



FAIR POLITICAL PRACTICES COMMISSION

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August 22, 2011

Dennis P. McBride, CPA
514 Oak Park Way
Redwood City, CA 94062-4038

Re: Your Request for Advice
Our File No. A-11-138

Dear Mr. McBride:

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

QUESTION

Is it possible for you, an elected member of the Redwood City school board, to serve as campaign treasurer for a primarily formed ballot measure committee being created to organize and run a campaign in support of a local parcel tax for the Redwood City School District?

CONCLUSION

As long as the ballot measure committee does not support or oppose candidates, including yourself, you as an elected school board member may control the ballot measure committee and may serve as its treasurer.

FACTS

The Redwood City School District community at large would like to attempt a parcel tax. The group believes the appropriate committee designation to establish a committee to organize and run a campaign in support of a local parcel tax is a primarily formed ballot measure committee.

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.

You are an elected member of the Redwood City School District school board and are running for reelection this November 2011. The group supporting the parcel tax would like you to be the treasurer of the ballot measure committee because you have been treasurer on many school bond and parcel tax campaigns in the past. No money has been raised as of July 19, 2011, so the committee that is starting up has no formal reporting requirements at this time.

ANALYSIS

Section 82013(a) defines a committee as “any person or combination of persons who directly or indirectly . . . receives contributions totaling one thousand dollars (\$ 1,000) or more in a calendar year.” You state that the committee being started will be a primarily formed ballot measure committee, supporting a local parcel tax for the Redwood City School District.

In addition, Section 82016 of the Act defines a “controlled committee” as follows:

“(a) ‘Controlled committee’ means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.”

(b) Notwithstanding subdivision (a), a political party committee, as defined in Section 85205, is not a controlled committee.”

Section 82016 describes two ways in which a committee may become a controlled committee. First, if a candidate, his or her agent, or his or her controlled committee directly or indirectly controls the committee by exerting significant influence on the actions or decisions of the committee. Second, if a candidate, his or her agent, or his or her controlled committee acts jointly with a candidate in connection with the making of expenditures. The term “candidate” as defined by the Act, includes elected officials at the state and local level. (Section 82007.)

To determine whether a candidate controls a committee under the first part of Section 82016(a), one looks at the degree of the candidate’s involvement in the committee’s activities. (*Madden* Advice Letter, No. A-85-197.) The applicable standard is whether an elected official exerts “significant influence” over the actions or decisions of a committee.

The Commission has interpreted the definition of “controlled committee” broadly to include any significant participation in the actions of a committee by a candidate, his or her agent, or representatives of any other committee he or she controls. (*Higdon* Advice Letter, No. I-94-189; *Kopp* Advice Letter, No. A-97-108.) We have advised that where a candidate is a voting member of an organization’s leadership, the candidate is presumed to be the controlling candidate since the candidate exercises significant influence on the actions or decisions of the organization. (*Titus* Advice Letter, No. I-06-197; *Trimbur* Advice Letter, No. A-00-067;

Gastelum Advice Letter, No. A-96-113; *Ferguson* Advice Letter, No. A-86-044.) Other relevant factors which determine whether a candidate is controlling a committee include whether the candidate is involved with decisionmaking or developing or implementing campaign strategy for the committee. (*Helms* Advice Letter, No. I-91-390.)

On the other hand, where a candidate is merely an honorary member of a committee's governing body, who may appear in the letterhead, but does not vote, make decisions about committee funds, or otherwise influence the actions of a committee, we have advised that the candidate is not considered to "control" the committee. (*Lacy* Advice Letter, No. I-03-076; *Erenbaum* Advice Letter, No. I-01-242; *Madden* Advice Letter, No. A-85-197.)

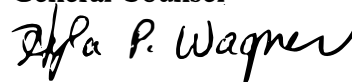
The Commission has determined that a candidate may control a ballot measure committee, as long as the committee does not make contributions to support or oppose candidates, including the candidate controlling the ballot measure committee. (*Karpel* Advice Letter, No. A-93-356; *Olson* Advice Letter, No. A-89-363; *Weems* Advice Letter, No. A-91-448; *Reid* Advice Letter, No. A-05-191; see also Regulation 18521.5.) Accordingly, the Act would not prevent you, as an elected school board member, from controlling a ballot measure committee supporting a tax for schools. As long as you remain a candidate, as defined by Section 82007, if your activity meets the standards of a controlling candidate, the proposed ballot measure committee will be considered controlled by you.²

As to the committee name, a controlled committee must include the last name of a controlling candidate under Regulation 18402(c)(1), and a primarily formed ballot measure committee must include the measure letter or number once it has been designated, under Section 84107 (copy enclosed).

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl
Enclosure

² Section 82007 states, in pertinent part, that "an individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214." Thus, if you terminate your status as a candidate by leaving office and terminating your campaign committee, then the proposed ballot measure committee would no longer be considered a committee controlled by a candidate. (*Reid* Advice Letter, No. A-05-191.) At that time, the proposed committee would be required to file an amended Statement of Organization (Form 410) to reflect that change.