



Fair Political Practices Commission

Enforcement Closure Letter Examples

Item #27 April 19, 2018 Commission Agenda

Table of Contents

No Action Closure Letter Examples	3
Letter 1 – Vote No on Measure V/Comite de Vecinos de Calexico	4
Letter 2 – Daniel Saucedo	5
Letter 3 – Rod Foster.....	6
Letter 4 – Oakland Unified School District	7
Letter 5 – Jack Feller and Mary Azevedo	9
Advisory Letter Example.....	11
Letter 1 – City of Carson.....	12
Warning Letter Examples	14
Letter 1 – Barry Bentley.....	15
Letter 2 – Powers, Re-Elect Marylou Powers Galt City Council 2014.....	17



No Action Closure Letter Examples



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

March 26, 2018

Vote No on Measure V/Comite de Vecinos de Calexico
c/o Rocio Amador
c/o Tony Dominguez
c/o Lorena Minor-Montes

[REDACTED]
Via email: [REDACTED] minorl@calexico.ca.gov

Closure Letter: Case No. 16/19914; Vote No on Measure V/Comite de Vecinos de Calexico/Neighbors of Calexico

Dear Messrs. Amador and Dominguez and Ms. Minor-Montes:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ As you know, the Enforcement Division opened a matter based on allegations that you violated the campaign disclosure and advertising provisions of the Act. After conducting our investigation and review of the matter, we have found insufficient evidence to support a finding that you violated the Act and are, therefore, closing this case without taking any enforcement action.

Although our investigation found that you engaged in some campaign activity in support of Measure V, it appears that you likely did not raise \$2,000 or more, or spend \$1,000 or more in independent expenditures, and therefore did not qualify as a recipient committee or independent expenditure committee with campaign filing obligations under the Act. Further, as a result, you would not have had advertisement disclosure obligations.

If you have questions, please contact me at (916) 322-5021 or cburton@fppc.ca.gov.

Sincerely,

[REDACTED]
Christopher B. Burton
Commission Counsel
Enforcement Division

cc: Benjamin Horton (email only)

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

March 20, 2018

Kelley Hancock
Deputy Clerk, County of Fresno
sent via email at: khancock@co.fresno.ca.us

Re: FPPC File No. 18/135; Daniel Saucedo

Dear Mr. Hancock:

The Enforcement Division of the Fair Political Practices Commission received a Statement of Economic Interests ("SEI") non-filer referral from you on the above-named individual. On March 8, 2018, you informed the Enforcement Division that Mr. Saucedo filed his Assuming Office SEI for his position as a Board Member of the Lanare Community Services District prior to your referral. Therefore, the Enforcement Division will not pursue this matter further.

Thank you for taking the time to bring this matter to our attention. If you have any questions regarding this letter, you may contact Chloe Hackert at chackert@fppc.ca.gov or (916) 322-8190.

Sincerely,

Galena West, Chief
Enforcement Division

GW/ch



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

March 26, 2018

Rod Foster

[REDACTED]
Via email: [REDACTED]

Re: In the Matter of Rod Foster, FPPC Case No. 18-0009 - No Action Closure Letter

Dear Mr. Foster:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ The Enforcement Division received a complaint against you concerning a possible over-the-limit gift. Specifically, the complaint alleged that you, as city manager for Laguna Niguel, received tree services from a provider—that also contracted with Laguna Niguel—at little to no cost to you. As a city manager, you had a duty, under section 87200, to report any gifts, including discounts for services that are not generally available to the public, and you are prohibited from receiving a gift over the annual limit from a single source.

The Enforcement Division investigation found that you paid for the tree services you received and did not find sufficient evidence to conclude that the amount you paid was below market rate, which would have resulted in a gift violation. Therefore, we have closed our investigation against you in this matter.

If you have any questions regarding this matter, please feel free to contact me at 916-323-6421.

