



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 7, 2023

David Stotland
County of San Diego
1600 Pacific Highway Room 355
San Diego, CA 92101

Re: Your Request for Informal Assistance
Our File No. I-23-026

Dear Mr. Stotland:

This letter responds to your request for advice on behalf of San Diego County and Third District Supervisor, Terra Lawson-Remer, regarding the campaign disclosure provisions of the Political Reform Act (the “Act”).¹ Please note we do not advise on any other laws concerning the use of public resources by government officials for campaign activities such as Government Code sections 8314 and 54964, and Penal Code section 424. Moreover, we cannot provide advice related to the confidentiality of public records and required disclosure under the Public Records Act. Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. Because your questions are general in nature, we are treating your inquiry as a request for informal assistance.²

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.

QUESTION

1. May the County spend public funds to conduct a survey among constituents within a Supervisor’s district to determine constituent support for and opposition to issues in order to inform the Supervisor’s legislative and governmental priorities, with top-level survey findings then reported out publicly?

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).)

2. May the County spend public funds to conduct a survey among constituents within a Supervisor's district to determine the constituents' preferred outreach methods, with results being held confidential?

CONCLUSIONS

1. Yes. The County may use public funds to conduct a survey among constituents to gauge support or opposition to local issues in order to inform the Supervisor's agenda so long as the survey does not constitute campaign activity. Additionally, should the results be used for a political purpose, it may qualify the County as a committee and it would incur reporting requirements under the Act.

2. Yes. The County may use public funds to conduct a survey among constituents regarding preferred outreach methods, so long as it is not used by the Supervisor for political purposes. However, we express no opinion regarding the confidentiality of the survey results.

FACTS AS PRESENTED BY REQUESTER

The County's district boundary lines were adjusted during redistricting after the 2020 Census. Accordingly, a significant number of residents in the Third District—as redrawn after redistricting—previously were residents of different districts. Supervisor Lawson-Remer desires to understand the priorities of constituents within the redrawn district in order to better represent them in County government and endeavor to meet their needs. To do so, the Supervisor seeks to survey the constituents of the redrawn district. Thus, the County issued a public Request for Quote (RFQ) for vendor responses. The RFQ included the following background in the Statement of Work:

The County of San Diego Board of Supervisors, District 3, needs to assess the current mood, opinions and preferences of San Diego County Third (3rd) District residents. The office seeks to examine constituent support and opposition on a variety of issues tied to policy development. To do this, the office requires a contractor to develop a survey and report the findings back to District 3 staff and constituents to allow for policy development, newsletter updates, and community engagement.

The survey will allow the office to better engage and inform the public on different issues and to raise awareness in proposals that are likely to be considered by County government. **Survey is issue-based and will only be used for legislative or governmental purposes.**

Top-line findings of the survey will be made available to the public in accordance with County policy and official Fair Political Practices Commission (FPPC) opinions. Findings will be reported out either through a report, memo, or other townhall type of tool. (Emphasis in original.)

With regard to the survey questions, the Statement of Work states that the vendor will allow County staff time to review the questions before the survey begins. Thus, any proposed questions can be modified in accordance with the Commission's advice regarding parameters for the survey questions. The survey will be conducted online, in-person, and/or via landline/cell phones. No tangible item will be mailed or distributed.

Additionally, the Statement of Work indicates that the survey will fulfill the purposes of: 1) informing the Supervisor's legislative and governmental priorities, 2) raising awareness of the Supervisor's legislative and governmental priorities, and 3) determining the constituents' preferred outreach methods. In subsequent correspondence, you clarified that point 2 above, that of "raising awareness of the Supervisor's legislative and governmental priorities," is not a point that will be included in the survey. Therefore, we address the remaining questions.

The County has awarded a contract to a vendor to handle the constituent survey. No work has been performed by any vendor yet pending requested advice.

ANALYSIS

The Act governs the use of public funds for campaign activities in two ways. First, the Act prohibits the mass mailing of campaign materials by a governmental agency. Second, a governmental agency is subject to campaign reporting rules if it qualifies as a campaign committee.

