



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 20, 2015

Residocracy Land Use Voter Empowerment (LUVE) Initiative
Tricia Crane, Assistant Treasurer
1112 Montana Avenue, #358
Santa Monica, CA 90403

Re: Your Request for Advice
Our File No. A-15-233

Dear Ms. Crane:

This letter responds to your request for advice as principal officer and assistant treasurer of your recently filed primarily formed ballot measure committee, Residocracy Land Use Voter Empowerment (LUVE) Initiative under the campaign provisions of the Political Reform Act (the "Act").¹ The facts outlined in your letter raise aspects of the City of Santa Monica's Municipal Code. The Commission's authority is limited to the provisions of the Act. It has no authority to interpret municipal codes.

FACTS

You recently filed an initial Form 410 and are waiting to receive a Committee ID number. The committee is primarily formed to support a proposed local ballot measure in Santa Monica. It is your intent to prepare a petition for circulation and to qualify it for either a special or general election.

You are in the preliminary stages of the initiative petition process and have not yet submitted a notice of intent with the Santa Monica elections official. You have, however, received contributions of over \$1,000 for the specific purpose of preparing and qualifying the proposed ballot measure. Accordingly, you have filed the initial Form 410 with the Secretary of State's office as well as with the City of Santa Monica City Clerk's office.

Based on your review of Manual 3, as well as conversations with the Santa Monica City Clerk's office (the local elections official), your current understanding is that your proposed ballot initiative is not yet qualified as a "measure" and therefore reporting obligations for the committee have not yet been triggered. The Santa Monica Clerk's office advised you that reporting requirements and dates will be formalized and delivered to you in a letter prepared by the City

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.

Clerk's office once the Notice of Intent for the ballot measure is submitted to the elections official by the proponents of the proposed measure.

QUESTIONS, CONCLUSIONS AND ANALYSIS

1. When is a local initiative considered a "measure" under the Act, such that contributions or expenditures to qualify the initiative for the ballot, or to support or oppose the initiative, are reportable under the Act?

The Act requires candidates and committees to file periodic reports disclosing contributions received and expenditures made in connection with state and local elections. "Committee" includes any person or group of persons that receives contributions totaling \$ 2,000 or more in a calendar year for the purpose of supporting or opposing candidates or for the qualification, passage, or defeat of a ballot measure.² (Sections 82013(a) and 82015; Regulation 18215.)

The term "measure" is defined in Section 82043 as follows:

"'Measure' means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedures whether or not it qualifies for the ballot."

An initiative, referendum, or recall procedure becomes a "measure" under the Act when the proponents begin to circulate signature petitions to qualify the measure for the ballot. The Commission's *Fontana* Opinion (1976) 2 FPPC Ops. 25, states as follows:

"Under the Political Reform Act, a proposal can become a measure in two different ways. First, 'measure' includes any proposition 'which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.' Section 82043. This definition includes not only each initiative, referendum or recall that is actually submitted to the voters but also applies to each such proposal that is intended to be submitted to a popular vote whether or not it qualifies for the ballot. *Accordingly, an initiative, referendum or recall becomes a measure when the proponents begin to circulate signature petitions to qualify the measure for the ballot. . . .* 'Measure' also means 'any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body.'" (Emphasis added.)

In addition, Campaign Manual 3 for ballot measure committees states that "[a]n initiative, referendum, or recall becomes a measure when the proponents begin to circulate signature petitions to qualify the proposal for the ballot." (FPPC Campaign Manual 3, p. 1-1; *Bagatelos* Advice Letter, No. I-00-075.)

² The Committee qualification threshold of Section 82013(a) increased from \$1,000 to \$2,000 on January 1, 2016 due to statutory changes.

In this case, you are inquiring about a local initiative. Absent a unique local ordinance to the contrary, the local initiative becomes a measure under the Act when proponents first circulate petitions to qualify the initiative for the ballot. You have not provided any information indicating that the initiative procedure in the city of Santa Monica is substantially different than the referendum procedure available to citizens in most California localities under the Elections Code. (*Numainville and Cowan Advice Letter, No. I-10-049.*)

Once a proposal becomes a measure, all contributions received and expenditures made must be reported, including those received and made before the campaign reporting requirements were triggered. (*Angus Advice Letter, No. A-97-173.*) The terms "contribution" and "expenditure" are defined as payments made for "political purposes." (Sections 82015 and 82025.) "Political purpose" means that the payment was made for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Regulations 18215(a)(1) and 18225(a)(1).)

Under your facts, as of December 2, 2015, you have already formed a committee, filed a Form 410 and received contributions from others for political purposes of more than \$1,000; so the committee is already reporting its contributions and expenditures. The next disclosure statement is due no later than February 1, 2016 covering the period through December 31, 2015.

2. (a) Can an individual affiliated with the Committee continue to directly pay for advertisements as described below through her personal funds and donate a portion of her advertisement space from time to time in order to promote the "potential" ballot initiative (or the future official ballot measure) and the Committee then subsequently report these contributions as non-monetary contributions?

