



FAIR POLITICAL PRACTICES COMMISSION

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February 25, 2010

Tom Diebert
2707 Aurora Road
Mariposa, CA 95338

RE: Your Request for Informal Assistance
Our File No. I-10-025

Dear Mr. Diebert:

This letter responds to your request for advice regarding the approval or disapproval of third-party software vendors under Section 87500.1 of the Political Reform Act (the "Act").¹ Under Section 87500.1 four counties (Los Angeles, Orange, Stanislaus, and Merced) are permitted to participate in a pilot program concerning the electronic filing of statements of economic interests, as required under the Act. Our analysis is based on the five questions that you have posed to us in your letter.

Section 87500.1 of the Government Code provides as follows:

“(a) The Counties of Los Angeles, Merced, Orange, and Stanislaus may permit the electronic filing of a statement of economic interests required by Article 3 (commencing with Section 87300) in accordance with regulations adopted by the commission. Each participating county shall use the standard form for electronic filing found online, as required by the commission.

“(b) A public official subject to Article 2 (commencing with Section 87200) shall not participate in the pilot program.

“(c) A statement filed electronically must include an electronic transmission that is submitted under penalty of perjury and that conforms to subdivision (b) of Section 1633.11 of the Civil Code.

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.

“(d)(1) The filing officer shall issue to a person who electronically files his or her statement of economic interests or amendment electronic confirmation that notifies the filer that his or her statement of economic interests or amendment was received. The confirmation shall include the date and the time that the statement of economic interests was received by the filing officer and the method by which the filer may view and print the data received by the filing officer.

“(2) A paper copy retained by the filer of a statement of economic interests or amendment that was electronically filed and the confirmation issued pursuant to paragraph (1) that shows that the filer timely filed his or her statement of economic interests or amendment shall create a rebuttable presumption that the filer filed his or her statement of economic interests or amendment on time.

“(e) The filing officer shall utilize a system that includes firewalls, data encryption, secure authentication, and all necessary hardware and software and industry best practices to ensure that the security and integrity of the data and information contained in the statement of economic interests are not jeopardized or compromised.

“(f) The filing officer shall provide the public with a copy of an official’s statement of economic interests upon request, in accordance with Section 81008. The paper copy of the electronically filed statement of economic interests shall be identical to the statement of economic interests published by the commission and shall include the date that the statement was filed.

“(g)(1) The pilot program shall commence on or after January 1, 2009, and shall be completed by January 1, 2012. The pilot program shall include the reporting periods of 2008 through 2011. A county participating in the pilot program shall submit a report to the commission not later than July 1, 2011. The report shall include the following:

“(A) A listing and estimate of associated operational efficiencies and related savings.

“(B) A listing and estimate of associated costs from implementing and operating the pilot program.

“(C) A listing of safety, security, or privacy issues encountered and explanation of how those issues were addressed.

“(D) Available information relating to feedback from electronic filing participants.

“(E) Any other relevant information on the implementation of the pilot program.

“(2) The commission shall transmit the county reports received, as well as any comments on the reports, to the Legislative Analyst’s Office not later than August 15, 2011. The Legislative Analyst’s Office shall provide a report to the Legislature evaluating the pilot program not later than March 1, 2012.

“(h) The commission, in conjunction with the Legislative Analyst’s Office, may develop additional criteria for the report to be submitted to the commission by participating counties pursuant to paragraph (1) of subdivision (g).

“(i) This section shall remain in effect until March 1, 2012, and as of that date is repealed, unless a later enacted statute, which is enacted before March 1, 2012, deletes or extends that date.”

QUESTION

1. Is there any provision in Section 87500.1 regarding specification for approval/disapproval of third party or internally developed electronic filing software?

ANALYSIS

No. Section 87500.1(a) does not require the counties to use any specific type of electronic filing software or to obtain approval for its use.

QUESTION

2. If a pilot county uses third-party or internally developed software during the pilot program, will that software become automatically certified by the Commission if electronic filing is permanently adopted?

ANALYSIS

No. Since the statute does not require any specified type of electronic filing software to be used, there is likewise no requirement for the Commission to certify the software. The only requirements in Section 87500.1 directly require a county participating in the pilot program to establish a method of electronic filing that complies with the provisions of subdivisions (a), (c), (d), and (e) of that section. However, there is no requirement that the Commission certify the software used to do this.

QUESTION

3. If a pilot county uses third-party or internally developed software during the

pilot program, will that software receive special consideration or status during any future certification process by the Commission if electronic filing is permanently adopted?

ANALYSIS

No. Please refer to the analysis for the previous questions.

QUESTION

4. If electronic filing is permanently adopted, is it possible that any software currently being used by a pilot county could fail certification by the Commission?

ANALYSIS

While it is possible that, at some point, legislation is passed that authorizes the Commission to certify software used for filing statements of economic interests, Section 87500.1 does not currently contain such authority.

QUESTION

5. If third-party software exists but is not being used by any of the pilot counties, do the provisions of Section 87500.1 place this software at a disadvantage from becoming approved if an electronic filing standard is ultimately developed?

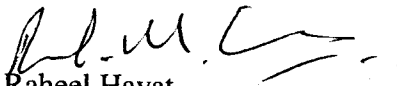
ANALYSIS

Please refer to the analysis of the previous question. In addition, the criteria for software set forth in future legislation on this issue, if it is passed by the legislature, will control the standards used to assess the acceptability and approval of use of the software.

I hope this letter answers all the inquiries you had regarding Section 87500.1(a) of the Political Reform Act. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel


By: Raheel Hayat
Intern, Legal Division

RH:jgl