



FAIR POLITICAL PRACTICES COMMISSION

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March 26, 2008

Jim Winder, Mayor
City of Yorba Linda
21795 Todd Avenue
Yorba Linda, CA 92887

Re: Your Request for Informal Assistance
Our File No. I-08-021

Dear Mr. Winder:

This letter responds to your request for advice regarding the campaign reporting provisions of the Political Reform Act (the "Act").¹ Because your question involves conduct that has already occurred, our response is limited to the city's future reporting obligations, and we render informal assistance pursuant to regulation 18329(c). Nothing in this letter should be construed to evaluate any conduct that may have already taken place. Additionally, our advice is limited to the provisions of the Act and we cannot advise you with respect to your question regarding whether the city-financed brochure violates the use of public funds to campaign for a ballot measure, which potentially implicates Government Code Sections 8314 and 54964, and Penal Code Section 424 – areas of law outside the Act. We can only advise you regarding the reporting provisions of the Act. However, you may wish to get advice regarding this issue from your city attorney or the Office of the Attorney General.

QUESTION

Does a city-financed brochure, regarding an upcoming ballot measure to increase funding to a benefit assessment district create reporting obligations for the city under FPPC regulations?

CONCLUSION

The newsletter does *not* appear at this time to qualify as campaign activity; therefore, under the Act, the city would not have campaign reporting obligations with regard to the brochure.

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.

FACTS

You are the mayor of Yorba Linda. Recently, one of your city council colleagues alleged at a televised city council meeting that a city-financed brochure concerning an upcoming Proposition 218 ballot measure on a proposed increase to benefit an assessment district, violated laws against the use of public funds for advocacy and may have created reporting obligations for the city under the FPPC regulations.

The city councilmember took particular objection to the tag phrase in the brochure stating, "Facing the Challenge...The cost to keep Yorba Linda looking its best." The councilmember asserted that this phrase advocated the approval of the measure.

You state that the "city paid for and mailed the brochure." However, you contend that the text of the brochure was informative, and not advocacy. You believe that, when taken as a whole, the brochure simply frames the issues for the voters and does not advocate for any particular outcome.

You wish to know whether the city has incurred certain financial reporting obligations as the result of paying for and disseminating the brochure.

ANALYSIS

A person or group of persons qualifies as a committee, and thereby incurs certain campaign reporting obligations under section 82013 of the Act, if it receives contributions totaling \$1,000 or more in a calendar year or makes independent expenditures of \$1,000 or more in a calendar year.

Section 82015 defines "contribution" as:

"... a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes."

An "independent expenditure" is defined in section 82031 as:

"... an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee."

In addition, Regulation 18225 provides that:

“(b) ‘Expenditure’ includes any monetary or non-monetary payment made by any person . . . that is used for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure.

(1) ‘Clearly identified,’ has the following meaning:

...

“(C) A measure that has qualified to be placed on the ballot is clearly identified if the communication states a proposition number, official title or popular name associated with the measure. In addition, the measure is clearly identified if the communication refers to the subject matter of the measure and either states that the measure is before the people for a vote or, taken as a whole and in context, unambiguously refers to the measure.

...

“(2) A communication ‘expressly advocates’ the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot,’ ‘vote against,’ ‘defeat,’ ‘reject,’ ‘sign petitions for’ or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.”

Thus, if the city-financed brochures qualify as campaign literature, the city may have incurred reporting obligations under the Act. Contributions made by a local government agency in support of a candidate or ballot measure must be disclosed as contributions on the campaign disclosure statements of the recipient. (Section 84200 et seq.; See Regulation 18420.) Further, if the contributions or independent expenditures made by the local government agency meet the thresholds of section 82013, the agency will be a committee under the Act. As a committee, the local government agency will incur independent reporting obligations and will be required to comply with all the filing requirements applicable to committees. Thus, if the District receives contributions or makes expenditures of \$1,000 or more to campaign for a measure on the ballot, the District may become a committee, subject to the reporting requirements of the Act.

The brochure you enclosed in your request for advice clearly refers to an identifiable measure. However, it does not appear to be a communication that “expressly advocates” the passage or defeat of the ballot measure to increase funds to benefit an assessment district. The communication, taken as a whole, does not appear to unambiguously urge a particular result in an election. Therefore, the newsletter does *not*

qualify as campaign activity, and the city would *not* have campaign reporting obligations under the Act with regard to this brochure.

Finally, please note that the Commission is aware that the case of *Vargas v. City of Salinas* (2005) 135 Cal. App. 4th 361, which addresses issues very similar to the ones you raise, is currently pending before the California Supreme Court. The court's ruling in that case may cause the Commission to reexamine its regulations in this subject area and thus reassess advice the Commission has provided on these matters.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script that reads "Emelyn Rodriguez". The signature is written in black ink and is positioned below the typed name of the signatory.

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl