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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

FPPC No. 14/346

12 CITY OF ROCKLIN,

STIPULATION, DECISION AND ORDER

13 Respondent.
14

15 **STIPULATION**

16 Complainant Fair Political Practices Commission and Respondents City of Rocklin hereby agree
17 that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its
18 next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an additional administrative
21 hearing to determine the liability of Respondents, pursuant to section 83116 of the Government Code.

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent City of Rocklin
2 violated the Political Reform Act by: 1) Producing and sending 30,000 copies of the “Inside Rocklin”
3 mailer at public expense, in April of 2014, which featured the mayor and members off the city council,
4 elected officials, in violation of Section 89001 (1 Count). Exhibit 1, which is attached hereto and
5 incorporated by reference as though fully set forth herein, is a true and accurate summary of the facts in
6 this matter.

7 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
8 Respondent agrees to the Commission imposing upon it an administrative penalty in the amount of Two
9 Thousand Dollars (\$2,000). A cashier’s check or money order from Respondent totaling said amount,
10 made payable to the “General Fund of the State of California,” is submitted with this Stipulation as full
11 payment of the administrative penalty and shall be held by the State of California until the Commission
12 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
13 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
14 after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent
15 in connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
16 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the
17 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
18 shall be disqualified because of prior consideration of this Stipulation.

19
20 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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22
23 Dated: _____

Ricky A. Horst, City Manager
on behalf of Respondent, City of Rocklin

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of City of Rocklin,” FPPC No. 14/346, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent is the City of Rocklin (“Respondent Rocklin”), located in Placer County, California. In this matter, in April of 2014, Respondent Rocklin sent a mailer, at public expense, featuring the mayor and members of the Rocklin City Council, with a message by, and photograph of the mayor.

For the purposes of this stipulation, Respondent’s violation of the Political Reform Act (the “Act”)¹ is stated as follows:

COUNT 1: Respondent City of Rocklin produced and sent 30,000 copies of the “Inside Rocklin” mailer at public expense, in April of 2014, which featured the mayor and members of the city council, in violation of Section 89001.

SUMMARY OF THE LAW

Mass Mailing at Public Expense

A “mass mailing” is defined by Section 82041.5 of the Act to be over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.

No mass mailing may be sent at public expense. (Section 89001). FPPC Regulation 18901, subdivision (a), provides that a mailing is prohibited under Section 89001 if all of the following criteria are met:

- (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. The item delivered must be a tangible item, such as a written document.
- (2) Features an elected officer affiliated with the agency which produces or sends the mailing. An item features an elected officer when the item includes, among other things, the elected officer’s photograph or signature. (Regulation 8901, (c)(2).) A mailing containing the name, office, photograph or any other reference to an elected officer who consults or acts in concert with the agency to prepare or send the mailing also fulfills the second criteria.
- (3) Costs of design production and printing exceeding \$50.00 are paid with public moneys, and the design, production or printing is done with the intent of sending the item other than as permitted by this regulation, and

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.

(4) More than two hundred substantially similar items are sent, in a single calendar month.²

SUMMARY OF THE FACTS

Respondent is the City of Rocklin (“Respondent Rocklin”), located in Placer County, California. In this matter, in April of 2014, Respondent sent a mass mailing, at public expense, featuring the Mayor and City Council members. The City of Rocklin sent a publication “Inside Rocklin” to all households in Rocklin. The publication includes a 2014 events schedule and other articles of interest to Rocklin residents. The inside cover includes a message from the Mayor, Scott Yuill, welcoming readers to the “inaugural issue” of the “Inside Rocklin” publication. Scott Yuill’s photograph and title is included at the end of the message, as are the photographs and titles of the balance of the council members.

According to invoices and receipts, approximately 30,000 copies of the “Inside Rocklin” mailer were sent on in April of 2014. The costs for the design, printing and postage totaling approximately \$20,000 were paid for by Respondent Rocklin.

After contact with the Enforcement Division, Respondents have changed the “Inside Rocklin” publication to be in compliance with the requirements of the Act.

COUNT 1 **Mass Mailing at Public Expense**

In April of 2014, Respondent Rocklin, a public agency, paid for the cost for the design, printing and postage of approximately 30,000 copies of the “Inside Rocklin” publication, which featured a photograph of the Mayor, along with a message and title, as well as photographs of the other elected Rocklin City Council members, including their photographs and titles.

By paying for and sending the Inside Rocklin publication, featuring elected officials, to approximately 30,000 households, Respondent violated Government Code Section 89001.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“Commission”) considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good

² Regulation 18901, subd. (b), contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.

faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Using public funds to pay for the design and production of a mass mailing featuring an elected officer can be a serious violation of the Act as it misuses public funds for prohibited purposes. The typical administrative penalty for a public funded mass mailing violation, depending on the facts of the case, has been in the mid range of available penalties. Recent fines approved by the Commission for sending a newsletter or mass mailing featuring an elected officer at public expense include:

In the Matter of Yorba Linda Water District and Michael Beverage; FPPC No. 11/499, in December 2012, the Commission approved a penalty of \$2,000 for one count of sending a newsletter at public expense that featured Respondent Michael Beverage, an elected member of the Yorba Linda Water District, in violation of Government Code section 89001. In this matter, the violation included one newsletter, the cost to the public was relatively low, Respondents cooperated with the investigation, and have no prior Enforcement history.

In the Matter of the City of Temecula and Jeff Comerchero; FPPC No. 13/924. Respondents, the City of Temecula and Jeff Comerchero, an elected Temecula City Councilmember, sent two brochures, at public expense, featuring Respondent Comerchero, an elected member of the Temecula City Council, with a message by, signature of and photo of Respondent Comerchero. Respondents cooperated fully with the investigation, and the Commission approved a penalty of \$2,000 for each count on April 17, 2014.

In this matter, Respondent sent a prohibited mass mailer at public expense. However, Respondent cooperated with the investigation and has no prior history with the Enforcement Division.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondents' pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$2,000 for the Count is recommended.