



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

October 2, 2019

Greg Lyman
2531 Tamalpais Ave
El Cerrito, CA 94530

Re: Your Request for Informal Assistance
Our File No. I-19-163

Dear Mr. Lyman:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Because your question is general in nature, we are treating your inquiry as a request for informal assistance.²

Please 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. Is a local ballot measure committee required to include the name of a candidate in the name of the committee when the candidate "controls" the committee?
2. If your role with a local ballot measure committee is limited to certain treasurer duties as opposed to advising on strategy, would the committee still be required to be designated as controlled by you?

CONCLUSIONS

1. Regulation 18402 provides that the name of a committee controlled by one or more candidates must include the last name of each candidate that controls the committee. For a primarily formed ballot measure committee that is candidate controlled, the name would need to be similar to the following: "a committee for Measure (letter/number), controlled by (last name of candidate(s).)"

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. The committee would not be required to be designated as a committee controlled by you, as a candidate, so long as you only advise on the reporting of contributions and expenditures including bookkeeping, money management, recordkeeping, and advising the committee on its filing obligations and no other duties. However, if you have any influence over committee decisions, including discretion when authorizing expenditures, the committee is candidate controlled. We also strongly caution that a treasurer is responsible for authorizing committee expenditures under the Act and is liable for improper expenditures by a committee, even if the treasurer does not exercise discretion in authorizing expenditures.

FACTS AS PRESENTED BY REQUESTER

You are a city councilmember for the City of El Cerrito and will be leaving office soon. You were a candidate in 2008, 2012, and 2016 and were successfully elected all three times. You still have a committee open but have no intention of running again. You are not on the 2019 ballot and do not plan to be on the 2020 ballot. You were approached by a group of residents and asked to be the committee treasurer for a local primarily formed ballot measure committee, which will terminate upon successful passage of the measure.

You are unsure of what your role would be with the ballot measure committee but provided two sample scenarios related to your potential involvement. The first scenario would include you advising on strategy and mailer content for the committee. The second scenario would include your involvement with the committee as the treasurer only, and in this role, you would advise the committee solely on reporting of contributions and expenditures including bookkeeping, money management, recordkeeping, and advising the committee on its filing obligations. You would like to know which regulation requires a candidate's name to be included in the name of a local candidate-controlled ballot measure committee. Under the second scenario you would like to know if your participation in the limited role of only advising on the reporting of contributions and expenditures as the treasurer would require you to be identified as a controlling candidate for the committee, resulting in your last name being included in the committee name and whether you would need to report your information on the ballot measure committee's Statement of Organization.

ANALYSIS

Scenario One

Section 82016 of the Act defines a "controlled committee" as follows:

"(a) 'Controlled committee' means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee."

(b) Notwithstanding subdivision (a), a political party committee, as defined in Section 85205, is not a controlled committee."

Section 82016 describes two ways in which a committee may become a candidate controlled committee. First, if a candidate, his or her agent, or any other committee controlled by the candidate directly or indirectly controls the committee by exerting significant influence on the actions or decisions of the committee. Second, if a candidate, his or her agent, or any other committee controlled by the candidate acts jointly with a candidate in connection with the making of expenditures. The term "candidate" as defined by the Act, includes elected officials at the state and local level. (Section 82007.)

To determine whether a candidate controls a committee under the first part of Section 82016(a), one looks at the degree of the candidate's involvement in the committee's activities. (*Madden Advice Letter*, No. A-85-197.) The applicable standard is whether an elected official exerts "significant influence" over the actions or decisions of a committee.

Under the first scenario you provided above, you would be advising on strategy and mailer content for the committee. Therefore, you would be exerting significant influence over the actions or decisions of the committee and you would be a controlling candidate for the committee.

A primarily formed ballot measure committee name must include the measure's designation (e.g., Measure B), the committee's position on the measure (e.g., support or oppose), and if sponsored, the name(s) of the sponsor(s). (Section 84107.) If the committee is candidate controlled, the name of the committee controlled by one or more candidates must include the last name of each candidate that controls the committee. (Regulation 18402.) For example, the name may appear similar to "A committee for Measure (letter/number), controlled by (last name of candidate)."

As long as you remain a candidate, as defined by Section 82007, if your activity meets the standards of a controlling candidate, the ballot measure committee will be considered controlled by you and your last name must be included in the name of the controlled committee. Section 82007 states, in pertinent part, that "an individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214." You stated that you will be leaving office soon and will not be running for office again. Thus, when you terminate your status as a candidate by leaving office and terminating your campaign committee(s), the ballot measure committee would no longer need to be designated as a committee controlled by a you and your name would no longer be required to be part of the name of the committee. (*Bagatelos Advice Letter*, No. A-93-104.) At that time, committee would be required to file an amended Statement of Organization (Form 410) to reflect that change.

