



FAIR POLITICAL PRACTICES COMMISSION

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May 19, 2009

Ms. Terri Cook
City Clerk
City of Belmont
One Twin Pines Lane
Belmont, California 94002

Re: Your Request for Informal Assistance
Our File No. I-09-108

Dear Ms. Cook:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Because your letter does not request advice with regard to a specific set of facts, we have treated your request as one for informal assistance.²

FACTS

The City of Belmont enacted an ordinance governing campaign contributions in 1986. It has never been reviewed or updated since that time. Your City Council desires to amend this ordinance. The City Council has given direction regarding a number of areas outlined in the ordinance. You have attached a draft ordinance for our review and comment. You have provided a marked-up copy so that we can see the existing ordinance and the proposed changes. Below are the highlights of the changes:

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

- Adding language denoting the desire for “grass roots” campaigning (specific Council direction)
- Changing thresholds for reporting requirements based on State levels
- Increasing individual contribution level from \$100 to \$250
- Eliminating all but individual contributions (i.e., no business, organization or PAC contributions)
- Other “cleanup” items

You would like us to review the Belmont ordinance for conformance with the Act. In addition, you have three specific questions about the treatment of contributions from minors, a cite to Elections Code 22808, and a requirement that the city clerk not issue a certificate of election until all campaign statements have been filed. We address these questions below.

ANALYSIS

Generally, the Act permits local governments to impose additional requirements relating to campaign finance and disclosure, so long as those requirements do not conflict with the Act. Section 81013 of the Act provides:

“Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title.”

However, the authority granted to local agencies is limited by Section 81009.5(b). That provision prohibits a local government agency from enacting any ordinance imposing filing requirements “additional to or different from” those set forth in Chapter 4 of the Act unless the additional or different filing requirements apply only to:

“[T]he candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification of, or passage of, a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.”

As expressly provided, the City of Belmont’s ordinance is intended to be a supplement to, and not conflict with, the Political Reform Act and its implementing regulations. City of Belmont Ordinance Sec. 8.5-1 provides, in part: “This chapter is intended to supplement the Political Reform Act of 1974 and as subsequently amended; and in the event of a conflict between the act and this article, that act shall prevail.”

We address your specific questions first:

1. *Is there any regulation regarding how contributions from minors are to be treated? In reviewing other cities' ordinances, some of them provide that those contributions are to be treated as if they came from their parents, and others are treated as separate contributions. Is this discretionary?*

The treatment of contributions by minors in local ordinances does vary. Some ordinances automatically attribute a minor's contribution to his or her parents or guardians and others treat them as separate contributions. The purpose of provisions attributing minors' contributions to their parents is to prevent circumvention of campaign contribution limits by routing contributions through minors. The Commission has in the past considered a Los Angeles ordinance which automatically attributed a minor's contribution to his or her parents or guardians, and concluded that the ordinance did not conflict with the Act because it was a permissible additional local contribution limitation. (*In re Pelham* (2001) 15 FPPC Ops. 1, copy enclosed.) In addition, the U.S. Supreme Court considered the issue of contributions by minors in *McConnell v. FEC*, 124 S.Ct. 619, 711 (2003), and invalidated a prohibition on contributions by minors aged 17 or younger contained in Section 318 of the Bipartisan Campaign Reform Act of 2002.³

It is discretionary whether to add a special provision concerning contributions from minors to your City's campaign ordinance. If the City of Belmont does not add a special provision concerning contributions from minors, the Act's provision on family contributions will govern. The Act contains a rebuttable presumption that a contribution made by a child under 18 years of age is a contribution from the parent or guardian of the child. Section 85308 provides:

“(a) Contributions made by a husband and wife may not be aggregated.

“(b) A contribution made by a child under 18 years of age is presumed to be a contribution from the parent or guardian of the child.”

2. *You are removing the citation to Elections Code Section 22808, as it appears this code section no longer exists. You are not sure what this section covered and would like us to confirm that this removal is appropriate.*

The entire Elections Code has been renumbered. Old Elections Code Section 22808 was renumbered to current Elections Code Section 10202. The section concerns limitations on contributions in municipal elections. Elections Code Section 10202 provides that: “[A] city may, by ordinance or resolution, limit campaign contributions in municipal elections.” You may wish to update this cite in the Belmont City ordinance, as it is still relevant authority for the City of Belmont's contribution limits ordinance.

³ Further discussion of contributions by minors is contained in the article “*Breaking the Piggy Bank: An Alternative Approach to Campaign Contributions by Minors After McConnell v. FEC*,” by Heather Davis, 73 Geo. Wash. L. Rev. 353 (2005).

The Act contains contribution limits for state candidates and committees, but not for local candidates. However, the Act also specifically permits cities and counties to enact contribution limits applicable to elections within their jurisdictions. Section 85703(a), copy enclosed, provides:

“Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312.”⁴

3. *The very last section of the Belmont ordinance states that the city clerk is not to issue a certificate of election until all the statements have been filed. Is this legally enforceable? You notice that other cities include a similar clause.*

Section 8.5-15(b) of the ordinance provides as follows:

“(b) The city clerk shall not issue any certificate of election to any candidate until the campaign statements required by section 8.5-12 or, if no campaign statement is required the written declaration permitted by section 84212 of the California Government Code, have been filed in the form and at the place required by the Political Reform Act of 1974 as amended. The city council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in accordance with the provisions of this chapter.”