Sincerely,

Theresa Gilbertson

Theresa Gilbertson
Commission Counsel
Enforcement Division

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

March 21, 2018

Marion McWilliams
General Counsel
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607

Via email: marion.mcwilliams@ousd.org

FPPC No. 17/1166; Oakland Unified School District

Dear Ms. McWilliams:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ This letter is in response to a complaint filed against Oakland Unified School District ("OUSD") that alleged that OUSD violated the public access requirements of the Act. Section 81008 of the Act provides that every report and statement filed pursuant to the Act, including statements of economic interests ("SEIs"), are public records open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received.

OUSD did not provide certain SEIs requested by a member of the public until 15 calendar days following the request.² However, according to OUSD, the records were not provided in a timely fashion because the responsible individual mistakenly treated the request as a request under the California Public Records Act, which permits the agency more time to respond to a record request. Further, the request was voluminous in the number of SEIs it requested, requiring additional time to compile the records. Given these mitigating factors, as well as the fact that the requested SEIs were ultimately provided prior to contact by the Enforcement Division, we are closing this matter without further action. However, please be

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² OUSD provided SEIs for 16 of the 18 individuals listed in the subject request. The remaining two individuals were not required to file SEIs with OUSD; therefore, no responsive records existed.

aware of the Act's requirements to timely make records available, listed above, and modify your procedures accordingly.

Please feel free to contact me at (916) 322-5021 or cburton@fppc.ca.gov with any questions you may have regarding this letter.

Sincerely,



Christopher B. Burton
Commission Counsel
Enforcement Division

cc: William Lynch (email only)



FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3000 • Sacramento, CA 95811

March 20, 2018

Jack Feller
[REDACTED]

Mary Azevedo
[REDACTED]

RE: Closure Letter: Jack Feller and Mary Azevedo; FPPC No. 16/19820

Dear Mr. Feller and Ms. Azevedo:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ This letter is in response to a non-sworn complaint alleging that Jack Feller ("Feller") used campaign funds from his candidate-controlled committee Jack Feller for City Council 2012 ("Committee") to reimburse himself for personal expenditures not related to a political, legislative, or governmental purpose, in violation of Section 89512. An examination of reimbursements to Feller from 2013 through 2017 led to the Enforcement Division's decision to close its file on this matter without prosecution.

Campaign contributions are held in trust for expenses associated with the election of a candidate or for expenses associated with holding office.² Candidates and elected officials cannot spend campaign funds on items that are not reasonably related to a political, legislative, or governmental purpose.³ If an expenditure of campaign funds confers a personal benefit of \$200 or more on the candidate or official, the expenditure must be directly related to a political, legislative, or governmental purpose.⁴

Depending on whether a candidate or officeholder makes an expenditure from the campaign funds, there are restrictions related to how that money is spent. A candidate must deposit all funds that he or she is contributing to his or her campaign in a campaign bank account and make all expenditures from that account.⁵ The Act does not permit a candidate to use personal funds for the campaign and subsequently seek reimbursement from campaign funds. An officeholder, on the other hand, may be reimbursed for expenditures of his or her personal funds from the campaign bank account as long as those expenditures are not, among other conditions, campaign expenses.⁶

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

² Section 89510, subd. (b).

³ Section 89512.

⁴ Section 89512, subd. (a).

⁵ Section 85201, subd. (c)-(e).

⁶ Section 89511.5, subd. (b).

Our investigation found reimbursements from the Committee to Feller that were identified as "campaign expenses" in the Committee's semiannual campaign statement for the period covering January 1, 2013 through June 30, 2013. Please note that a candidate must deposit all funds to a campaign bank account before making expenditures and should not be reimbursed for campaign expenditures. However, an officeholder may use personal funds only for officeholder expenditures and later seek reimbursement for those expenses. It appears the reimbursements to Feller were mislabeled as campaign expenses instead of officeholder expenses. Further, the investigation did not reveal sufficient evidence to conclude relevant Committee expenditures were not for political, legislative, or governmental purposes. Given the above, the Enforcement Division cannot conclude that you violated the Act's prohibition against personal use of campaign funds. Therefore, we are closing this matter with this closure letter.