Yes.

The following is background information for this question:

Your committee has four members as follows: A treasurer, an assistant treasurer, and two other principal officers (POs). One of the principal officers is a local real estate agent. The PO has a yearly contract with the local newspaper in which she has purchased a standing weekly advertisement for her regular business use. From time to time, the PO also uses her standing weekly advertising space to inform the public of her involvement with the community and to promote such things as the Boys and Girls Club, local public school events, as well as issues affecting the local community that are being discussed and considered at City Hall. In addition, the PO has donated portions of her contracted advertisement space to solicit support from the local community for a potential ballot initiative which is now the purpose of this committee. In the future, the PO also intends to donate additional space from time to time to promote and advertise the "proposed" ballot measure as well as the actual "qualified" ballot measure (if and when the proposed initiative is submitted to the local elections official and the official circulation period begins). In all of the above circumstances, the advertisements have and will be paid for directly by the PO and not from the committee's funds.

The PO plans to continue to directly pay for the advertisements described above (through her personal funds) and donate a portion of her advertisement space from time to time in order to promote the "potential" ballot initiative (or the future official ballot measure) and the Committee would then subsequently report these contributions as non-monetary contributions from the PO. The portion of the advertisement donated to the ballot measure would be calculated and prorated from the yearly contract amounts to determine the nonmonetary contribution value for the committee's reporting purposes.

The terms "contribution" and "expenditure" are defined as payments made for "political purposes." (Sections 82015 and 82025.) "Political purpose" means that the payment was made for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Regulations 18215(a)(1) and 18225(a)(1).) Therefore, the donated portion of the PO's advertising space used for the political purpose of the qualification or passage of the "potential" ballot initiative is a "contribution" under the Act. The advertisement appearing in the donated space would be subject to the advertisement disclosure requirements set forth in the Act.

2. (b) *Does the answer to Question 2 change if the PO steps down from her position on the committee?*

No.

3. *The committee intends on having a series of meetings throughout the process to promote the "potential" as well as the eventual official ballot measure. Your meetings will be held at one of the following different types of venues:*

- a. *A meeting space available for rent to the general public for meeting and gathering purpose such as a banquet hall, a meeting facility, etc.*
- b. *A private home or private apartment unit where no payment is made or expected to be made for the use of the home or apartment for the gathering or event.*
- c. *In a local retail or restaurant facility, which is open to the public but does not charge a meeting facility charge such as a coffee shop, diner, bar, etc. and no payment is made for the use of the facility or expected to be made.*
- d. *In a local business office room, conference room, board room, business premises, etc. in which the space that the meeting is held in is not generally open to the public and is not available for rent as a meeting space; again, no payments for the use of the facility are made or expected to be made*

For each type of venue other than (a): Is the committee required to report the use of the space as a non-monetary contribution? If so, how is the fair market value of the non-monetary contribution determined?

(b) A private home or private apartment unit where no payment is made or expected to be made for the use of the home or apartment for the gathering or event.

There would be no reportable value for your committee's use of the meeting space if the costs related to the meeting or fundraiser are under \$500. (Section 82015(f)(1).)

Government Code Section 82015(f)(1) provides an exception to the term "contribution." It states:

"... 'contribution' does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred (\$ 500) or less."

The exception permits campaign volunteers to hold low-cost neighborhood coffees, meet and greets, and fundraisers in their home or office for committees under \$500 without the event counting as a reportable contribution to the committee. (*Olson Advice Letter, No. I-15-065.*)

(c) In a local retail or restaurant facility, which is open to the public but does not charge a meeting facility charge such as a coffee shop, diner, bar, etc. and no payment is made for the use of the facility or expected to be made.

There would be no reportable value for your committee's use of the meeting space.

Here an organization provides meeting space to members of the public free of charge. Under the Act, non-monetary contributions must be reported at fair market value, unless a discount is given in the regular course of business to members of the public. According to your facts, the customary charge for the meeting space is a rate generally available to members of the public. The exception for discounts made available to the general public will apply and there would be no reportable value for your committee's use of the meeting space. (Regulation 18215(b)(3); *Lippert Advice Letter, No. A-88-323.*)

(d) In a local business office room, conference room, board room, business premises, etc. in which the space that the meeting is held in is not generally open to the public and is not available for rent as a meeting space; again, no payments for the use of the facility are made or expected to be made.

There would be no reportable value for your committee's use of the meeting space if the costs related to the meeting or fundraiser are under \$500.

The Commission has provided that if a business makes a room available to a committee for a meeting and it does not normally charge a fee for the use of the room, the business is not making a contribution as long as all costs related to the meeting or fundraiser remain under \$500. (Section 82015(f)(1) and *Olson Advice Letter, No. I-15-065.*)

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

Sincerely,

Hyla P. Wagner
General Counsel

A handwritten signature in black ink, appearing to read "L. K. Harrison". The signature is stylized with a large initial "L" and a long horizontal stroke.

By: L. Karen Harrison
Counsel, Legal Division

LKH:jgl