Enforcement of this provision is outside the scope of the Act. Your question about whether this provision is legally enforceable may be better directed to your City Attorney or District Attorney’s office, as they would be the agency enforcing the provision. However, this provision does not conflict with the Act and nothing in the Act would prevent its enforcement. This provision may have been derived from an old section of the Elections Code that used to contain a similar statute. Old Elections Code Section 4536, a 1957 law, provided that no elections officer is to issue a certificate of election to any person until his campaign statement is filed.⁵

⁴ Section 85312 establishes the member communications exception to contributions and independent expenditures, providing that: “. . . payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards and newspaper advertisements.” Pursuant to Section 85703, local jurisdictions with ordinances that impose contribution limitations or prohibitions in connection with local elections must also provide for this exception in some fashion.

⁵ A 1957 Attorney General Opinion discussing this section concluded that the statutory prohibition against issuing election certificates to candidates who have not yet filed campaign statements

We note that the reference to Section 84212 of the Act in Section 8.5-15(b) of the Belmont ordinance is outdated. That section was formerly titled "Candidates who receive and spend \$200 or Less" but was amended by Stats. 1985, Ch. 1456, and now covers the reporting of loans. The appropriate reference is Section 84206, copy enclosed, concerning a short form for filing reports for candidates or officeholders who receive contributions or make expenditures of less than \$1,000 in a calendar year.

We have the following additional comments on the draft ordinance:

4. *Eliminating all but Individual Contributions.* The draft ordinance proposes eliminating contributions by businesses, organizations and PACs. The draft showing changes provides:

"Sec. 8.5-3. Campaign contributions by individuals.

"No individual shall make, and no candidate shall receive from any individual, any contribution to the campaign of any individual candidate for any City of Belmont elective public office in excess of ~~one hundred dollars (\$100.00)~~ two hundred fifty dollars (\$250) in any calendar year.

"Sec. 8.5-4. Campaign contributions by organizations, businesses, and political action committees.

"No organization⁶ shall make, and no candidate shall receive from any organization, business, or political action committee any contribution to the campaign of any individual candidate for any City of Belmont elective office ~~in excess of two hundred dollars (\$200.00) in any calendar year.~~

~~"Sec. 8.5-5. Campaign contributions by political action committees.~~

~~"No political action committee shall make, and no candidate shall receive from any political action committee, any contribution to the campaign of any individual candidate for any City of Belmont elective public office in excess of two hundred dollars (\$200.00) in any calendar year. No candidate may receive any contributions in excess of six hundred dollars (\$600.00) combined total contributions from political action committees in any calendar year."~~

overrides statutory direction to issue election certificates on the Tuesday after the election, and consequently a successful municipal candidate who files his campaign statement after the date of the official canvass may receive his certificate of election and take office after the campaign statement is filed. (30 Ops. Atty. Gen. 354, copy enclosed.)

⁶ Under the draft ordinance, "organization" excludes PACs; the term is defined to mean "any entity other than an individual, political action committee or controlled committee of a candidate, but includes businesses (including sole proprietorships), and nonprofit corporations or unincorporated associations."

The Belmont ordinance currently contains an aggregate limit on contributions by political action committees ("PACs") to a candidate in Section 8.5-5. Aggregate limits on contributions by PACs to a candidate have been upheld in several cases, including, *Montana Right to Life Association v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003); and, in another jurisdiction, *Gard v. Wisconsin State Elections Bd.*, 156 Wis. 2d 28, 456 N.W.2d 809, 820 (Wis. 1990).

The draft ordinance strikes out the aggregate limit on contributions from PACs to candidates of \$600 per year, and the limit on contributions from organizations to candidates of \$200 per year, and proposes a ban on these contributions. The draft ordinance would permit contributions to city candidates from individuals only, and bar contributions to city candidates from organizations, businesses, political action committees and political parties.

Many jurisdictions do specify the permissible kinds of donors to candidate's campaigns.⁷ However, campaign contribution laws enacting source restrictions such as these raise freedom of speech and associational issues under the First and Fourteenth Amendments. The only source restriction on contributions that has been directly upheld by the Supreme Court is a prohibition on contributions to candidates from the general treasuries of corporations. Most recently, *FEC v. Beaumont*, 539 U.S. 146 (2003), copy enclosed, upheld the federal ban on corporate contributions to candidates even as applied to nonprofit corporations. In *Beaumont*, the Court found that the ban on corporate contributions was only a marginal speech restriction which was closely drawn to match the significant public interest in preventing undue corporate influence over the political process. In addition, the Court observed that the corporation could still make indirect contributions through its political action committee, and the corporation's members could make direct contributions as individuals.

5. Forfeiture of Office for Conviction of Violation of Ordinance.

Section 8.5-15 of the Belmont ordinance provides in part that: "(a) The election to office of any candidate who is convicted of a violation of any provision of this chapter shall be void, and such office shall become vacant immediately if the candidate is the incumbent or upon the date the candidate would otherwise have taken office. . . ."

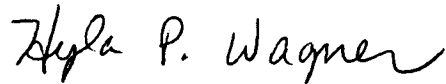
This provision presumably applies only in the case of a candidate convicted of a serious misdemeanor offense under the ordinance. Forfeiture of office statutes are discussed in the two enclosed legal encyclopedia excerpts. (Am Jur 2d Public Officers and Employees Sections 166 and 184, copies enclosed.) In such statutes, the crime or offense must be closely related to the employment and be of sufficient gravity to merit the harsh penalty of forfeiture of office.

⁷ A discussion of source restrictions that may be of assistance is contained in Writing Reform, by Deborah Goldberg, Chapter III, copy enclosed.

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 "Hyla P. Wagner".

By: Hyla P. Wagner
Senior Counsel, Legal Division

Enclosures

HPW:jgl