Although we are closing our file on this matter, please be advised of the provisions in the Act and regulations regarding the appropriate uses of campaign funds. Should you have any questions regarding this letter, please feel free to contact me at (916) 322-7771 or ryang@fppc.ca.gov.

Sincerely,

Ruth Yang

Ruth Yang
Commission Counsel
Enforcement Division



Advisory Letter Example



FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3000 • Sacramento, CA 95811

March 23, 2018

William W. Wynder
City of Carson
c/o Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite 475
El Segundo, CA 90245

Via email ONLY:
wwynder@awattorneys.com

RE: Advisory Letter: City of Carson; FPPC No. 17/01272

Dear Mr. Wynder:

The Enforcement Division of the Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”).¹ This letter is in response to a sworn complaint alleging that the City of Carson (the “City”) mailed a campaign mailer regarding Measure C at public expense, in violation of Section 89001, prior to the November 7, 2017 election. The complaint also alleged that the City used public moneys to create and upload campaign materials in support of Measure C onto its website. The Enforcement Division completed its investigation and has decided to close its file on this matter without prosecution.

The Act prohibits sending a newsletter or other mass mailing at public expense.² Specifically, mass mailing is prohibited if (1) the item is a tangible item; (2) the item expressly advocates the qualification, passage, or defeat of a clearly identified measure, or unambiguously urges a particular result in an election; (3) public moneys are paid to distribute the item, or to prepare the item, for more than \$50, with the intent of sending the item; and (4) more than 200 substantially similar items are sent during the course of an election.³ This prohibition limits the public subsidy of political campaigns, which would grant an unfair advantage to governmental bodies that desire to use public resources in pursuit of favorable election results.

A mailing unambiguously urges a particular result in two ways: (1) when it clearly is campaign material or campaign activity, such as bumper stickers, billboards, door-to-door canvassing, posters, advertising “floats,” or mass media advertising,⁴ or (2) when the style, tenor, and timing of the communication can be reasonably characterized as campaign material and not a

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

² Section 89001.

³ Regulation 18901.1, subd. (a).

⁴ Regulation 18901.1, subd. (c)(1).

fair presentation of facts serving only an informational purpose.⁵ Some factors to consider when assessing style, tenor, and timing include, but are not limited to whether the communication is (1) funded from a special appropriation related to the measure as opposed to a general appropriation; (2) consistent with the normal communication pattern for the agency; (3) consistent with the style of other communications issued by the agency; and (4) using inflammatory or argumentative language.⁶

A payment of public moneys by a local governmental agency made in connection with a communication that expressly advocates passage of a ballot measure, or that taken as a whole and in context, unambiguously urges a particular result in an election is an independent expenditure.⁷ Any person or combination of persons who, in a calendar year, makes independent expenditures totaling \$1,000 or more qualifies as an independent expenditure committee.⁸ An independent expenditure committee must file semi-annual campaign statements each year for the period ending June 30 and December 31 if it made independent expenditures during the 6-month period prior to those dates.⁹

Our investigation found that the mass mailing concerning Measure C did not contain express advocacy. The mailing generally was informational, except for the few instances when it described services as "vital," "meaningful," "substantial," and "important." However, in this circumstance these descriptors are not sufficiently inflammatory or argumentative to constitute campaign activity. Given the above, the Enforcement Division cannot conclude that the mailer in question violated the Act's prohibition against campaign mailers at public expense. As for the web page created for Measure C, the prohibition on mass mailings at public expense does not regulate the content of the City's website. Further, the Enforcement Division did not find sufficient evidence to conclude the City would have qualified as a campaign committee under the Act based on the City's activity related to the website. Therefore, we are closing this matter with this advisory letter.

