

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
1112 "I" Street, Suite #100
Sacramento, California 95814
(916) 874-6458

DATE: September 2, 2009

TO: Sacramento Local Agency Formation Commission

FROM: Nancy C. Miller
Commission Counsel

RE: **Sacramento LAFCo Policies and Procedures Amendment Related to Disclosure of Contributions and Expenditures Pursuant to the Political Reform Act and Cortese-Knox-Hertzberg Act (GC 56100.1)**

RECOMMENDATIONS

1. Receive and file this report back; and continue the decision on adopting a Commission policy requiring disclosure of contributions made to pay for costs associated with the processing of applications until the next Commission meeting.

BACKGROUND AND DISCUSSION

At the August 5, 2009, Commission meeting, staff informed the Commission that the Fair Political Practices Commission (FPPC) denied staff's request for advice related to contributions made to the Arden Arcade Incorporation Committee (AAIC) to pay for the preparation of the Environmental Impact Report (EIR), Comprehensive Fiscal Analysis (CFA), and staff time and processing costs associated with the incorporation proposal. The Commission was provided with a copy of the July 14, 2009, letter from the FPPC denying the request for advice.

After being informed of the denial, the Commission directed staff to prepare a Commission policy in the absence of written advice from the FPPC. The Commission directed that the policy require disclosure of contributions made to pay for costs associated with the processing of applications, including EIRs and CFAs.

On July 27, 2009, Jonathan Hobbs of the law firm of Kronick, Moskovitz, Tiedemann & Girard submitted a letter on behalf of the AAIC requesting written advice from the FPPC on:

Whether AAIC must file monthly campaign statements associated with financial contributions received by AAIC, and submitted to Sac LAFCO, to pay the costs of: (1) the Environmental Impact Report; (2) the Comprehensive Fiscal Analysis; and (3) Sac LAFCO staff time and processing costs associated with the incorporation proposal.

A copy of the letter is attached to this report. On July 29, 2009, the FPPC sent a standard form response letter to Mr. Hobbs acknowledging receipt of the request for written advice. A copy of that letter is also attached to this report.

Staff subsequently contacted the FPPC to discuss Mr. Hobbs' request. In an August 26, 2009, telephone conversation with William Lenkeit, the FPPC attorney assigned to the matter, staff was informed that the FPPC would indeed be providing a written response with advice to Mr. Hobbs. Mr. Lenkeit also informed staff that the FPPC's deadline to prepare and transmit the response was September 1, 2009.

In light of the fact that the FPPC will be providing a written advice letter on the matter to AAIC, staff recommends that the best course of action is to prepare a policy after the FPPC has provided its opinion.

If staff obtains a copy of the opinion prior to the Commission meeting, staff will distribute it at the meeting.

CONCLUSION

Staff is encouraged that the FPPC will be providing written advice. Staff will wait to submit a draft policy for the Commission's consideration until after the receipt of the FPPC letter.

Respectfully submitted,



Nancy C. Miller
Commission Counsel

Attachments: Attachment A – Jonathan Hobbs letter to the FPPC, July 27, 2009.
Attachment B – FPPC letter to Jonathan Hobbs, July 29, 2009.



RECEIVED

JUL 30 2009

JONATHAN P. HOEBS

July 27, 2009

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Sacramento Local Agency Formation Commission; Arden Arcade
Incorporation Committee Advice Letter

To Whom It May Concern:

This office has been asked by the Arden Arcade Incorporation Committee ("AAIC") to provide input concerning the Sacramento Local Agency Formation Commission's ("Sac LAFCO") request for advice dated May 8, 2009 concerning the contribution reporting requirements under the Political Reform Act, California Government Code sections 81000, et seq. ("PRA"). A copy of Sac LAFCO's May 8, 2009 request for advice is enclosed for reference.

The issue presented is whether AAIC must file monthly campaign statements associated with financial contributions received by AAIC, and submitted to Sac LAFCO, to pay the costs of: (1) the Environmental Impact Report ("EIR"); (2) the Comprehensive Fiscal Analysis ("CFA"); and (3) Sac LAFCO staff time and processing costs associated with the incorporation proposal. For the reasons set forth below, AAIC submits that such contributions are not reportable under the PRA because the contributions are not made for "political purposes," as the term is defined under the PRA.

SUMMARY OF FACTS

AAIC was formed in or about April of 2006 to explore incorporation of a currently unincorporated area of Sacramento County commonly known as Arden Arcade. On or about February 27, 2007, AAIC submitted a voter-signed petition to Sac LAFCO proposing incorporation of the City of Arden Arcade. An EIR is being prepared by Sac LAFCO pursuant to the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000, et seq.) ("CEQA"). The EIR will provide an independent and impartial review of the environmental impact of incorporation. Additionally, a CFA is being prepared by Sac LAFCO pursuant to Government Code section 56800 to assess the financial viability of incorporation. AAIC has agreed to reimburse Sac LAFCO for the cost of preparation of the EIR and the CFA, as well as Sac LAFCO staff time in processing the incorporation application.

