



## FAIR POLITICAL PRACTICES COMMISSION

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May 29, 2014

Mr. James Sutton  
The Sutton Law Firm  
150 Post Street, Suite 405  
San Francisco, CA 94108

Re: Your Request for Advice  
**Our File No. A-14-066**

Dear Mr. Sutton:

This letter responds to your request for advice on behalf of a client regarding the Local Agency Formation Commission ("LAFCO") reporting requirements of the Political Reform Act (the "Act")<sup>1</sup> and is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, our advice is based solely on the provisions of the Act. We offer no opinion on the applicability of other laws.

### QUESTIONS

Are the following payments reportable "expenditures" under the Act's campaign reporting provisions?

- I. Payments to a law firm to:
  - (a) Prepare an application to be submitted to a LAFCO for annexation of land into a neighboring city;
  - (b) Interact with LAFCO staff regarding the application;
  - (c) Represent the applicant at hearings at which the LAFCO will formally consider

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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.

the application;

- (d) Prepare and send a packet of materials to neighbors and attend community meetings to answer any questions about the application?
2. Payments to consultants to prepare maps, legal descriptions and reports that must be submitted as part of the LAFCO application?
3. A portion of an employee's salary or compensation attributable to working with the law firm on the application?

### CONCLUSIONS

1(a) – (c) No. The application is a document required by LAFCO and, therefore, payments for the application's preparation are not "expenditures."

(d). – Yes. The payments are made to influence or attempt to influence voters or the LAFCO to adopt the LAFCO proposal.

2. No. The maps, legal descriptions and reports are documents required by LAFCO.

3. No. Payment of an employee's salary to prepare the application is not "expenditure" provided that the employee's work does not include the preparation of communications that are made to influence or attempt to influence voters or the LAFCO.

### FACTS

You represent a property owner who is filing an application with its county LAFCO requesting the annexation of certain land currently within an unincorporated part of the county into a neighboring city. The property owner has retained a law firm to prepare the application and to represent the property owner at the hearings at which the LAFCO will formally consider the application. In preparing the application the law firm will provide analysis of how the annexation complies with applicable laws as well as factual and legal information about how certain public services will be provided on the property after the boundary changes have been completed. The law firm expects to interact with LAFCO staff on a regular basis regarding the application, whether through e-mails, telephone calls or meetings, to make certain that the property owner is complying with all of the application's requirements. Also, the property owner's employees will work with the law firm on the application, some of whom may spend more than 10 percent of their compensated time during any calendar month on the application.

The property owner will provide information about the proposed annexation to neighboring property owners and community groups which will include the law firm sending a packet of materials to neighbors. However, the property owner will not be sending mailers to the

public, put up signs, or otherwise ask third parties to contact the LAFCO in support of the project. The law firm expects to attend community meetings to answer questions about the proposed annexation. In our telephone conversation, you indicated that providing materials to neighbors and participating in community meetings to provide information about the proposed annexation are not activities required by LAFCO.

In addition, the property owner has retained other consultants to prepare maps, legal descriptions, and reports that are required to be submitted as part of the LAFCO application.

## ANALYSIS

### Campaign Disclosure Provisions Generally

The campaign disclosure provisions of the Act require committees to file a statement of organization and periodic reports disclosing contributions received and expenditures made. (Section 84100 *et seq.*) Under Section 82013, a person or combination of person who makes independent expenditures totaling \$1,000 in a calendar year qualifies as a “committee.” The Act defines “expenditure” as a payment made for a “political purpose.” (Section 82025.) A payment is made for a political purpose if it is intended to influence the actions of voters for or against the nomination or election of a candidate or the qualification or passage of a measure. (Regulation 18225.)

### Reporting Expenditures relating to LAFCO Proposals

The Act contains special provisions governing the reporting of expenditures made in connection with a LAFCO proposal.<sup>2</sup> (Section 84250, *et seq.*) Section 84250 provides that “all requirements of this title applicable to a measure, as defined in Section 82043, also apply to a LAFCO proposal, as defined in Section 82035.5, except as set forth in Section 84252.”<sup>3</sup>

Section 84251 sets forth a definition of “political purpose” specific to payments made to support or oppose a LAFCO proposal. It provides:

“A payment made for ‘political purposes,’ as that term is used in Sections 82015 and 82025, includes a payment made for the purpose of influencing or attempting to influence the actions of voters or a local agency formation commission for or against the qualification, adoption, or passage of a LAFCO proposal.”

