Secretary of State
1500 11th Street, Room 495
Sacramento, California 95814

Re: Your Request for Advice
Our File No. I-07-120

Dear Mr. Miller:

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

QUESTION

May the Secretary of State, pursuant to Government Code Sections 81008 and 84602(d), post on the internet via Cal-Access the addresses of political committees that file documents with the Secretary of State in accordance with the Act?

CONCLUSION

Government Code Section 84602(d), stating that the "data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms . . .," does not permit the Secretary of State to post on the internet the address of political committees that file online.

FACTS

Under Government Code Section 81008(a), all data filed with the Secretary of State is available for viewing and copying in the Office of the Secretary of State. This

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

includes addresses of all contributors, treasurers and committees, as well as bank account numbers. The information is available in the Sacramento Office of the Secretary of State on paper documents filed with the office and on computer terminals that access a non-internet database. Copies of the information are provided upon request.

In addition, Government Code Section 84602 requires the Secretary of State to make all data filed available on the internet for public access as soon as possible after receipt, noting that the data made available on the internet "shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number" that must be disclosed. Pursuant to this Section, the Secretary of State does not post on the internet street addresses of contributors or bank account numbers. The information remains available on paper documents filed and on computer terminals located in the Sacramento Office of the Secretary of State that access a non-internet database.

The Secretary of State's office currently receives numerous calls, faxes and e-mails requesting political committee addresses. The requested information is provided whenever possible. However there is a twofold result – (1) the need to make a special effort to obtain address information is very frustrating for filers and others who desire the information and (2) providing the information upon request diverts the Secretary of State's staff resources from other duties. Considerable time and effort would be saved if the information could be accessed through Cal-Access on the internet.

ANALYSIS

One of the main purposes of the Political Reform Act is to ensure that campaign finances are "fully and truthfully disclosed so that the voters may be fully informed." (Section 81002(a) and (b).) The public is provided broad access to reports filed under the Act under Government Code Section 81008:

"(a) Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received. . . .

"(b) Campaign statements shall be open for public inspection and reproduction from 9:00 a.m. to 5:00 p.m. on the Saturday preceding a statewide primary or statewide general election in the offices of the Secretary of State, Registrar-Recorder of Los Angeles County, Registrar of Voters of San Diego County, and Registrar of Voters of the City and County of San Francisco."

The Online Disclosure Act, SB 49 passed in 1997, further expanded public access to campaign and lobbying reports. The findings and declarations in the Online Disclosure Act provide:

“(a) The people of California enacted one of the nation’s most comprehensive campaign and lobbying financial disclosure laws when they voted for Proposition 9, the Political Reform Act of 1974, an initiative statute.

“(b) Public access to campaign and lobbying disclosure information is a vital and integral component of a fully informed electorate.

“(c) Advances in technology have made it viable for disclosure statements and reports required by the Political Reform Act to be filed online and placed on the Internet, thereby maximizing availability to the public.” (Section 84601.)

Government Code Section 84602 outlines the Secretary of State’s duties with respect to electronic filing:

“To implement the Legislature’s intent, the Secretary of State, in consultation with the commission, notwithstanding any other provision of the Government Code, shall do all of the following:

“(a) Develop online and electronic filing processes for use by persons and entities specified in Sections 84604 and 84605 that are required to file statements and reports with the Secretary of State’s office pursuant to Chapter 4 (commencing with Section 84100) and Chapter 6 (commencing with Section 86100). . . .

* * *

“(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. *The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to this title.*” (Emphasis added.)

The question at hand is whether the Secretary of State’s Office may post committee addresses on the internet. Our analysis centers on the interpretation of the term “persons” in Section 84602(d). In interpreting the Act, we look to the plain meaning of the statute and its legislative history, applying reason and common sense to interpret the statute consistent with its purposes. (See, e.g., *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1238-1239 (1992).)

The Act defines the term “person” in Section 82047 as follows:

“Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation,

limited liability company, association, committee, and any other organization or group of persons acting in concert.”

The Act’s broad definition of “person” specifically includes both individuals and committees. Section 84602(d) states that the data posted on the internet shall not contain the street address and building number of “persons or entity representatives” listed on electronically filed forms.

We recognize that there are instances where “persons” appears to be used in the Act to refer to individuals, a subset of the statutory definition of “persons” in Section 82047. For example, Section 81009(a) states “original campaign statements of *persons* holding elective state office, candidates for any such office, committees supporting any such officeholder or candidate, and committees supporting or opposing statewide measures” (Emphasis added.)² Within the Online Disclosure Act itself, the term “person” is differentiated from a “committee” or “entity,” suggesting that the term may refer to individuals in those references. (Section 84602(a) [“develop online and electronic filing processes for use by persons and entities . . . that are required to file statements and reports with the Secretary of State’s Office. . . .”] and Section 84602.5 [“. . . an index of the identification numbers . . . of every person, entity, or committee that is obligated to make a disclosure pursuant to Chapter 4”].)

