



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

December 21, 2012

Evelyn F. Heidelberg  
Procopio, Cory, Hargreaves & Savitch LLP  
525 B Street, Suite 2200  
San Diego, CA 92101

Re: Your Request for Informal Assistance  
**Our File No. I-12-170**

Dear Ms. Heidelberg:

This letter responds to your request for advice regarding the enforcement provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your question is general in nature and not limited to a specific decision, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTION

Assuming City A and City B are both located in County X, does a resident of City B have standing to bring an action under Section 91004 where a committee required to file with the Clerk of City A fails to do so in violation of the Act?

### CONCLUSION

No. Because the committee had an obligation to file with the Clerk of City A, the relevant jurisdiction would be City A where violation of the Act occurred, and residents of City B would therefore not have standing under Section 91004 to bring an action for a reporting violation against the committee.

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<sup>1</sup> 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.

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

## FACTS

Your request for advice centers on Section 91004, which authorizes private enforcement actions for reporting violations under the Act. In *Sanders v. Pacific Gas & Electric Company* (1975) 53 Cal.App.3d 661, 671, the Court stated that Section 91004 “authorizes any resident of a jurisdiction where violation of the act occurs to bring an action. . .”<sup>3</sup> You therefore seek to clarify the meaning of the phrase “where violation of the act occurs” by posing the following factual hypothetical:

Committee 1 is a committee formed or existing primarily to support or oppose candidates or local measures (as that phrase is used in Section 84215(e))<sup>4</sup> to be voted on in City A. Committee 2 is a city general purpose committee (as that term is defined at 2 Cal. Code Regs. § 18227.5) relative to City A. City A is located in County X. Would an alleged violation of a provision of Title 9, Chapter 4, Article 2 (Filing of Campaign Statements) by Committee 1 or Committee 2 occur in County X, such that a resident of City B (which is also located in County X) would have standing to bring an action pursuant to section 91004 for an alleged violation?<sup>5</sup> Please assume that the resident of City B does not reside at real property located within two miles of the jurisdiction of land owned or utilized by City A.

## ANALYSIS

Section 91004 authorizes private causes of action for reporting violations under the Act by providing that “[a]ny person who intentionally or negligently violates any of the reporting requirements of this title shall be liable in a civil action brought by the civil prosecutor or *by a person residing within the jurisdiction* for an amount not more than the amount or value not properly reported.” (Emphasis added.)

The issue posed by your hypothetical seeks to ultimately clarify the meaning of the phrase “by a person residing within the jurisdiction” as that phrase is used in Section 91004. A good starting point is to utilize the rules of statutory construction where the primary task is to determine the Legislature’s intent. (*Bode v. Los Angeles Metropolitan Medical Center* (2009) 174 Cal.App.4th 1224, 1236.) As explained by the Court in *Bode*, the words of a statute are given their plain and commonsense meaning, and the meaning is derived from context of the entire statutory scheme:

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<sup>3</sup> As mentioned in your letter, the Commission subsequently referenced this language when it issued an advice letter that dealt with the standing aspect of Section 91004. (*Moser* Advice Letter, No. G-11-231.)

<sup>4</sup> Although the letter references Section 84215(e), committees formed or existing primarily to support or oppose candidates or local measures and city general purpose committees are actually addressed by Section 84216(d).

<sup>5</sup> We note that your letter also clarifies that both committees would have an obligation to file with the Clerk of City A. In addition, because both committees have the same legal filing obligation, we make reference to a single committee for purposes of simplicity.

Our first step is to scrutinize the words used in the statute and give them a plain and commonsense meaning. If the language is clear and unambiguous, there is no need for construction or for resort to indicia of the Legislature's intent. However, the literal meaning of a statute must be aligned with its purpose. Therefore, the meaning of a statute may not be determined from a single word or sentence. The words must be construed in context, and provisions relating to the same subject matter or that are part of the same statutory scheme must be read together and harmonized to the extent possible.

(*Id.* at pp. 1236-37.)

Looking to the language of Section 91004, the Act manifests a clear intent to provide a private cause of action only to those individuals residing within a specified *jurisdiction*. In turn, the Act defines the term *jurisdiction* to mean “the state with respect to a state agency and, with respect to a local government agency, the region, county, city, district or other geographical area in which it has jurisdiction.” (Section 82035; see also *Faulder v. Mendocino County Bd. of Supervisors* (2006) 144 Cal.App.4th 1362, 1371 [“[t]erms defined by the statute in which they are found will be presumed to have been used in the sense of the definition”].) Thus, the Act contemplates that a particular jurisdiction will only include that geographical component, such as a city or a county, in which the relevant state or local government agency at issue has authority.

Your hypothetical assumes a reporting violation by a committee that has an obligation under the Act to file with the Clerk of City A, which is located in County X. Under this scenario, jurisdiction under Section 91004 would lie with City A because it is the controlling geographical area encompassing the relevant local government agency. (See Section 82035.) This conclusion is bolstered by the fact that Section 84215(d) expressly excludes the requirement that such a committee “file with the local elections official of the county in which they are domiciled.” Under Section 91004, therefore, only residents of City A would have standing to bring an action for the described reporting violation. It would therefore be logical to conclude that residents of City B, although also located in County X, would *not* have standing to file a private cause of action under Section 91004 for the reporting violation in your hypothetical.

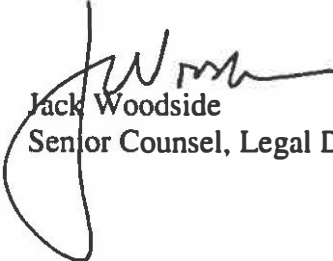
That only residents of City A would have standing to file a private cause of action under your hypothetical is further bolstered by the *Sanders* case, cited previously. As mentioned, the Court in *Sanders* explained that residents of a jurisdiction “where violation of the act occurs” are authorized under Section 91004 to bring an action. (*Sanders, supra*, 53 Cal.App.3d at p. 671.) Because your hypothetical states the committee failed to properly file with the Clerk of City A, the relevant jurisdiction where the reporting violation *occurred* is City A. To construe the language of Section 91004 to provide residents of City B, located in County X, with the authority to bring an action under the facts of your hypothetical would improperly nullify the intent of the legislature. (*California Sch. Employees Assn. v. Jefferson Elementary Sch. Dist.* (1975) 45 Cal. App. 3d 683, 687 [the language of a statutory provision should not be construed so as to nullify the will of the legislature or cause the law to come into conflict with the apparent purpose that the lawmakers had in view].)

Accordingly, we agree with the conclusion reached in your letter that under the factual scenario provided, only residents of City A would have standing to file an action under Section 91004 because that is the relevant jurisdiction in which the violation occurred.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By:  Jack Woodside  
Senior Counsel, Legal Division

JCW:jgl