Mass Mailings

Section 89001 provides a general rule that "[n]o newsletter or other mass mailing shall be sent at public expense, while Section 82041.5 defines "mass mailing" as "over two hundred substantially similar pieces of mail" not including a "form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." While the express terms of Section 89001 are exceptionally broad, the Commission and additional legislation has acted to limit the application of the mass mailing prohibition to mailings that feature or included the name, office, photograph, or other reference to an elected official affiliated with the agency producing or sending the mailer (Section 89002; Former Regulation 18901) and mailings of other campaign-related materials by a governmental agency paid for with public moneys (Regulation 18901.1).

However, as interpreted by Regulations 18901(a)(1) and 18901.1(a)(1), Section 89001 applies only to *tangible items*. Because surveys conducted online, in-person or via telephone are not considered tangible items, the Act's mass mailing restrictions under Section 89001 do not apply to these communications.

Conducting a Survey

Notwithstanding the conclusion that the Act's mass mailing provisions do not apply to a survey conducted online, in-person and via phone, we must caution that a payment of public funds by a state or local governmental agency in connection with a campaign related communication is either a contribution or an independent expenditure, which may qualify the agency as a committee subject to the Act's reporting provision. (See Regulation 18420.1.)

A communication is campaign related, under the Act and Commission regulations, if the communication either (1) “expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified ballot measure” or (2) “when taken as a whole and in context, unambiguously urges a particular result in an election.” (*Ibid.*) For a communication by a state or local governmental agency, a communication “unambiguously urges a particular result” if the communication “can be reasonably characterized as campaign material or campaign activity,” or “when considering the style, tenor and timing of the communication, it can be reasonably characterized as campaign material.” (*Ibid.*)

From the facts provided, it appears the aim of the survey is to gather information from constituents regarding the policy and legislative issues of interest to residents of the district. Additionally, the Statement of Work emphasizes that the survey is to be issue-based and only used for legislative or governmental purposes. The facts also indicate that no outcome of an election – whether related to a candidate or measure – is to be addressed. While the survey is likely to identify the Supervisor as it is squarely focused on the constituents of her district, this is not the type of activity typically considered to be campaign related barring additional information indicating a relationship to a campaign other than the mere fact that the official is an elected official. (*See Parks Advice Letter, I-10-013.*) Note, however, that each communication must be assessed on a case-by-case basis considering the entirety of the message and the factual context in which the communication is made.

Use of Survey Results

In addition to conducting the survey, the provision and use of such results for political activity, may constitute a contribution or expenditure as well. Providing survey data to a candidate that either requests the information or uses the information for political purposes³ results in a nonmonetary contribution to the candidate. The value of the contribution is the fair market value of the survey, i.e., what the candidate would have had to pay on the open market to purchase the information. (Section 82025.5.) Therefore, should the County provide the information to the

³ Section 82025(b) provides that a payment is made for “political purposes” if it is any of the following:

(1) For purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure.

(2) Made by any of the following:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to the candidate’s candidacy or status as an officeholder.

(B) A controlled committee.

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee, or any subcommittee of such committee.

(D) An organization formed or existing primarily for political purposes, as described in paragraph (1), including, but not limited to, a political action committee established by any membership organization, labor union, or corporation.

Supervisor for use for a political purpose, it may qualify as a committee under Section 82013 based on the value of the contribution.

You have stated, however, that you plan to make the topline results of the survey public with findings reported out through a report, memo or other townhall type of tool. We have previously advised that where an entity conducts a survey and makes the results of the survey public, either by presenting the information at a public meeting or providing data to a newspaper, such action would not result in a contribution. (*Norton* Advice Letter, I-19-115; *Winkler* Advice Letter, A-86-035.) Accordingly, provision of public data to the Supervisor would not result in a contribution from the County.

Constituents' Preferred Outreach Methods

You also inquired as to whether public funds may be used to survey constituents within the Supervisor's district in order to determine their preferred outreach methods, with the results remaining confidential for privacy purposes. As with use of the survey data outline above, should the information be used for political purposes – i.e., to craft campaign communications, target likely voters, etc. – this will be a contribution from the County to the Supervisor. To the extent that the constituent contact information will be kept confidential, great care should be taken to ensure that the contact information is used for governmental purposes only and that the contact information is not used by Supervisor Lawson-Remer, or any other elected official, for campaign purposes including but not limited to campaign communications.

Should the data be used for a political purpose, this will constitute a contribution from the County to the Supervisor and the County may incur reporting requirements thereon.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Erika M. Boyd
Senior Counsel, Legal Division

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