



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Gómez, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Karen Harrison, Senior Commission Counsel

Subject: Adoption: Proposed Regulation 18400, Treasurer, Assistant Treasurer, Responsible Officer, and Principal Officer Capacity.

Date: October 10, 2022

Executive Summary

Staff presents proposed Regulation 18400 for adoption. This regulation proposes language requiring an individual to be at a minimum 18 years of age to serve as a campaign committee treasurer, assistant treasurer or as an entity’s “responsible officer” or “principal officer” under the Political Reform Act (“Act”).¹

The Act does not explicitly exclude a minor² from acting in any of these important roles. The Commission may set this requirement through regulation in order to ensure the effective administration of the Act because of the important campaign statement verification and reporting duties assigned to these roles and the enforcement issues that may result where a minor is involved.

Reason for Proposed Regulatory Action

This regulation is necessary to ensure the proper disclosure of campaign activity and the effective enforcement of the Act. The Act does not provide express qualifications for a recipient committee treasurer, assistant treasurer, or an entity’s responsible officer or principal officer; nor does it expressly prohibit a minor from acting in these roles. However, each role requires that the person filling the role be publicly identified, have the ability to perform the duties, and the ability to be held responsible for violations in an administrative, civil, or criminal proceeding. A minor has only a limited legal capacity, and as a result the Act’s penalties for wrongful reporting or statement verifications would likely be unenforceable against the minor.

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.

² A minor is defined as an individual under 18 years of age. (Family Code section 6500.)

Background

Current Law

Purpose of the Act: Disclose Campaign Finance Information & Provide Vigorous Enforcement

The Act seeks to address the influence of campaign contributions and abusive practices through effective campaign finance disclosure laws. (See Section 81001.) To this end, the Act's stated purposes include that "[r]eceipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited" and that "[a]dequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced." (Section 81002(a),(f).)

Recipient Committee Treasurer: Duties & Penalties for Violations

To accomplish these purposes, the Act assigns important duties to a campaign committee treasurer. The treasurer's role is not that of a figurehead; it is a public role, essential to the functioning of a committee, with the responsibility for a committee's compliance with the Act's campaign finance rules and disclosures. The Act requires that: every recipient committee³ shall have a treasurer, the treasurer's authorization is required for any campaign expenditure, and the committee may neither accept a contribution nor make an expenditure if the office of treasure is vacant. (Section 84100(a).) In the committee's statement of organization, the treasurer must be identified by name, address, email address, and telephone number, acknowledge that they must comply with all applicable duties stated in the Act and the regulations of the Commission, and acknowledge that a violation of these duties could result in criminal, civil, or administrative penalties. (Section 84102(c) and (d).)

The treasurer, as well as the candidate and principal officer, has a duty to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements and to establish that campaign statements were properly filed. (Section 84104; Regulations 18401, 18427.) To ensure proper filings, the treasurer must sign all the committee's filings and verify the filings accuracy under penalty of perjury. (Section 81004(b).) A treasurer will be guilty of perjury if the document contains material matter that the person knows to be false. (*Ibid.*) Lastly, the treasurer may be held jointly and severally liable with the candidate and the committee for reporting violations. (Sections 83116.5 and 91004; Regulation 18316.6.)

Note that Section 84100(b) provides that a campaign committee may designate one "assistant treasurer" on the statement of organization and this assistant treasurer may sign and verify committee campaign statements under penalty of perjury as required by Section 81004. Therefore, the treasurer's verification duties also attach to the assistant treasurer role.

³ A "recipient committee" includes any person or combination of persons who receives contributions totaling \$2,000 or more in a calendar year. (Section 82013(a).)

Responsible Officers & Principal Officers: Duties and Penalties for Violations

The role of “responsible officers” and “principal officers” are similarly public, essential, and with responsibilities for an entity’s compliance with the Act’s campaign finance rules and disclosures. Section 81004(b), noted above for its requirement that campaign committee treasurers must sign and verify any report or statement, also specifies the verification requirements for other situations, stating:

[A] report or statement filed by any other person shall be signed [under penalty of perjury]and verified by the filer. If the filer is an entity other than an individual, the report or statement shall be signed and verified by *a responsible officer* of the entity or by an attorney or a certified public accountant acting as agent for the entity. (*emphasis added.*)

Similar to a campaign committee treasurer, a “responsible officer” for an entity, such as a limited liability company qualified as a major donor or independent expenditure committee, is primarily responsible for approving the political activity of the entity. (Regulation 18402.2.) This includes authorizing expenditures, contributions, and developing or approving campaign strategy for the committee. (*Ibid.*) The responsible officer must be identified on each statement and report filed under Chapter 4 or 5 of the Act, and may be held liable for criminal, civil, or administrative penalties for a violation under Sections 83116.5, 91000 or 91004. (*Ibid.*)

A “principal officer” is similarly the individual primarily responsible for approving the political activities of a committee, authorizing the content of its communications, expenditures, and contributions as well as determining the committee’s campaign strategy. (Section 82047.6(b).)⁴ All recipient committees, other than a candidate controlled committee, must disclose the full name, address, and telephone number of its principal officer in its statement of organization. (Regulation 18402.1.) As noted above, in addition to imposing a recordkeeping duty on a candidate and treasurer, Section 84104 also imposes this duty on each principal officer. Lastly, if a committee is required to file a campaign statement or report disclosing an independent expenditure, a principal officer of the committee must sign a verification with the language set forth in Section 84213(b).

