



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 9, 2024

Ryan Abusaa  
Engagement & Compliance Officer  
San Francisco Ethics Commission  
25 Van Ness Ave, STE 220  
San Francisco, CA 94102

Re: Your Request for Informal Assistance  
**Our File No. I-24-075**

Dear Mr. Abusaa:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup> 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. Because your request for advice is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTIONS

1. Do the costs of printing campaign signs and other campaign materials borne by a local campaign committee’s volunteers and supporters qualify as in-kind contributions to the committee?
2. Is it relevant whether the signs and other campaign materials are free to download or if the committee charges a fee for them?

### CONCLUSIONS

1. Yes, assuming the individual or entity who pays for the printing of the campaign signs and other campaign materials does so at the committee’s behest, the payments would constitute in-kind contributions to the committee. Absent coordination with the committee, a large-scale printing of a committee’s campaign communications that exceed an individual’s personal use may constitute an independent expenditure, but

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

small-scale printing by an individual solely for the individual's personal use would not constitute a contribution or independent expenditure.

2. Payments received by the committee for which the committee has not provided full and adequate consideration are contributions. If the committee charges fair market value to download its campaign signs and other materials, then the resulting cost of printing those materials by volunteers or other persons is not a nonmonetary contribution and payments to the committee for these downloads should instead be reported as miscellaneous increases to cash. However, because payments to a committee are presumed to be contributions and given the marginal costs to the committee of allowing downloads from its campaign website, it is the committee's burden to demonstrate that the downloads actually have a fair market value.

### **FACTS AS PRESENTED BY REQUESTER**

A local campaign committee (the "Committee") within the San Francisco Ethics Commission's jurisdiction plans to make versions of its window signs and other campaign materials publicly accessible to download over the Internet for free. Once downloaded, campaign volunteers and supporters could then print these campaign signs and other materials at their own expense. You ask whether these printing costs borne by campaign volunteers and supporters would constitute nonmonetary contributions to the committee under the Act. You also ask whether it is determinative if the Committee charges a fee for its campaign materials instead of providing them to anyone free of charge.

### **ANALYSIS**

The Act requires candidates to file periodic reports disclosing contributions received and expenditures made in connection with running for state or local elective office (Section 84100, et seq.) A "contribution" is a payment received by a candidate or committee for which the candidate or committee has not provided full and adequate consideration in return, or if it is clear from the surrounding circumstances that the payment is not made for political purposes. (Section 82015; Regulation 18215) For purposes of the Act, "full and adequate consideration" means the fair market value of goods, services, facilities, or anything of value other than money the committee would have to pay on the open market in exchange for the contribution provided to it (Section 82025.5.) A contribution can be either monetary, such as cash, check, credit card, wire transfer; or nonmonetary (also known as "in-kind), meaning donated goods or services.

A payment is presumed to be made for political purposes if received by a candidate or controlled committee. (Regulation 18215.) A payment is also made for political purposes if it is received by or made at the behest of a candidate, unless it is clear from surrounding circumstances that the payment was received or made at his or her behest for personal purposes unrelated to his or her candidacy. (Regulation 18215.) "Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. (Section 82041.3; Regulation 18225.7.)

In contrast to a contribution, an “independent expenditure” means an expenditure made by any person, including a payment of public moneys by a state or local governmental agency, in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is *not made to or at the behest of* the affected candidate or committee. (Section 82031.)

Nothing in the Act prohibits a committee from making its campaign signs and other campaign materials available to download for free over the Internet. However, the proper classification of whether printing such materials would constitute a contribution will depend on the facts of the scenario. Where an individual prints a committee’s campaign signs and other materials at the behest of the committee, the cost of such a printing would constitute an in-kind contribution to the committee. As noted above, “made at the behest of” means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. (Section 82041.3; Regulation 18225.7.)

For example, in the *Brewer* Advice Letter, No. I-03-174, we advised that if an individual or entity pays a vendor directly for printing, mailing, and distribution of a committee’s campaign literature, such payments constitute in-kind contributions to the committee, assuming the payments are made at the committee’s behest. Likewise, we have previously advised that there was coordination between a committee and a vendor where a candidate provided the candidate’s logo to the vendor free of cost to use on merchandise sold by the vendor, since the resulting publicity benefitted the candidate. (*Lawler* Advice Letter, No. A-22-020.) Thus, the vendor made a contribution to the committee, and the vendor’s services would need to be reported as an in-kind contribution to the committee. (*Id.*)

By contrast, where there is no coordination between a committee and campaign volunteers or other individuals who print the committee’s campaign materials on their own initiative, the cost of an individual printing one sign, flyer, or other communication for the individual’s personal use would not constitute a contribution to the committee. For example, if a committee made campaign signs and other materials available for download on its website but did not request or suggest that anyone print these materials for the committee’s benefit, the mere fact that individuals find these materials and print them for their own personal use does not constitute a nonmonetary contribution to the committee.

Even in the absence of coordination between the committee and individuals who print its campaign materials, printings which exceed an individual’s personal use may constitute independent expenditures, and therefore qualify the individual as an independent expenditure committee.<sup>3</sup> However, we reach no conclusion as to whether printing services exceeding an

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<sup>3</sup> “Independent expenditure” means an expenditure made by a person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the best of the affected candidate or committee. (Section 82031.) Any person or combination of persons who directly or indirectly makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year qualifies as an independent expenditure committee under the Act. (Section 82013(c).)

individual's personal use would constitute a contribution or independent expenditure at this time. The determination of whether printing services, beyond a small-scale printing by an individual solely for the individual's personal use, is a contribution or independent expenditure is necessarily a fact-specific determination that would depend on the scope of the printing services and the nature of the communications or understandings between the committee and individual or individuals paying for the printing.

Finally, you have asked whether this analysis would change if the committee charged a fee to download its campaign signs and other materials instead of making them available for free. As stated above, payments to a committee are presumed to be contributions except to the extent that full and adequate consideration is received. (Section 82015.) Thus, if a committee charges fair market value to download its campaign signs and other materials, then full and adequate consideration has been exchanged, and the resulting cost of printing those materials by the volunteer or other person is not a nonmonetary contribution to the committee. In such cases, the payments to a committee are not contributions and should instead be reported as miscellaneous increases to cash on the committee's campaign statements. For example, we have previously advised that where a committee sells advertising space in its newspaper, to the extent that the advertiser pays fair market value for this advertising space, the payment is not a contribution to the committee and may instead be reported as a miscellaneous increase to cash. (*Parisi Advice Letter*, No. A-98-269.)

However, in the *Lawler* letter cited above, we advised that, because payments to a committee are presumed to be contributions, it was a committee's burden to demonstrate that the advertising space the committee was selling to its vendor had a fair market value. We further advised that, given the marginal costs to the committee of promoting the vendor's merchandise on the committee's campaign website, the advertising payments constituted contributions and should be reported accordingly, unless the committee could demonstrate that the advertisement space had a fair market value, compared to other website advertisements of a comparable nature and similar size audience.

Thus, if individuals print a committee's campaigns signs and other materials at the committee's behest, to avoid these payments being considered contributions to the committee, the committee must not only charge fair market value for them, but also establish that these downloadable campaign materials have a fair market value, and that the price the committee charges for them does not exceed this value.

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

Sincerely,

Dave Bainbridge  
General Counsel

A handwritten signature in black ink, appearing to read 'T L', with a stylized flourish at the end.

By: Toren Lewis  
Counsel, Legal Division

TL:aja:bc