919761.3

ATTORNEYS AT LAW

400 CAPITOL MALL, 27TH FLOOR SACRAMENTO, CALIFORNIA 95814-4416 TELEPHONE (916) 321-4500 FAX (916) 321-4555

ANALYSIS

Assembly Bill 1998 of the 2007/2008 legislative session added Government Code sections 84250 through 84252 to the PRA. These provisions provide that committees formed primarily to support or oppose a LAFCO proposal are to file campaign statements identifying contributions made for "political purposes" of \$1,000 or more received within a calendar year. See Cal. Govt. Code §§ 82013, 82015, 84252. A payment for "political purposes" is defined as a payment "made for the purpose of influencing or attempting to influence the actions of voters or of a local agency formation commission for or against the qualification, adoption, or passage of a LAFCO proposal." Cal. Gov.'t Code § 84251.

Here, payments and contributions made to AAIC for reimbursement of EIR costs, CFA costs, and Sac LAFCO processing are not payments made for "political purposes." Thus, they are not subject to reporting under the PRA. Such payments are being made for the completion of independent and unbiased environmental and financial studies prepared by Sac LAFCO as part of processing the incorporation proposal. The studies are not advocacy pieces. They are designed to provide Sac LAFCO with an impartial environmental and financial view of the incorporation proposal in order to aid Sac LAFCO in the decision-making process. Sac LAFCO has an independent legal duty to analyze and evaluate the environmental impacts and fiscal viability of incorporation.

A similar issue was addressed by the FPPC in conjunction with the recent incorporation of the City of Rancho Cordova. See FPPC Advice Letter A-98-125, June 1, 1998, enclosed. There, the Rancho Cordova Incorporation Committee inquired as to whether funds received for a feasibility study and an EIR were subject to reporting under the PRA. The FPPC advised that such contributions were not reportable. The FPPC noted that "the incorporation committee is receiving funds for the purpose of funding a feasibility study and an environmental impact report." Id. at 2. The FPPC found that, even if the proposal were to be placed on the ballot, such contributions would still not be reportable because "the funding of these studies is not meant to influence the citizens to vote for or against the measure." Id. Rather, "the studies simply determine whether a proposed city is viable and considers environmental concerns. The committee is purchasing a product, the studies, and is not influencing a vote or an election." Id.

While the Rancho Cordova Incorporation Committee Advice Letter predates AB 1998, the principle remains the same. Here, AAIC is reimbursing Sac LAFCO for the funding of studies to "determine whether a proposed city is viable and considers environmental concerns." Like the Rancho Cordova Incorporation Committee, AAIC is "purchasing a product, the studies, and is not influencing a vote or an election." The studies are not meant to influence a citizen or LAFCO vote for or against incorporation. As such, the contributions to AAIC to pay for these studies do not constitute a payment for "political purposes" under Government Code section 85251 and, thus, are not reportable campaign contributions.

The case of Yes on Measure A v. City of Lake Forest, 60 Cal. App. 4th 620 (1997), provides further guidance on the issue of payments and expenditures made for "political

purposes.” There, the City of Lake Forest challenged the legality of a ballot measure concerning the amendment of the county’s general plan. Plaintiff sued to compel the city to file reports under the PRA to disclose expenditures the city had made related to the litigation. Plaintiff contended that the expenditures were aimed at invalidating a ballot measure. Thus, argued the plaintiff, the expenditures were being made for “political purposes” and were reportable. The court disagreed, finding that the litigation was not an attempt to “influence the electorate” but merely to “test the legal validity” of the ballot measure. *Id.* at 625-626. Similarly, here, the contributions made to AAIC to defray the costs of the EIR, the CFA and Sac LAFCO staff time are not designed to “influence the electorate” or LAFCO. Rather, they are designed as impartial studies analyzing the financial feasibility and environmental impacts of incorporation. Such contributions are not made for political purposes and are not reportable under the PRA.

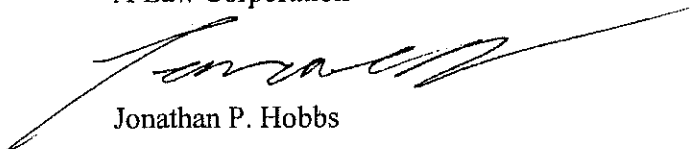
CONCLUSION

For the reasons set forth herein, AAIC submits that the contributions to defray the cost of the EIR, the CFA and Sac LAFCO staff processing time are not payments made for “political purposes” under the PRA. Accordingly, AAIC submits that such contributions are not reportable under the PRA.

Thank you for your consideration of this matter. AAIC looks forward to the FPPC’s opinion on this issue. Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation



Jonathan P. Hobbs

JPH/dlc

Enclosures

cc w/encs.: Joe Archer, Chair, AAIC
✓ Nancy Miller, Counsel for Sac LAFCO

MILLER, OWEN & TROST
A PROFESSIONAL CORPORATION

DANIEL CALVERT
PAUL J. CHRISMAN
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WILLIAM L. OWEN
OF COUNSEL

May 8, 2009

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
1-866-275-3772

Via Hand Delivery

RE: Sacramento Local Agency Formation Commission; Arden-Arcade Incorporation
Committee

To Whom It May Concern:

We represent the Sacramento Local Agency Formation Commission ("Sac LAFCo" or "Commission") and request written advice pursuant to Government Code section 83114, subdivision (b). In short, we are seeking advice related to a committee that has submitted a voter-signed petition to the Commission related to potential city incorporation.

ADVICE QUESTIONS

1. Does the Arden-Arcade Incorporation Committee (AAIC) qualify as a committee for purposes of the Political Reform Act of 1974 (PRA of 1974)?
2. Must the money AAIC pays to Sac LAFCo for processing the application be reported as expenditures on a monthly campaign statement? AAIC pays Sac LAFCo funds to pay for a portion of the following studies to be used by Sac LAFCo in reviewing the application:
 - a. Environmental Impact Report;
 - b. Comprehensive Fiscal Analysis; and
 - c. Sac LAFCo staff time for processing the voter-signed petition.
3. Will the FPPC be promulgating LAFCO specific regulations?

MATERIAL FACTS

Local Agency Formation Commissions (LAFCOs) exist in each and every California county for the purpose of establishing and revising local government boundaries. LAFCOs can establish or revise local government boundaries if it receives an application. Applications can be submitted by either (1) voter signed petitions, or (2) a resolution of application by a district/public entity.

The applications must be processed before they are presented to the Commission for a decision. The application must satisfy certain statutory mandates and Commission policies.

Processing the application costs money. Typical costs associated with an incorporation proposal, include, but are not limited to, (1) preparation of an environmental document, which can include an Environmental Impact Report (EIR), (2) preparation of the Comprehensive Fiscal Analysis (CFA), and (3) staff time.

Applicants are required to pay a portion of these costs and Sac LAFCo pays a portion. Once the application is processed it is presented to the Commission for approval, conditional approval, or denial. If the application is approved it goes through protest proceedings wherein voters can file protests with the Commission opposing the change of organization presented by the application. If enough protests are received the application is abandoned. If insufficient protests are received, the proposed change or organization is placed on the ballot for voter approval.

In this situation, the Arden-Arcade Incorporation Committee (AAIC) submitted a voter-signed petition to Sac LAFCo on February 27, 2007. The petition proposes to change the unincorporated area of Sacramento County, commonly known as Arden Arcade, into its own incorporated city. The petition signatures were collected by AAIC, which was formed in April 2006 to work towards incorporation.

Following submission of the petition, AAIC entered into an agreement with Sac LAFCo, whereby it agreed to pay a portion of the EIR, the CFA, and staff time. Under the agreement, AAIC has committed to pay \$121,811. AAIC paid \$50,000 of that money in March 2009 and anticipates paying the remaining amount by October 1, 2009. Sac LAFCo has committed to pay \$100,000.

There are new provisions governing the reporting requirements related to LAFCo proposals; Government Code sections 82035.5, and 84250 – 84252. Sac LAFCo requests advice on how these provisions apply to the facts set forth above. The specific questions relating to this matter are also set forth above.

If you have any questions, concerns, or require additional information, please contact us at your earliest convenience.

Very Truly Yours,

MILLER, OWEN & TROST
A Professional Corporation

By: *Nancy C. Miller* FOR
Nancy C. Miller

cc: Peter Brundage, Sac LAFCo
Ruthann Ziegler, Arden-Arcade Incorporation Committee

CA FPPC Adv. A-98-125, 1998 WL 321562 (Cal.Fair.Pol.Prac.Com.)

California Fair Political Practices Commission

*1 DAVID B. ROBERTS

FPPC File No. A-98-125

June 1, 1998

CAMPAIGN An incorporation committee does not have to report moneys raised to pay for a feasibility study and an environmental impact report. Also, the funds will not be reportable, if, and/or when, the proposal for incorporation becomes a committee.

David B. Roberts
Rancho Cordova Incorporation Committee
2008 Maryvale Way
Rancho Cordova, California 95670
Re: Your Request for Advice

Dear Mr. Roberts:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").^[FN1]

QUESTION

Does the Rancho Cordova Incorporation Committee have to report moneys raised to pay for a feasibility study and an environmental impact report?

CONCLUSION

No. Moneys raised for this purpose do not have to be reported.

FACTS

The Rancho Cordova Incorporation Committee is a grassroots civic organization that is working to make Rancho Cordova a city. According to you, Sacramento County (the "county") is very much opposed to this effort and a number of potential contributors who do business with the county are reluctant to contribute knowing that any contribution will have to be reported. The county registrar of voters has directed that the incorporation committee report any and all contributions.

The incorporation decision must be placed on the ballot by the board of supervisors following a lengthy series of hearings by the Local Agency Formation Commission ("LAFCO"). The issue cannot go before the county supervisors until LAFCO has approved a feasibility study and an environmental impact report. The feasibility study costs \$50,000 and the environmental impact report costs an estimated \$200,000 and no recommendation can be forwarded by LAFCO to the supervisors until the fees are paid.

All money you are raising, until the measure is placed on the ballot, is to pay for the studies. You feel your contributors are purchasing a product, the studies, and are not influencing a vote or an election. These studies simply determine whether a proposed city is viable and considers environmental concerns. You believe that as long as you are raising money solely for the purpose of paying for these studies that you do not have to report the contributions.

ANALYSIS

The obligation to report expenditures in support of or in opposition to a proposal for incorporation begins when the proposal becomes a measure pursuant to Section 82043. A proposal for incorporation becomes a measure when the board of supervisors orders the proposal on the ballot. (*In re Fontana* (1976) 2 FPPC Ops. 25.) At that time, contributions received to support or oppose the measure are reportable. Further, contributions received and expenditures made before the proposal became a measure that were for the purpose of influencing citizens to vote for or against the measure shall be reported during the initial campaign statement after the proposal became a measure. (*Martini Advice Letter*, No. A-93-378.)

*2 Currently, the incorporation committee is receiving funds for the purpose of funding a feasibility study and an environmental impact report. These funds are not reportable now since the board of supervisors has not ordered the incorporation proposal on the ballot. Also, the funds will not be reportable, if, and or when, the proposal for incorporation becomes a measure, since the funding of these studies is not meant to influence the citizens to vote for or against the measure. As you point out, the studies simply determine whether a proposed city is viable and considers environmental concerns. The committee is purchasing a product, the studies, and is not influencing a vote or an election. (See *Yes on Measure A v. City of Lake Forest* (1997) 60 Cal.App.4th 620, where the fourth appellate district held that a city's preelection challenge to a ballot measure is not an attempt to influence the electorate stating that the "audience at which these activities are directed is not the electorate per se." See also *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529.)

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

Sincerely,
Steven G. Churchwell
General Counsel

By: Marte Castanos
Staff Counsel, Legal Division

FN1. Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

CA FPPC Adv. A-98-125, 1998 WL 321562 (Cal.Fair.Pol.Prac.Com.)
END OF DOCUMENT



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 29, 2009

Jonathan P. Hobbs
Kronick Moskowitz
Tiedemann & Girard
400 Capitol Mall 27th Floor
Sacramento, CA 95814-4416

Re: Your Request for Advice
Our file No. 09-185

Dear Mr. Hobbs:

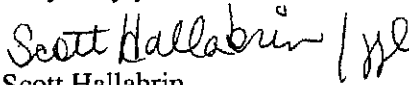
Your letter requesting advice under the Political Reform Act ("Act") was received by the Fair Political Practices Commission ("Commission") on July 28, 2009. If you have any questions about this request, you may contact William J. Lenkeit, the attorney who has been assigned to your questions at (916) 322-5660.

If your request seeks formal written advice under Government Code Section 83114(b), you may expect a response within 21 working days.¹ However, should we require additional information before responding to your request, we will contact you and our response will be provided within 21 working days from the date on which we receive the additional information. If your request is for informal assistance, an answer will be provided as quickly as possible. (2 Cal. Code Regs., Section 18329; also see Library and Publications at www.fppc.ca.gov.)

Please note that sometimes it is not appropriate to issue a written response. Therefore, your request may be denied. This may occur, for example, if your request involves past conduct or you are not authorized by the advisee to make the request. (2 Cal. Code Regs., Sections 18329 and 18329.5.)

Also, your request and our response are public records that may be disclosed to the public upon receipt of a proper request for disclosure. For questions about the status of your request, contact Juanita Lira, at (916) 322-5660.

Very truly yours,


Scott Hallabrin
General Counsel

SH:jgl

1. The timeline may be extended for good cause (Government Code, section 83114(b).)

