

MEMORANDUM OF LAW

DATE: November 30, 1992

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Campaign Disclosure Statements and Listing of  
"Self-Employed"

This is in response to your opinion request of October 8, 1992, regarding use of the term "self-employed" on campaign disclosure forms filed pursuant to the Political Reform Act (the "Act"). Because of apparently contradictory advice you have received from the Fair Political Practices Commission ("FPPC"), you specifically ask whether relevant portions of the Act require the filer of a campaign disclosure statement to disclose the names of a contributor's business on the campaign disclosure form, if the contributor is self-employed. As part of this opinion request, the Clerk's Deputy Director in charge of Elections/Legislative Services Mikel Haas has also asked the City Attorney to examine the Clerk's duties under San Diego Municipal Code ("SDMC") section 27.2961 in administering the City's Campaign Control Ordinance and to provide guidance as to what the Clerk must do when checking campaign disclosure statements.

ANALYSIS

The first question presented is whether the Political Reform Act requires the filer of a campaign statement to disclose the name of a contributor's business if the contributor is self-employed. The answer is "yes." Government Code section 84211(f). This Government Code section reads in relevant part as follows:

Each campaign statement  
required by this article article 2  
shall contain all of the following  
information:

....

(f) If the cumulative amount  
of contributions (including loans)  
received from a person is one hundred  
dollars (\$100) or more and a  
contribution or loan has been

received from that person during the period covered by the campaign statement, all of the following:

....

(4) The name of his or her employer, or if self-employed, the name of the business.

....

A copy of the complete statute is enclosed for your convenience. The plain language of Government Code section 84211(f)(4) clearly requires disclosure of a contributor's business name, if the contributor is self-employed, on a campaign statement filed pursuant to Government Code sections 84200-84226. Just to make sure the FPPC or courts have not interpreted this statute differently, I also examined FPPC regulations, opinions and enforcement decisions and searched for reported court cases.

First, I examined regulations published by the FPPC interpreting the Political Reform Act and I found no regulation construing or interpreting Government Code section 84211(f). See 2 Cal. Code of Regs. Section 18110 et seq.F

There are regulations published construing other portions of Government Code section 84211, but not subsection (f). See for example, 2 Cal. Code of Regs. " 18421, 18423 and 18428.

I also found no

proposed FPPC rule in progress construing Government Code section 84211(f). I also reviewed formal opinions issued by the FPPC construing the Political Reform Act and found none interpreting Government Code section 84211(f), although there are some formal FPPC opinions construing other portions of that code section. Those opinions are not relevant here.

Although I have some of the FPPC's private advice letters on hand to research, I do not have a complete set. Therefore, I called the FPPC to request copies of any private advice letters pertaining to Government Code section 84211(f), assuming any existed. Jeanette Turvill, Political Reform Analyst in the Legal Division, Fair Political Practices Commission, reported that she made a search of the FPPC's computer for any private advice letter on the issue and found none.

I also found no reported court cases construing Government Code section 84211(f). I have called the FPPC's Enforcement Division, and talked to Jerry Nottleson, an Accounting Specialist with the FPPC. He searched their files for the last one or two years for enforcement cases pertaining to occupation/employer information on campaign disclosure forms. Using identifying information Mr. Nottleson provided to me, I have made a public

records request to the FPPC for the files in these cases. I enclose a copy of my written public records request to them. When I receive copies of these files, I shall share them with you.

Absent information to the contrary in the enforcement case files that I have requested and will be receiving, I conclude that the plain language of Government Code section 84211(f) requires disclosure of a contributor's business name, if the contributor is self-employed, on campaign statements filed pursuant to Government Code sections 84200-84226.

A question remains whether San Diego's law modifies this particular state law requirement. I conclude that it does not. SDMC section 27.2931 requires candidates and committees to file campaign statements in the same time and manner as the Political Reform Act of 1974, as amended. This Municipal Code section specifically cites Government Code sections 84100 through 84305. SDMC section 27.2931 further states that compliance with that Act "shall be deemed compliance with this section."F

As you may recall, however, Judge Milliken recently ruled in *Friends of Susan Golding v. Abdelnour* (S.D. Super. Ct. Case No. 657722), that the State law's loan reporting provision (Government Code ' 84216) had not been incorporated into the City's law, that is, not incorporated into SDMC ' 27.2941(b).

As part of the Clerk's opinion request, Deputy Director Mikel Haas has asked for the City Attorney's guidance interpreting the Clerk's duties under SDMC section 27.2961, particularly as they pertain to checking campaign disclosure statements. The following paragraph provides that guidance.

First, I note that among the City Clerk's duties pertaining to the San Diego Municipal Election's Campaign Control Ordinance (SDMC sections 27.2901 through 27.2975), the Clerk is charged with determining "whether required documents have been filed and, if so, whether they conform on their face with the requirements of state law." SDMC section 27.2961(b). Therefore, I first recommend that the Clerk review campaign disclosure statements that are filed with the Clerk's office to determine whether they contain the information required by Government Code section 84211, including subsection (f).

If persons or known committees fail to file forms in the time and manner required by state law, the Clerk has a duty to notify them promptly. SDMC section 27.2961(c). If the Clerk determines there is an "apparent violation" of either state law or SDMC Chapter II, Article 7, Division 9, the Clerk has a duty to report the "apparent violation" to the appropriate enforcement authority, which in most instances will be the City Attorney's office.F

I note that the City Attorney, who is elected, has always asked the District Attorney to enforce this ordinance as to matters arising out of the City Attorney's race.

Unlike state law, which has no such requirement, SDMC section 27.2921 in part requires that "no contribution shall be deposited to a campaign contribution checking account without the receipt by the candidate or committee of that information required by Government Code sections 84210 and 84211 concerning the contribution to be deposited." This wording was added to SDMC section 27.2921 in 1985.

It is my opinion that the Clerk is under no duty currently in the SDMC to investigate whether candidates and committees indeed have made the determination required by SDMC section 27.2921, as outlined above. The Clerk merely must determine whether the information supplied on the disclosure form is facially complete. If not, the Clerk must notify the appropriate candidate or committee of the lack of that information and, the Clerk must also determine whether that lack of information constitutes an "apparent violation" of either state or local law for purposes of referral to the appropriate Enforcement Authority.

#### CONCLUSION

Based on the extensive research and telephone calls I have done to date on this issue, I conclude that Government Code section 84211(f) requires persons filing campaign disclosure forms to list the name of a contributor's business on the form, if the contributor is self-employed. This requirement is incorporated into the San Diego Municipal Code by SDMC section 27.2931. The Clerk has a duty under SDMC section 27.2961(b) to determine whether campaign disclosure filings are facially complete and, if not, to notify the candidates or committees of the defect and possibly to refer the matter to the Enforcement Authority under certain circumstances. SDMC section 27.2961(c) and (d). The Clerk does not currently have a duty to investigate whether candidates have made certain determinations under SDMC section 27.2921.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:014:(043.2)

Attachments

cc Jeanette Turvill, FPPC

Jerry Nottleson, FPPC

Bill Newsome, Deputy City Attorney

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