Regulation 18417, which was adopted by the Commission last year, implements and interprets the LAFCO provisions contained in Sections 884250-84252 as follow:

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<sup>2</sup> Under Section 82035.5, an application for annexation is a LAFCO proposal.

<sup>3</sup> Section 84252 provides that in lieu of the filing dates for campaign statements regarding a “measure,” set forth in Sections 84200 and 84202.3, campaign statements in connection with a LAFCO proposal are filed monthly.

“(a) A committee primarily formed to support or oppose a LAFCO proposal (as defined in Section 56069) shall file the monthly campaign statements required under this title from the date that a petition application or resolution of application is filed until a measure is placed on the ballot. If a measure is not placed on the ballot, the committee shall file monthly statements until the committee is terminated under Section 84214.

“(b) The following payments are neither contributions nor expenditures.

“(1) Payments made for the cost, including staff time, if applicable, of preparing reports, studies or analyses, including environmental impact reports, feasibility studies, and fiscal analyses.

“(2) Processing and similar fees paid to a LAFCO.”

**Question 1(a) – (c) – Are payments made to a law firm to (a) prepare an application to be submitted to a LAFCO, (b) interact with LAFCO staff regarding the application or (c) represent the applicant at LAFCO hearings “expenditures?”**

Regulation 18417(b) lists certain payments applicable to a LAFCO proposal that are not considered “expenditures.” These payments include payments for the cost of preparing reports, studies and analyses that are required by LAFCO. In determining whether the payments made to prepare an application, interact with staff regarding the application and representing the applicant at LAFCO hearings, we can compare these payments with payments listed in Regulation 18417(b). The common characteristic of the payments listed in subdivision (b) is that they are payments made for costs that are necessarily incurred to comply with LAFCO requirements. The regulation essentially codifies prior advice letters suggesting that payments made to prepare LAFCO-required documents are neither “contributions” nor “expenditures.” (See *Hobbs* Advice Letter, No. A-09-185; *Roberts* Advice Letter, No. A-98-125.)

The application is similar to reports, studies and analyses such as environmental impact reports, feasibility studies and fiscal analyses in that it too is a document required by LAFCO. If payments made for the preparation of required supporting documents are not expenditures, it stands to reason that payments made for the cost of preparing and filing the application itself, including payments made to the law firm to interact with LAFCO staff and to represent the applicant at LAFCO hearings, are also not expenditures.

**Question 1(d) - Are payments made to the law firm to send materials to neighbors and attend community meetings to answer questions about the application expenditures?**

In contrast to the documents described above, communicating with neighbors and property owners, whether by a mailing or attending community meetings, is not required by LAFCO. Although virtually all applicants engage in such communications, they do so voluntarily for the purpose, as you say, of providing information to property owners and community groups. Thus, they are “expenditures” if they are made to influence voters or the LAFCO to support or oppose the LAFCO proposal.

In interpreting whether a payment is made to influence or attempt to influence voters or a LAFCO, we look at the surrounding circumstances. In a LAFCO proceeding, property owners are given the opportunity to weigh in on the merits of the proposal. Their views are a material part of a LAFCO’s deliberations in deciding whether to adopt the LAFCO proposal. Presumably, the information provided by the applicant in the mailing and at the community meetings will generate interest in the proposed annexation and discussions among affected property owners as to its merits. The information will be a primary source in forming the property owners’ views. In the mailing and the meetings the applicant will have the opportunity to describe the benefits of the annexation and present the information in the best possible light. Even if property owners will not be directly asked to contact LAFCO, it is apparent that the purpose of communicating with them is to prevent roadblocks to LAFCO’s adoption of the LAFCO proposal by securing community support. Accordingly, payments made to the law firm to prepare and send the mailing and to participate in the community meetings are reportable expenditures.

**Question 2 - Are payments made to consultants to prepare maps, legal descriptions and reports that must be submitted as part of the application “expenditures?”**

As discussed above, payments made to prepare informational supporting documents that are required by a LAFCO are not “expenditures.” Maps, legal descriptions and reports fall within this category and, therefore, payments for their preparation are not expenditures.

**Question 3 - Is the portion of an employee’s salary or compensation attributable to working with the law firm on the application “expenditures?”**

To answer this question, we would need additional information as to the employees’ specific tasks. If their work is directly related to the preparation of the application, and not to the mailing or the community meetings, payment of their salaries is not an “expenditure.”

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

Sincerely,

Zackery P. Morazzini  
General Counsel

A handwritten signature in black ink, appearing to read "Valentina Joyce", with a long horizontal flourish extending to the right.

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl