



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 5, 2018

Gary S. Winuk  
Kaufman Legal Group  
621 Capitol Mall, Suite 1900  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. I-18-101**

Dear Mr. Winuk:

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

### QUESTIONS

1. Is the League required to register as a recipient committee, within the meaning of Section 82013(a), if it meets the committee qualification criteria in Section 84222.5(b), but makes its campaign expenditures solely from “nondonor funds?”
2. If the League is required to register as a recipient committee, how should “nondonor funds” used for campaign expenditures be disclosed on its campaign reports?

### CONCLUSIONS

1. As discussed in further detail below, we find that the League is required to register as a recipient committee if it meets any of the criteria in Section 84222.5(b) regardless of whether its campaign expenditures were derived solely from “nondonor funds.”
2. The League’s expenditures made using “nondonor funds,” should be disclosed as increases to cash in an amount equal to the total amount of campaign expenditures made during the period on Schedule I of the relevant campaign reports.

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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 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.

<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).)

## FACTS AS PROVIDED BY REQUESTOR AND ADDITIONAL BACKGROUND

You serve as legal counsel to the League and are authorized to seek advice on its behalf. The League is an association of California city officials who work together to enhance their knowledge and skills, exchange information, and combine resources so that they may influence policy decisions that affect cities. You indicate that the League is organized as a 501(c)(4) nonprofit corporation and qualifies as a “publicly funded nonprofit organization” under Section 54964.5. You also note that the League makes campaign expenditures, but does not accept third party payments for political purposes. Rather it funds these expenditures exclusively through a segregated account with only “nondonor funds,” as defined in Section 84222(c)(5)(B).

In 2013, the State Legislature passed Senate Bill 594 (Stats. 2013, Ch. 773, SB 594 Hill) to “improve transparency with respect to the campaign activity of nonprofit organizations that receive at least 20% of their gross revenue from taxpayer dollars and that engage in political activity through contributions from their general treasury.” (Senate Com. on Elections and Constitutional Amendments, analysis of Senate Bill No. SB 594 (2012-2013 Reg. Sess.) September 11, 2013, p. 3.) This bill, which was codified in current Section 54964.5 and former Section 54964.6, required that such nonprofit organizations disclose the sources of funds used for campaign activity if the activity met any of the following thresholds:

- \$2,500 or more related to local candidates or ballot measures during a calendar quarter.
- \$10,000 or more related to local candidates or ballot measures during a two-year period beginning with January 1 of an odd-numbered year and ending with December 31 of the following even-numbered year.
- \$50,000 or more related to statewide candidates or ballot measures during a calendar quarter.
- \$100,000 or more related to statewide candidates or ballot measures during a two-year period beginning with January 1 of an odd-numbered year and ending with December 31 of the following even-numbered year.

(*Id.*; Section 54964.6(c) [repealed].)

The Legislature empowered the California Franchise Tax Board (the “FTB”) to enforce these requirements and accept the qualifying organizations’ reports. (Section 54964.6 [repealed].)

Assembly Bill 2318 (Stats. 2016, Ch. 825, AB 2318 Low), which came into effect on January 1, 2017, transferred the responsibility for administering and enforcing the registration and reporting requirements for a “publicly funded nonprofit organization” from the FTB to the Fair Political Practices Commission (the “Commission”).<sup>3</sup> According to the State Legislature, this transfer was meant to “maximize transparency” as well as streamline and harmonize the registration and reporting rules for publicly funded nonprofit organizations with the general rules provided for

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<sup>3</sup> AB 2318 repealed Section 54964.6, added new provisions to existing Section 54964.5 and added Section 84222.5 to the Act.

multipurpose organizations in Section 84222. (Assem. Floor analysis of Assem. Bill No. AB 2318 (2016-2017 Reg. Sess) August 30, 2016.)

You seek assistance as to the League's committee registration and reporting requirements in light of existing law and this recently enacted legislation.

### ANALYSIS

A "publicly funded nonprofit organization" is defined as "a nonprofit organization for which public resources from one or more local agencies account for more than 20 percent of the nonprofit organization's annual gross revenue in the current fiscal year or either of the previous two fiscal years." (Section 54964.5(b)(4).) Section 84222.5 provides that a "publicly funded nonprofit organization" qualifies as a recipient committee within the meaning of Section 82013(a) if any of the following occurs:

"(1) It makes contributions or expenditures totaling fifty thousand dollars (\$50,000) or more related to statewide candidates or ballot measures or makes contributions or expenditures totaling two thousand five hundred dollars (\$2,500) or more related to local candidates or ballot measures, either directly or through the control of another entity, during the prior quarter.

"(2) By January 31 of each odd-numbered year, it makes contributions or expenditures totaling one hundred thousand dollars (\$100,000) or more related to statewide candidates or ballot measures or makes contributions or expenditures totaling ten thousand dollars (\$10,000) or more related to local candidates or ballot measures, either directly or through the control of another entity, during the previous two years."

