



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 25, 2024

Amber Maltbie
Attorney at Law
NOSSAMAN LLP
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Re: Your Request for Informal Assistance
Our File No. I-24-105

Dear Ms. Maltbie:

This letter responds to your request for assistance on behalf of Aaron Peskin regarding the provisions of the Political Reform Act (the “Act”) relating to contributions and candidate-controlled ballot measure committees.¹ Because your request for advice is general in nature, we are treating your request as one for informal assistance.²

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

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

Under Regulation 18521.5, may Mr. Peskin’s candidate-controlled committee primarily formed to support or oppose three San Francisco ballot measures feature Mr. Peskin, a candidate for Mayor of San Francisco, in committee advertisements, including photographs of, quotes by, and biographical information about him? If so, what limits apply to featuring the candidate in committee advertisements in these ways?

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.

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).)

CONCLUSION

Regulation 18521.5, which includes provisions relating to candidate-controlled ballot-measure committees, does not apply to Mr. Peskin or his controlled ballot measure committee because the City of San Francisco imposes its own limit on contributions pursuant to Section 85702.5. Thus, Mr. Peskin must comply with his jurisdiction's local rules in regard to ballot measure committees controlled by a candidate. He will need to consult the relevant local ordinances or the City of San Francisco regarding the application of local campaign laws to the types of advertisements he has inquired about.

However, in response to your request regarding limitations on his being featured in the ballot measure committee advertisements, the Act defines certain payments for election-related activities as a "contribution." If Mr. Peskin used his controlled ballot measure committee to make an expenditure that would qualify as a contribution to his campaign committee, he would violate the Act's "one bank account rule," which requires that all campaign expenditures be made from the same account. In addition to violating the one bank account rule, the ballot measure committee would be required to report the expenditure and Mr. Peskin's mayoral campaign committee would be required to report receipt of the contribution which, as noted above, may implicate local campaign ordinances.

Whether any particular advertisement by the ballot measure committee will qualify as a reportable contribution is a determination that must be made on a case by case basis based upon the nature and content of the specific advertisement. Generally, we can only advise that an advertisement may not reference Mr. Peskin's candidacy, his election campaign, or his or his opponent's qualifications for office, and that it is quite possible including biographical information would constitute a reference to Mr. Peskin's qualifications for office.

FACTS AS PRESENTED BY REQUESTER

Mr. Peskin has a controlled ballot measure committee, "Real Reform, Yes on C, No on D, Yes on E, a coalition of small businesses, neighbors and Aaron Peskin" (FPCC ID # 1472007) (the "Committee"). The Committee is primarily formed to support or oppose three City of San Francisco ballot measures that are on the November 5, 2024 ballot. Mr. Peskin is a candidate for Mayor and will appear on the same ballot as these measures. It is anticipated that the Committee will soon begin distributing advertisements supporting Propositions C and E and opposing Proposition D. As such, you have inquired:

1. May the Committee's advertisements "feature" the controlling candidate with photographs of the controlling candidate? If yes, is there a limit to how many times (or for how long) a controlling candidate may appear in print, television or other types of ads?
2. May the Committee's advertisements also contain quotes by the controlling candidate if the quotes address the same issues that are the subject of the ballot measure?
3. May the Committee's advertisements also contain biographical information about the controlling candidate? Specifically, may the advertisements discuss the candidate's voting record and accomplishments on the same types of issues that are the subject of the ballot measure?

ANALYSIS

Regulation 18521.5 generally provides that “a candidate for city or county elective office subject to the contribution limit in Section 85301(d), may control a committee under Section 82013(a) to support or oppose the qualification or passage of a measure, only as provided in this regulation.” Section 85301(d), however, does not apply to a city or county that has imposed its own contribution limits, and states:

A person shall not make to a candidate for elective county or city office, and a candidate for elective county or city office shall not accept from a person, a contribution totaling more than the amount set forth in subdivision (a) per election, as that amount is adjusted by the Commission pursuant to Section 83124. This subdivision does not apply in a jurisdiction in which the county or city imposes a limit on contributions pursuant to Section 85702.5.

