



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

September 26, 2018

Eric S. Casher
Attorney at Law
meyers nave
555 12th Street, Suite 1500
Oakland, CA 94607

Re: Your Request for Advice
Our File No. A-18-187

Dear Mr. Casher:

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

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. Can the City conduct a City Council candidate forum or debate at a City-owned facility hosted by a third-party organization, to be televised on Pinole TV, the recording and broadcast costs of which will be paid for by the City? If the answer is no, what if the broadcast costs are paid for by a private entity?
2. Can the City televise video recorded candidate statements on Pinole TV, the recording and broadcast costs of which will be paid for by the City? If the answer is no, what if the broadcast costs were paid for by a private entity?
3. Can the City televise video recorded arguments regarding a proposed ballot measure on Pinole TV for which the recording and broadcast costs of which will be paid for by the City? If the answer is no, what if the broadcast costs were paid for by a private entity?

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.

CONCLUSION

1. The Act does not prohibit the City from conducting a candidate forum or debate at a City-owned facility hosted by a third-party organization to be televised on Pinole TV provided that all candidates have equal time and opportunity to participate.
2. The Act does not prohibit the City from televising recorded candidate statements on Pinole TV provided that all candidates have equal time and opportunity to participate.
3. The Act does not prohibit the City from televising video recorded arguments regarding a proposed ballot measure so long as the proponent of a ballot measure and at least one opponent, or their respective representative, are invited to participate in equal numbers.

FACTS

You are the City Attorney for the City of Pinole ("City"). The City is a general law city with five city councilmembers. At the November 6, 2018, statewide general election, the City's voters will elect three individuals to serve on the City Council. Currently, there are seven individuals running for three City Council seats. In addition, at the November election, the City's voters will also consider whether or not to approve a ballot measure submitted to voters by the City Council.

The City owns and operates a public access cable television channel known as Pinole Community Television ("Pinole TV"). Pinole TV is based out of Pinole City Hall, and receives essentially all of its funding from the City of Pinole, both from the City's General Fund and from Public, Education, and Government ("PEG") fees collected by the City from cable franchisees.

The City is currently considering allowing a third-party organization to host a City Council candidate debate or forum at a City facility such as City Hall. This even would be filmed and broadcast on Pinole TV.

In addition, several candidates have expressed interest in filming short candidate statements to be shown periodically on Pinole TV. Each candidate's statement would be of equal length, and the filming and broadcast costs for these statements would be paid for by the City. All candidates would be given the opportunity to record a statement, and when Pinole TV broadcasts the statements, the order in which the statements are shown would be chosen randomly.

Finally, the City is considering allowing supporters and opponents of the proposed ballot measure to film short arguments regarding the measure, of equal length, to be broadcast periodically on Pinole TV. The filming and broadcast costs for these statements would be paid for by the City. Both opponents and supporters of the measure would be given the opportunity to record arguments. When Pinole TV broadcasts the statements, the order in which the arguments are shown would be chosen randomly.

ANALYSIS

Section 82015(a) of the Act defines "contribution" as "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the

extent that full and adequate consideration is received or if it is clear from the surrounding circumstances that the payment is not made for political purposes.”

Regulation 18215 states:

“(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

“(1) 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...”

Section 82015(b) further provides that a contribution includes “the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office....”

Generally, we have advised that providing a forum to a candidate, without charging the candidate for the cost of the event, is considered an in-kind contribution. However, where a forum is made available to all candidates for the same office, we have advised no contribution results. (*Gross* Advice Letter, No. A-83-200, *Larruccia* Advice Letter, No. I-89-137, *Wilson* Advice Letter, No. A-92-456, *Mancuso* Advice Letter, A-94-370, and *Smith* Advice Letter, No. A-03-177.)

The rationale for not treating events that provide equal access to all candidates as contributions was discussed in the context of free television time in the *Morten* Advice Letter, No. A-88-293 as follows:

“We believe this provision was included in the definition of contribution for the purpose of ensuring that the public have access to both sides of issues on which they are to vote. Allowing the media to provide free advertising time on an equal basis to opposing candidates, and to those supporting and those opposing ballot issues, serves the interests of the public in receiving information needed to make an informed decision at the polls.

The requirement in Section 82015 that the radio or television station or the newspaper extend the policy of providing equal time to all candidates for the same office (or both sides of an issue in the case of ballot measures) ensures that the exception for free media advertising time will be utilized as a method of providing information to the public on campaign issues. A media provider which did not extend the opportunity for free advertising time to all candidates for the same office, or to both sides of a ballot issue would be deemed to be making contributions to the candidate or committee which received the free time.”

Thus, if all candidates in an election for a specific office are invited on the same terms and conditions to the event, the cost of the event will not result in contributions to any candidate. The City may pay for the costs and televise on Pinole TV a debate hosted by a third-party organization

as long as each candidate has the opportunity to be included in the debate. Additionally, the City may televise recorded candidate statements on Pinole TV provided that all candidates have equal time and opportunity to participate. It is not necessary that all candidates take advantage of the opportunity, so long as the opportunity is provided on the same terms and conditions to all candidates. (*Mancuso* Advice Letter, *supra*; *Morten* Advice Letter, A-88-293.)

In the case of televised recorded arguments for and against a ballot measure, Regulation 18215(c)(11) provides an exception to the definition of contributions for "a payment for a debate or other forum in which the proponent of a ballot measure and at least one opponent, or their respective representative, were invited to participate in equal numbers." This rationale was also discussed in the *Morten* Advice letter cited above. Therefore, the City may televise video recorded arguments regarding a proposed ballot measure so long as the proponent of a ballot measure and at least one opponent, or their respective representative, are invited to participate in equal numbers.

Other Laws

Laws outside the Act may be implicated by the broadcasts on Pinole TV. *Stanson v. Mott*, (1976) 17 Cal.3d 206, Section 8314, Section 54964 and Penal Code Section 424 are among the authorities proscribing the use of public moneys for campaign-related activities by a state or local governmental entity. Since we cannot provide advice regarding areas outside of the Act, we can only recommend them for your review.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



Sukhi Brar
By: Senior Counsel, Legal Division

SKB:jgl