(Section 84222.5(b).)

It further provides that a publicly funded nonprofit organization qualifying as a recipient committee must comply with the registration and reporting requirements set forth in Section 84222. (Section 84222.5(c).)

#### *Registration Requirements*

As you have noted, Section 84222(c) provides five additional criteria for when a multipurpose organization ("MPO") qualifies as a recipient committee and must register as a recipient committee.<sup>4</sup> One of these five criteria provides that a multipurpose organization that

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<sup>4</sup> The Act defines a "multipurpose organization" as "an organization described in Sections 501(c)(3) to 501(c)(10), inclusive, of the Internal Revenue Code and that is exempt from taxation under Section 501(a) of the Internal Revenue Code, a federal or out-of-state political organization, a trade association, a professional association, a civic organization, a religious organization, a fraternal society, an educational institution, or any other association or group of persons acting in concert, that is operating for purposes other than making contributions or expenditures. "Multipurpose organization" does not include a business entity, an individual, or a federal candidate's authorized committee, as defined in Section 431 of Title 2 of the United States Code, that is registered and filing reports pursuant to the Federal Election Campaign Act of 1971 (Public Law 92-225).

makes contributions or expenditures totaling more than \$50,000 in a period of 12 months or more than \$100,000 in a period of four consecutive calendar years, qualifies as a recipient committee. For multipurpose organizations that qualify under this particular criteria, there is an exception that provides that an MPO “shall not qualify as a committee within the meaning of subdivision (a) of Section 82013... if the [MPO] makes contributions or expenditures using only available nondonor funds.”<sup>5</sup> (See Section 84222(c)(5)(A).) However, this exception applies only to qualification under Section 84222 and there is no similar exception provided in Section 84222.5. Moreover, any such exception would appear to run counter to the Legislative intent behind SB 594 and AB 2318.

When interpreting a statute, the Commission follows the same canons of statutory construction employed by the courts. *Britton et al. v. Dallas Ainnotire, Inc. et al.* (2007) 153 Cal.App.4th 127, 131-132 provides a succinct statement of these principles:

“Our primary objective in interpreting a statute is to determine and give effect to the underlying legislative intent. We begin by examining the statutory language, giving the words their usual, ordinary meanings and giving each word and phrase significance. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions... relating to the same subject matter must be harmonized to the extent possible. An interpretation that renders related provisions nugatory must be avoided; each sentence must be read not in isolation but in the light of the statutory scheme; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.” (Internal citations and quotation marks omitted.)

Prior to the passage of AB 2318 (and the subsequent amendment and enactment of Sections 54964.5 and 84222.5, respectively), state law required publicly funded nonprofit organizations meeting the criteria in former Section 54964.6(d) to disclose their campaign activity, the nature of that activity, and those receipts underlying the activity, regardless of the source of the receipts. The purpose of this disclosure was to create:

“[A] means by which the public can be assured that their tax dollars aren’t being spent on political campaigns and when these nonprofits engage in political activity, proper disclosure will tell the whole story that is otherwise obfuscated today.”

(Senate Com. on Elections and Constitutional Amendments, analysis of Senate Bill No. SB 594 (2012-2013 Reg. Sess.) September 11, 2013, p. 3.)

While AB 2318 slightly modified the previous reporting requirements, as noted above, the Legislature made the modifications to harmonize existing requirements with Section 84222 and to “maximize transparency,” not to limit the disclosures set forth in SB 594.

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<sup>5</sup> Section 84222 defines “nondonor funds” as “investment income, including capital gains, or income earned from providing goods, services, or facilities, whether related or unrelated to the [MPO’s] program, sale of assets of other receipts that are not donations.” (Id. at (B).)

Accordingly, we find that the exemption related to nondonor funds in Section 84222(c)(5)(A) does not apply to a publicly funded nonprofit organization that qualifies as a recipient committee under Section 84222.5(b). Despite the League funding its campaign expenditures solely with nondonor funds, the League must register as a recipient committee if it meets any of the qualification criteria set forth in Section 84222.5(b).

*Reporting Requirements*

Section 84222.5(c) provides that a publicly funded nonprofit organization qualifying as a recipient committee, must comply with the reporting requirements set forth in Section 84222. For purposes of disclosure, a publicly funded nonprofit organization that funds its campaign expenditures solely from nondonor funds would satisfy its reporting requirements, in terms of receipts, by disclosing increases to cash totaling the amount of the organization's campaign expenditures for the period on the Schedule I for the relevant report. If itemization is required, the organization should be disclosed as the source and the "description of receipt" should read "nondonor funds."

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

Sincerely,

Brian G. Lau  
Acting General Counsel



By: Adam E. Silver  
Counsel, Legal Division

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