Scenario Two

Under the second scenario you provide that your only involvement with the committee would be as the treasurer for the committee but would involve advising only on the reporting of contributions and expenditures including bookkeeping, money management, recordkeeping, and advising the committee on its filing obligations and no other duties. The definition of "controlled committee" has been interpreted broadly to include any significant participation in the actions of a committee by a candidate, his or her agent, or representatives of any other committee he or she controls. (*Higdon Advice Letter*, No. I-94-189; *Kopp Advice Letter*, No. A-97-108.) Where a candidate is a voting member of an organization's leadership, the candidate is presumed to be the controlling candidate since the candidate exercises significant influence on the actions or decisions

of the organization. (*Titus* Advice Letter, No. I-06-197; *Trimbur* Advice Letter, No. A-00-067; *Gastelum* Advice Letter, No. A-96-113; *Ferguson* Advice Letter, No. A-86-044.)

An elected official who has extensive involvement in a committee's fundraising activity by actively participating in its solicitations, fundraising events and fundraising strategy is also exerting "significant influence" over the committee and controlling the committee within the meaning of Section 82016. (*Pirayou* Advice Letter, No. I-10-159.) Other relevant factors which determine whether a candidate is controlling a committee include whether the candidate is involved with decision making or developing or implementing campaign strategy for the committee. (*Helms* Advice Letter, No. I-91-390.) On the other hand, where a candidate is merely an honorary member of a committee's governing body, who may appear in the letterhead, but does not vote, make decisions about committee funds, or otherwise influence the actions of a committee, we have advised that the candidate is not considered to "control" the committee. (*Lacy* Advice Letter, No. I-03-076; *Erenbaum* Advice Letter, No. I-01-242; *Madden* Advice Letter, No. A-85-197.)

If your activity with the committee does not meet the definition of a controlling candidate, the committee will not be considered controlled by you. You state your services may be obtained by the local ballot measure committee to act as the treasurer but in that role, you may only be advising on the reporting of contributions and expenditures including bookkeeping, money management, recordkeeping, and advising the committee on its filing obligations. If your role is limited to this activity with no other involvement such as influencing how committee funds are raised or spent, you would not be exerting significant influence and control over the committee's actions and the committee would not need to be designated as controlled by you. (*Lacy* Advice Letter, No. I-03-076.)

As treasurer, you will have the responsibility to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that the campaign statements were properly filed, and to verify that campaign statements are true and complete. (Section 84104, Regulation 18427.) In addition, contributions can only be made while a committee has a treasurer in place and the treasurer has a duty to authorize all expenditures made from the committee. (Section 84100.) It is apparent from the duties listed in Sections 84101, 84100, and Regulation 18427 that as treasurer, you may engage in and are responsible for significant participation in the actions of the committee outside of the narrow set of activities you have provided under this scenario. If you have any influence over decisions, including discretion when authorizing expenditures, you would be a controlling candidate of the committee.

Note, a treasurer must authorize all expenditures by a committee as required by Section 84100 of the Act, and a treasurer is liable for improper expenditures by a committee, and subject to administrative, civil, and criminal penalties under the Act, even if the treasurer does not exercise discretion in authorizing expenditures. It is also important to note that as treasurer, you must be listed on the Statement of Organization and all campaign reports, regardless of the limited nature of your duties. (Section 84102; Regulation 18110.) Accordingly, serving as a treasurer without discretion in authorizing expenditures comes with inherent risk of inadvertent violations of the Act, and we would strongly caution against it.

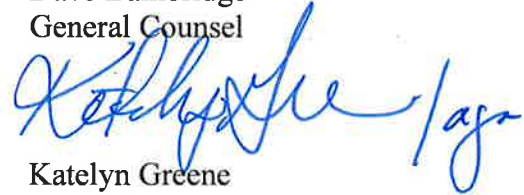
Because you have provided only a general overview of your potential duties under either scenario above, our advice at this point is necessarily general. If you are retained by the committee

and are in doubt as to the legal significance of specific services you will perform, we suggest that you contact us with the particulars so that we can offer you additional advice once you have decided which level of participation with the committee you will conduct.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "Katelyn Greene / aja".

By: Katelyn Greene
Counsel, Legal Division

KG:aja