Although we are closing our file, please be advised of the provisions in the Act and regulations regarding campaign related communications. Should you have any questions regarding this letter, please feel free to contact me at (916) 322-7771 or ryang@fppc.ca.gov.

Sincerely,

Ruth Yang

Ruth Yang
Commission Counsel
Enforcement Division

Cc: Christopher E. Skinnell

⁵ Regulation 18901.1, subd. (c)(2).

⁶ Regulation 18901.1, subd. (e).

⁷ Section 82031; Regulation 18420.1, subd. (a).

⁸ Section 82013, subd. (b).

⁹ Section 84200, subd. (b).



Warning Letter Examples



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

March 9, 2018

Barry Bentley
[REDACTED]

Warning Letter: Case No. 18/00036, Barry Bentley

Dear Mr. Bentley:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act¹ (the "Act"). This letter is in response to a referral from the California Highway Patrol. The Enforcement Division has completed its investigation and found that as a result of your position as a Motor Carrier Specialist I, the Act required you to periodically file a Statement of Economic Interests ("SEI") and that you failed to timely file your Leaving Office SEI.

Section 87300 of the Act requires every state and local agency to develop a Conflict of Interest Code. This Code requires individuals who participate in making decisions which may foreseeably have a material financial effect on any financial interest belonging to that person to disclose all reportable interests on SEIs.² Individuals required to file SEIs must file a Leaving Office SEI within 30 days of leaving office.³

You violated the Act by failing to file your Leaving Office SEI by the specified deadline. But since you are no longer in office and have not had a prior violation of this section, the Enforcement Division has decided to close your case with this warning letter.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

Although the Enforcement Division is closing this case without seeking a penalty, you are still required to file all outstanding statements. Please contact your filing officer, Becky Shelton at (916) 843-3788, for further information. Any future non-filings may result in monetary penalties and this warning letter may be considered in any future enforcement actions.

A warning letter is an Enforcement Division case resolution without administrative prosecution. This resolution does not provide you with the opportunity for a probable cause hearing or

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 87302, subd. (b).

³ *Ibid.*

administrative hearing. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of your case. If we do not receive such notification, this warning letter will be posted on the Commission's website.

If you have any questions regarding this letter, please contact us at complaint@fppc.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Galena West".

Galena West
Chief, Enforcement Division

GW:kt

cc: California Highway Patrol



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

March 14, 2017

Marylou Powers
Re-Elect Marylou Powers Galt City Council 2014 (1368953)

Warning Letter: FPPC No. 17/00065; Powers, Re-Elect Marylou Powers Galt City Council 2014 (ID# 1368953)

Dear Ms. Powers:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ This letter is in response to a referral the Enforcement Division received from the Franchise Tax Board's ("FTB") Political Reform Audit Program resulting from an audit of your committee, Re-Elect Marylou Powers Galt City Council 2014 ("Committee"), for the period from January 1, 2011 through December 31, 2014.

The FTB audit report concluded that the Committee substantially complied with the Act's disclosure and recordkeeping provisions, but that the Committee did violate the Act by accepting a \$650 loan in the form of cash, in violation of Section 84300.

Despite the violation, the Enforcement Division has determined that further enforcement action is not warranted because the FTB audit report concluded the Committee substantially complied with the Act, there were no prior violations of the Act, and you stated that, due to the lack of time, cash was inadvertently used to open the committee's bank account when an expense was due. The Committee ran a small campaign and has been terminated.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. But the warning letter resolution does not provide the Committee with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If the Committee wishes to avail itself of these proceedings by requesting that its case proceed with prosecution rather than a warning, please notify us within ten (10) days from

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

If you need forms or a manual, or guidance regarding your obligations, please visit our website at www.fppc.ca.gov. Please feel free to contact Hayley Porter at (916) 327-2020 or hporter@fppc.ca.gov with any questions you may have regarding this letter.

Sincerely,



Galena West
Chief
Enforcement Division

cc: Franchise Tax Board

GW:hp