



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

**To:** Chair Germond, Commissioners Cardenas, Hatch, and Hayward

**From:** Loressa Hon, Acting Executive Director  
Dave Bainbridge, General Counsel  
Phillip Ung, Director of Legislation

**Subject:** Authority to enforce prohibitions on the use of public funds for campaign activities

**Date:** February 11, 2019

---

### **Introduction**

At the December 20, 2018 Commission meeting, Commissioner Hatch requested the Commission discuss and consider at its January 17, 2019 meeting sending a letter to the leadership of the California Legislature requesting legislation amending the Political Reform Act to authorize the Enforcement Division to investigate and prosecute cases involving the illegal use of public resources for campaign activities.

At the January 17, 2019 Commission meeting, the Commission instructed staff to draft letters to the Assembly and Senate leadership for Commission review, and to research data supporting the assertion that laws prohibiting the use of public resources for campaign activity, which are outside the jurisdiction of the Commission, were not being adequately enforced. The draft letters are included with this memorandum. These research efforts are detailed below.

### **Background**

Multiple statutes prohibit public officials from using public resources for campaign activity.<sup>1</sup> Also, misappropriation of public funds can result in criminal prosecution.<sup>2</sup> Further, the California Supreme Court has ruled it is a violation of the State Constitution for public agencies and officials to spend public resources on campaign activities absent express statutory authority.<sup>3</sup>

Current law does not permit the Commission's Enforcement Division to investigate or pursue legal action against public agencies and officials for spending public funds on campaign activity. The law authorizes the Attorney General, district attorneys, and city attorneys in cities with populations of 750,000 or more people to bring civil actions enforcing the prohibition. The Commission's jurisdiction includes enforcing the prohibition on campaign mass mailings by a public agency, requiring a public agency that qualifies as a committee under the Act to file

---

<sup>1</sup> See Government Code sections 8314 and 54964, and Education Code section 7054.

<sup>2</sup> California Penal Code section 424.

<sup>3</sup> See *Stanson v. Mott* (1976) 17 Cal. 3d. 206 and *Vargas v. City of Salinas* (2009) 46 Cal. 4<sup>th</sup> 1.

campaign statements and reports, and enforcing advertising disclosure requirements on public agencies that participate in campaign activity.

## Research Results

### Legal Research

Staff attempted to obtain data showing the frequency with which state and local authorities pursue cases involving the use of public resources for campaign activities. However, superior court cases were not searchable by when a particular cause of action was alleged. Such a determination would require reviewing all complaints filed with a superior court.

Through Lexis Nexus, staff performed legal research of appellate court cases that would have considered issues concerning any of the relevant statutes or cases cited above. Staff also reviewed all California appellate cases that cited to *Vargas v. City of Salinas* (2009) 46 Cal. 4<sup>th</sup> 1. This search returned 33 published cases and 76 unpublished cases since the *Vargas* decision in 2009. Of the 33 published cases, only 5 cite *Vargas* on grounds relevant to the issue of the use of public funds for campaign activities. Four of those five cases were brought by private individuals or organizations against public officials or agencies. One case was a criminal case brought by a district attorney's office against a public official for authorizing subordinates to collect a list of persons who supported a school board recall.<sup>4</sup> That case involved allegations of violations of Penal Code section 424 and Education Code section 7054. The appellate court overturned a conviction by the superior court because it found the information collected was not used for a political purpose. Of the 76 unpublished opinions, none appeared to be cases brought by state or local prosecutors involving the use of public funds by a government official or agency for campaign purposes.

Review of California appellate cases citing the decision in *Stanson v. Mott* (1976) 17 Cal. 3d. 206, revealed similar results. Of the 62 published decisions citing *Stanson*, 20 cases concerned the issue of using public resources for campaign activity. Two of those 20 cases were criminal cases filed by district attorneys. One was the *Fleming* case discussed above. The other case involved a county supervisor who used county equipment and instructed county employees to perform campaign work supporting his candidacy for lieutenant governor.<sup>5</sup> In that case, the appellate court upheld the trial court's conviction for misuse of public funds. The other 18 cases were civil actions brought by private individuals or entities. There were 17 unpublished California decisions citing the *Stanson* case. None of these were brought by a state or local prosecutor.

Searches related to Government Code sections 8314 and 54964, Education Code section 7054, and Penal Code section 424 did not reveal any additional cases brought by state or local prosecutors for the violations involving expenditures of public funds for campaign activity.<sup>6</sup>

---

<sup>4</sup> *Fleming v. Superior Court* (2010) 191 Cal. App. 4<sup>th</sup> 73.

<sup>5</sup> *People v. Battin* (1978) 77 Cal. App. 3d 635.

<sup>6</sup> These searches were performed by searching for all cases referencing the code section, narrowing the results using the terms "campaign" and "funds." This search criteria resulted in 9 citing cases for Gov't Code § 8314; 11 cases for Gov't Code § 54964; 9 cases for Edu. Code § 7054; and 56 cases for Penal Code § 424.

## **Enforcement Cases**

Since 2015, the Enforcement Division has opened 34 cases involving allegations of a public agency spending public funds for campaign purposes. This includes cases involving public agencies sending campaign mass mailings, as well as agencies failing to disclose campaign activity (i.e. file statements and reports and include advertising disclaimers). To date, 18 of those cases have closed and 16 remain open. Of the closed cases, 3 resulted in stipulated settlements, 2 resulted in warning letters, and the remaining 13 were closed with an advisory or closure letter.

The Enforcement Division is not aware of any actions brought by state or local prosecutors related to those cases.

The Commission approved a settlement in December 2018 in the case of *In the Matter of San Francisco Bay Area Rapid Transit District (“BART”)*, FPPC No. 16/1995. Prior to that, the last decision adopted by the Commission involving violations by a public agency for failing to report campaign activity was in 1996.<sup>7</sup> (*In the Matter of the County of Sacramento*, FPPC No. 93/345.) Enforcement Division staff do not recall any instances where state or local prosecutors have brought actions against public officials or agencies for using public funds for campaign purposes.

## **Media and Interest Group Research**

Staff searched online sources and internal records for media reports on a state or local prosecutor pursuing an action against a public agency, or public official, for using public funds for campaign purposes without success.

Recent media coverage related to the *BART* case alleges that state and local prosecutors have not acted in response to campaign spending by local agencies<sup>8</sup>. These articles do not cite any authority supporting these assertions.

When asked, the Howard Jarvis Taxpayers Association, an organization that takes note of how money is spent by government agencies, does not have data for cases involving government agencies spending public money for campaign purposes. Anecdotally, it indicated through its attorney that it has “been involved in literally dozens of cases involving likely instances of misuse of public funds for political purposes. In only one of those cases (I believe it was a Sacramento County case), was HJTA ever aware that a criminal enforcement agency got involved in the matter.”

## **Conclusion**

Staff did not find data or other information indicating that cases regarding public agencies and public officials using public funds for campaign activity have been pursued beyond the actions of the Commission and private individuals or entities.

---

<sup>7</sup> *In the Matter of the County of Sacramento*, FPPC No. 93/345.

<sup>8</sup> See Walters, *Finally, a Crackdown on Misuse of Taxpayer Money*, CALmatters (January 1, 2019) <https://calmatters.org/articles/commentary/finally-a-crackdown-on-misuse-of-taxpayer-money/>; and Morodomi, *How Bay Area Park District Meddled in November Election*, The Mercury News (December 11, 2018) <https://www.mercurynews.com/2018/12/11/opinion-how-east-bay-park-district-meddled-in-november-election/>