(Emphasis added.)

Section 85702.5 permits counties and cities to establish contribution limits different from those established under Section 85301(d). San Francisco has done so. Under the Act, the current default contribution limit for elective city or county office candidates is \$5,500 per person. (Regulation 18545(a)(9).) In San Francisco, the limit is stated as follows: “[n]o person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed \$500.” (San Francisco Campaign and Governmental Conduct Code § 1.114.) Consequently, Regulation 18521.5 does not apply to Mr. Peskin. He must check for compliance with San Francisco’s local rules regarding a candidate-controlled ballot measure committee and whether it is permissible to feature Mr. Peskin in the ballot measure committee’s advertisements.

Regulation 18521.5’s inapplicability notwithstanding, other provisions of the Act still apply with respect to the content of the ballot measure committee’s advertisements. Depending on the content of the ballot measure committee’s advertisement, that communication could potentially qualify as a contribution to Mr. Peskin in his capacity as a mayoral candidate.

“Contribution” means “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.” (Section 82015(a).) The term “contribution” does not include a payment made at the behest of the candidate for a communication by the candidate or any other other person if the communication:

- (i) Does not contain express advocacy;
- (ii) Does not make reference to the candidate’s candidacy for elective office, the candidate's election campaign, or the candidate’s or opponent of the candidate’s qualifications for office; and
- (iii) Does not solicit contributions to the candidate or to third persons for use to support the candidate or oppose the candidate's opponent.

(Regulation 18215(c)(4).)

To the extent that his controlled ballot measure committee's advertisement is a communication that references his candidacy for mayor, his election campaign, or his or an opponent's qualifications for elective office, it will be an in-kind contribution to his candidacy. In such a case, the contribution would be reportable as an expenditure by the ballot measure committee and as a contribution received by the candidate campaign committee. (See Section 84211(f), (k).) Beyond reportability, however, such an expenditure would also violate the Act's "one bank account rule" under Section 85201, which requires, "[a]ll campaign expenditures shall be made from the [same campaign contribution] account" the candidate is required to establish at a California financial institution. (Section 85201(a), (e).) By using a controlled ballot measure committee to make a campaign expenditure to his campaign committee's benefit, Mr. Peskin would be violating Section 85201(e). As the Commission has consistently advised, under Section 85201, a candidate cannot simultaneously control a committee for elective office and a second committee that supports or opposes candidates for elective office or makes contributions to support or oppose candidates for elective office. (See *Stone* Advice Letter, No. I-21-099.)

It is not feasible to provide a comprehensive determination regarding the inclusion of pictures, quotes, or biographical information in a candidate-controlled ballot measure committee advertisement, as the advertisement's status as a "contribution" will ultimately depend on whether, taken as a whole, it references the candidate's candidacy, campaign, or the candidate's (or their opponent's) qualifications for elective office. Generally, we can only advise that an advertisement may not reference Mr. Peskin's candidacy, his election campaign, or his or his opponent's qualifications for office, and that it is quite possible including biographical information would constitute a reference to Mr. Peskin's qualifications for office.


If Mr. Peskin has questions or concerns regarding a specific proposed candidate-controlled ballot measure committee advertisement and whether it will meet the definition of a contribution to his campaign for mayor, he should seek additional advice and provide a complete description or copy of that proposed advertisement, so that we may provide an analysis of the communication as a whole. Mr. Peskin should also consult any potentially applicable local ordinances, including local contribution limits, or contact the City of San Francisco regarding the potential application of those ordinances to any advertisements that may be subject to local contribution limits.

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

Sincerely,

Dave Bainbridge
General Counsel

By:


Kevin Cornwall
Senior Counsel, Legal Division

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