A Minor’s Legal Capacity

Given the important reporting, accounting and accountability role of a campaign committee treasurer, assistant treasurer, and an entity’s responsible officer or principal officer, we examine the legal consequences if a minor were to fill any of these roles. As discussed below, it is likely the verification and signature under penalty of perjury, resting on a child’s knowledge and understanding of the Act’s requirements, is not enforceable against a minor. It is equally a concern that a minor could be improperly placed in these roles by design in order to avoid the purposes of the Act’s campaign reporting laws.

⁴ Note: A treasurer may serve as a principal officer as well. (Section 84102(c)(2).) If two or more individuals share the primary responsibility for approving the political activities of a committee, each individual is a principal officer. (Section 82047.6(b).)

A minor has a limited capacity to enter into contracts, delegate authority and be prosecuted for wrongdoing under the law. The state has made certain contracts entered into by minors void or voidable since at least 1874. (*I.B. v. Facebook, Inc.*, (2015) 82 F. Supp. 3d 1115, 1118, citing former Sections 33 and 34 of the Civil Code, now located in Family Code sections 6701(c) and 6710.) A minor cannot give a delegation of power, nor make a contract relating to real property, or relating to any personal property not in their immediate possession or control. (*Ibid.*) A minor may make any other contract, in the same manner as an adult, subject to the minor's power of disaffirmance [meaning the minor has the option to void the contract]. (Family Code section 6700, 6710.).

California courts interpreting these statutes have stated, in broad terms, that they reflect both a strong public policy in favor of protecting minors, and, even more so, of discouraging adults from contracting with minors. "This rule exists to protect minors against their own improvidence and the designs of others. The policy of the law is to discourage adults from contracting with an infant and they cannot complain if as a consequence of violating the rule they are injured by the exercise of the right of disaffirmance vested in the infant." (*Chui v. Chui*, (2022) 75 Cal. App. 5th 873, 902, citing *Burnand v. Irigoyen* (1947) 30 Cal.2d 861, 866.)

We note additionally that in the event that enforcement proceedings were brought against a minor, children under the age of 14 are not considered to be capable of committing crimes in the absence of clear proof that they knew its wrongfulness. (Penal Code section 26.) And, for criminal matters, minors between the ages of 12 and 17 years are within the jurisdiction of the juvenile court. (Wel & Inst Code section 602.)

Authority of the Commission to Set Age Requirements for Treasurers, Assistant Treasurers, Responsible Officers and Principal Officers

The Commission is charged with the authority to adopt, amend and rescind rules and regulations to carry out the purposes and the related provisions of the Act. (Section 83112.) Generally, the authority of the Commission extends to those powers expressly conferred by the Act as well as an implied power to take action necessary for the administration of powers expressly granted by law. (*Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal.2d 796, 810 [It is well settled in this state that governmental officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may fairly be implied from the statute granting the powers.])

Considering the inherent problems outlined above, a prohibition on minors serving as a treasurer, assistant treasurer, a responsible officer, or principal officer is necessary to ensure the proper disclosure of campaign activity and adequate enforcement of the Act. Therefore, the Commission has the implied authority to set qualifications for these roles so that the purposes of the Act may be realized and effectively enforced.

Proposed Regulation

To address these issues, staff proposes Regulation 18400, Treasurer, Assistant Treasurer, Responsible Officer, and Principal Officer Capacity, to state:

An individual must be at a minimum of 18 years of age to serve as a treasurer, assistant treasurer, responsible officer, or principal officer.

Summary of Public Comment & Responses

The proposed language was presented to the Commission for prenotice discussion at the August 18, 2022, meeting. No comments from the public have been received to date.

Education/Outreach Efforts

Commission staff will distribute the regulation to interested parties by means of the “Newly Adopted, Amended or Repealed Regulations” email list, and update the “Newly Adopted, Amended or Repealed Regulations” page on the website. Staff will also revise campaign training and educational materials as a result of this proposed language and update the instructions on relevant campaign forms.

Conclusion

The proposed regulation will establish that a recipient committee treasurer or assistant treasurer as well as an entity’s identified responsible officer or principal officer must be a minimum of 18 years of age, and thus competent for the role. This will allow for the effective enforcement of the Act’s campaign finance requirements and promote the filing of accurate campaign finance statements.

Attachment:
Proposed Regulation 18400