However, in another section of Chapter 4.6, the Online Disclosure Act, where the drafters wanted to override Section 84602(d) and display the addresses of lobbyists online, the statute specifically requires it. A later enacted statute, Government Code Section 86109.5(d) expressly provides that “[n]otwithstanding any other provision of this statute, the lobbying data made available on the Internet shall include the street name and building number of the persons or entity representatives listed” on all the lobbying reports filed with the Secretary of State under Chapter 6.³ The lobbying reports request the business address of the lobbyist, so concerns about publicly posting an individual’s home address are minimized.

We examined the legislative history of SB 49 (Karnette), the Online Filing Act enacted in 1997. The legislative history focuses primarily on broader issues, such as switching from paper to electronic filing, developing a system for the on-line transfer of data, and using software vendors, etc. With respect to posting addresses on the internet, an analysis of SB 49⁴ states that the bill requires the Secretary of State to:

² See also Sections 81009(d), 81011.5, 82020, 82021, 82028(b)(3), 82030(a)(9), 83102(b), 84308(a)(3), 87202(a), (b)(1), and (b)(2), 87203, 87204, 87205, 87209, 87350, 87405, 87460(e)(2), 87461(b)(2), 87500(e) and (f), 89502(b)(1), (b)(2) and (d), and 89513(f)(3).

³ An opinion from the Attorney General’s Office found that “the directive to make available over the Internet the street names and building numbers contained in the lobbying data (§ 86109.5) controls over the more general and earlier prohibition against such Internet publication by the Secretary of State (§86402).” 84 Ops.Cal.Atty.Gen. 1 (2001). Section 86109.5 was a later enacted statute.

⁴ Assembly Committee Report on SB 49 prepared for a hearing on July 14, 2007.

“5. Make the electronically filed data available at no cost on the ‘largest non-proprietary, nonprofit, cooperative computer network’, a.k.a., the Internet, in a format that is easily understood and provides the greatest public access. The data shall be made available free of charge, and as soon as possible after receipt. *Data made available on the public computer network shall not contain the residential street address and building number of any person.*” (Emphasis added.)

The legislative history merely summarizes the provision contained in Section 84602(d). The legislative history does not distinguish between displaying the building number and street address of contributors versus that of the political committee/filer.

The public policy behind this provision of the statute is to protect the privacy of individuals who are listed in reports filed electronically under the Act. During consideration of the electronic filing bill, the Fair Political Practices Commission and the Secretary of State were concerned about protecting the privacy of individual contributors’ home addresses. Contributor addresses had always been publicly available on campaign reports filed with the Secretary of State, but posting these addresses on the internet would have made them more widely available. The two agencies examined how to provide information about the geographic location of contributors, but not include their street addresses. The Commission adopted Regulation 18421.2 stating that candidates had to report zip codes in contributor addresses, so that a contributor’s city and zip code could be listed on the internet, but not their building number and street.

We recognize that it would be useful for the public to have committee addresses available on the internet, and it would be more efficient for Secretary of State staff. The Secretary of State’s Office receives many phone calls requesting committee addresses because the caller wants to send a contribution to a committee, or, in the case of a filer, because they have received a contribution from a committee and need to report that donor’s address on their contribution schedule.

Further, many of the political committees who are online filers list a business address or a post office box as their committee address. Therefore, posting the address of the political committees who file online is less likely to raise the same privacy concerns that displaying an individual contributor’s home address does. We are concerned, however, that some committees may use a candidate or a treasurer’s home address as the committee address. The candidate or treasurer may be a high profile individual in their community. Posting the home addresses of these individuals online could present precisely those privacy concerns which Section 84602(d) is aimed at preventing.

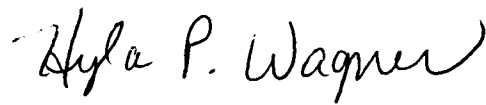
In sum, the fact that “person” is broadly defined in Section 82047 to include committees, and the concern about posting the home address of a candidate or treasurer, lead us to conclude Section 84602(d)’s prohibition on posting on the internet “the street

name and building number of the persons or entity representatives listed on the electronically filed forms” does not permit the Secretary of State to post committee addresses on the internet. We believe a minor legislative change is necessary to permit posting of committee addresses on Cal-Access.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in black ink that reads "Hyla P. Wagner". The signature is written in a cursive style with a large, sweeping initial "H".

By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl