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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Ortiz, Wilson, and Wood

From: Dave Bainbridge, General Counsel
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Subject: Prenotice Discussion of Amendments to Regulation 18227.5 Regarding
Committee Jurisdiction Determination for General Purpose Committees

Date: March 8, 2024

Executive Summary

Existing Regulation 18227.5 requires specified general purpose committees to determine their filing jurisdiction based upon a calculation of contributions and expenditures made. The proposed amendments would clarify which committee payments are taken into account when making this determination. The proposed amendments are scheduled to be presented for adoption at the May Commission meeting.

Reason for Proposed Actions

In 2023, the Legal Division received inquiries from two ethics agencies in large California cities regarding Regulation 18227.5. Specifically, the agencies inquired as to which payments are taken into account when determining the proper jurisdiction for a general purpose committee to file. The proposed amendments are designed to clarify the regulation and codify the informal advice provided.

Background

A “general purpose committee” is one which is formed or exists primarily to support or oppose more than one candidate or ballot measure. (Section 82027.5.¹) Depending upon its level of activity, a general purpose committee files its original campaign statements and reports in one of three places: with the state, with a county, or with a city. Section 82027.5 provides the following:

(b) A “state general purpose committee” is a political party committee, as defined in Section 85205, or a committee to support or oppose candidates or measures voted on in a state election, or in more than one county.

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 18104 through 18998 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.

(c) A “county general purpose committee” is a committee to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county.

(d) A “city general purpose committee” is a committee to support or oppose candidates or measures voted on in only one city.

Generally speaking, then, a committee active in only one city files with that city; a committee active in only one county, or in various cities within that county, files with the county; and a committee active at the state level, or in more than one county, files with the state.²

In 2011, former Regulation 18247.5 addressed how to determine the filing jurisdiction for a general purpose committee pursuant to Section 82027.5, as well as when a committee meets the definition of a “primarily formed committee” (i.e., when a majority of its activity is for a particular candidate/measure or group of candidates/measures) pursuant to Section 82047.5. The Commission sought to provide greater clarity to state and local committees as to where to file and determined that splitting Regulation 18247.5 into two separate regulations was the best course of action.³ As a result, at the December 8, 2011 Commission Meeting, Regulation 18247.5 was repealed and adopted to solely address primarily formed committees and Regulation 18227.5 was adopted in relation to general purpose committees.

Regulation 18227.5 lays out a framework for how general purpose committees determine their filing jurisdiction. For city and county committees this generally involves a calculation as to where more than 70 percent of their contributions or expenditures take place. Using “city” committees as an example, the Regulation provides the following:

(c)(1) City General Purpose Committee. A “city general purpose committee” is a committee that makes more than 70 percent of its contributions or expenditures to support or oppose candidates or measures voted on in only one city, or in one consolidated city and county, including contributions to city general purpose committees in the same city or the same consolidated city and county.

Defining “70 percent of Contributions and Expenditures”

The questions that have been raised pertain to what payments should be included in calculating “70 percent of its contributions or expenditures.” Do committees include *all* payments made (including payments for overhead and other administrative costs, such as rent, accounting fees, meeting catering charges, etc.) or only those payments that constitute

² Where the committee files and its correct determination is of note because if a report is filed in the wrong jurisdiction, it is not considered filed. Thus, not only is there harm to the public in potentially being unable to locate campaign filings, but the committee could be liable for a large amount of late fines as well for having filed in the wrong jurisdiction.

³ Staff Memorandum to Commission, dated November 28, 2011. “Repeal of Regulation 18247.5; Readoption of Regulation 18247.5 – Primarily Formed Committees; and Adoption of Regulation 18227.5 – General Purpose Committees – State, County or City.”

contributions or expenditures made in relation to candidates, measures, and political committees? Both the statutory language and longstanding Commission advice support the latter.

Looking again at “city” committees, Section 82027.5 provides that “a “city general purpose committee” is “a committee to support or oppose candidates or measures voted on in only one city.” The statutory language focuses on activity supporting or opposing candidates and measures in one jurisdiction. As illustrated by the following example, including all payments made would thwart the intent of the statute to focus on the location of the committee’s political activity. A committee made \$10,000 total in payments during a specified period. \$6,000 of it went to candidates in City A in Southern California via contributions, while \$4,000 went to a treasury firm located in City B in Northern California. If the committee takes all these payments into account, it would file with the state, as no single jurisdiction reaches the “more than 70 percent” threshold. But if the committee takes only its contributions or expenditures supporting or opposing candidates or measures into account, in this instance \$6,000, 100 percent of that went to activity in City A, and the committee would be a City A filer.

This interpretation is bolstered by the over two-year rulemaking history of current Regulation 18227.5. As outlined in detail in the *Sutton* Advice Letter, I-12-097, one of the Commission’s main aims in codifying a bright line rule of more than 70 percent was so that committees primarily active in specified jurisdictions could not avoid filing in those jurisdictions in order to avoid more stringent filing requirements.⁴ As demonstrated by the previous example, allowing committees to take all payments into account would potentially allow them to remain below a 70 percent threshold requiring filing at a county or city level, despite all of the committee’s political activity being in a local jurisdiction.

Additionally, since the Regulation’s inception over ten years ago, staff has continuously advised that only contributions and expenditures related to supporting or opposing candidates or measures are considered when calculating the 70 percent threshold for determining filing jurisdiction. This includes the recent advice provided to the two large ethics agencies referenced previously.

Staff therefore recommends adding language clarifying that the payments reported pursuant to Section 84211(k)(5) are taken into account when calculating the contributions and expenditures made by a committee for purposes of determining its filing jurisdiction. Pursuant to Section 84211(k), payments of \$100 or more are required to be itemized on campaign statements and include the payee’s name, street address, date of expenditure, and brief description of consideration for which the payment was made. Section 84211(k)(5) requires supplemental disclosure for the following:

- (5) In the case of an expenditure which is a contribution to a candidate, elected officer, or committee or an independent expenditure to support or oppose a candidate or measure, in addition to the information required in paragraphs (1) to

⁴ For example, Contra Costa County requires county committees to file a third pre-election report prior to an election. (CCCMC, Section 530-2.802(a).) By contrast, at the state level, only two pre-election reports are required. Filing at the state level, then, could be advantageous for some committees in avoiding both the time and funds required to file a third pre-election report.

(4), inclusive, the date of the contribution or independent expenditure, the cumulative amount of contributions made to a candidate, elected officer, or committee, or the cumulative amount of independent expenditures made relative to a candidate or measure; the full name of the candidate, and the office and district for which the candidate seeks nomination or election, or the number or letter of the measure; and the jurisdiction in which the measure or candidate is voted upon.

It is the contributions and independent expenditures outlined in Section 84211(k)(5) that are to be included in the 70 percent threshold calculation. Therefore, staff recommends adding a reference to this statutory subsection in the Regulation for clarity.

Replacing “Or” with “And”

One additional point of clarification staff recommends addressing with the current amendments pertains to use of the term “or” or “and” in calculating total contributions and expenditures made for the 70 percent threshold in paragraphs (c)(1) and (c)(2) of Regulation 18227.5. These paragraphs currently refer to “contributions *or* expenditures” for calculating the 70 percent threshold, potentially implying that a total of either could be used. But based upon the previous regulatory language, and longstanding interpretation, the calculation should include “contributions *and* expenditures.”

Prior to the 2011 amendments, Regulation 18247.5 addressed city general purpose committees as follows⁵:

(b)(3)(A) The committee makes contributions or expenditures to support or oppose candidates or measures voted on in only one city, or in one consolidated city and county, including contributions to city general purpose committees in the same city or the same consolidated city and county, that total more than 50 percent of the contributions and expenditures made by the committee, as calculated pursuant to subdivision (c).⁶ [emphasis added]

While the language did refer to “contributions *or* expenditures,” it also included a reference to “total” percentage of “contributions *and* expenditures.” Regulation 18227.7 currently includes the following:⁷

(c)(1) City General Purpose Committee. A “city general purpose committee” is a committee that makes more than 70 percent of its contributions or expenditures to support or oppose candidates or measures voted on in only one city, or in one

⁵ The Regulation included parallel language for county general purpose committees as well.

⁶ Prior to the 2011 amendments, Regulation 18247.5 utilized a “50 percent” activity threshold for determining when a committee was a local filer. For various reasons, including reducing the number of times a committee had to change its filing jurisdiction, this percentage was raised to “70 percent” in the language adopted for Regulation 18227.5. 70 percent remains the current threshold.

⁷ The Regulation includes parallel language for county general purpose committees as well.

consolidated city and county, including contributions to city general purpose committees in the same city or the same consolidated city and county.

As there is nothing in the record to indicate that staff or the Commission intended to use either set of payments instead of both,⁸ staff believes that in moving the language from Regulation 18247.5 to Regulation 18227.5, “or” was inadvertently used instead of “and.” To address this, and more aptly effectuate the intent of the statute, staff recommends replacing “or” with “and” in the paragraphs referencing the 70 percent threshold.

Proposed Regulatory Actions

Defining “70 percent of Contributions and Expenditures”

Staff proposes adding a definition of “70 percent of contributions and expenditures,” including a cross-reference to Section 84211(k)(5), specifying that only contributions and expenditures made in relation to candidates, measures, and committees are taken into account for calculating 70 percent of the committee’s activity.

Replacing “Or” with “And”

Staff proposes replacing the phrase “contributions *or* expenditures” with “contributions *and* expenditures” in paragraphs (c)(1) and (c)(2) of Regulation 18227.5.

Conclusion

The proposed regulatory amendments aim to provide greater clarity for general purpose committees determining filing jurisdiction pursuant to Regulation 18227.5. Staff welcomes feedback and input from the public and the Commission at this time and will bring the items back to the Commission for adoption at a later meeting.

Attachment:

- Proposed Amendments to Regulation 18227.5

⁸ Indeed, the *Sutton* Advice Letter, I-12-097, issued directly following adoption of Regulation 18227.5 states: “Regulation 18227.5 further defines a ‘city’ or ‘county’ general purpose committee as one that makes 70 percent or more of its total contributions and expenditures within a particular local jurisdiction, and considers all others to be “state committees.” (Emphasis added.)