



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

December 22, 2005

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Peter A. Bagatelos
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Dear Mr. Bagatelos:

The Ethics Commission received your letter dated September 15, 2005, in which you requested that the Commission provide advice regarding the application of electioneering communications provisions of the Campaign Finance Reform Ordinance, San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. ("CFRO"), to several hypothetical situations.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. S.F. Charter Section C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. *See id.* Informal advice does not provide similar protection. *See id.*

Because you seek general advice regarding the application of CFRO to hypothetical situations, the Commission is treating your inquiry as a request for informal advice.

Issues Presented

In your letter, you set forth hypothetical situations in which an organization spends \$1,000 to send out a letter in the last 90 days before an election to urge members of the public to contact the Board of Supervisors about proposed legislation. Supervisor Smith, a member of the Board of Supervisors, is a candidate on the ballot.

In the first hypothetical, the organization informs the public that Supervisor Smith likes parks and asks them to tell the Supervisor that they favor parks. You believe that this communication should be deemed an electioneering communication because it could be seen as creating a favorable impression of Supervisor Smith and might influence voters to vote for Supervisor Smith.

In the second hypothetical, the organization asks the public to contact Supervisor Smith to let her know of their support for a proposed ordinance to create more parks. You

believe that this communication “contains no slant whatsoever for or against Supervisor Smith” and thus should not be deemed an electioneering communication.

In the third hypothetical, the organization asks the public to contact “your Supervisors” to indicate support for a proposed ordinance to create more parks. The communication does not mention any Supervisor by name. You believe that this communication should not be deemed an electioneering communication because in your view it does not favor or oppose any Supervisor. You express concern that the communication might be covered because the phrase “refers to a clearly identified candidate” is broadly defined.

Discussion

An electioneering communication is: (1) a communication; (2) that refers to a clearly identified candidate for City elective office or a City elective officer who is the subject of a recall election; (3) is distributed within 90 days prior to an election for the City elective office sought by the candidate or a recall election regarding the City elective officer; (4) to 500 or more individuals who are registered to vote or eligible to register to vote in the election or recall election. San Francisco Campaign and Governmental Conduct (“C&GC”) Code § 1.161.5(c)(3). Under the hypothetical situations you presented, the first, third and fourth requirements are met in all three scenarios.¹ The remaining question is whether the communication “refers to a clearly identified candidate for City elective office” in each case.

The phrase “refers to a clearly identified candidate for City elective office or a City elective officer who is the subject of a recall election” means any communication that contains the candidate’s or officer’s name, nickname or image or makes any other unambiguous reference to the candidate or officer such as “your Supervisor” or “the incumbent.” C&GC Code § 1.161.5(c)(6).

In your first hypothetical, the communication informs the public that Supervisor Smith likes parks and urges them to contact Supervisor Smith to indicate that they also like parks. Here, the communication clearly refers to Supervisor Smith by name. Thus, the second requirement is met; and the communication is an electioneering communication.

In your second hypothetical, the organization asks the public to contact Supervisor Smith to let her know of their support for a proposed ordinance to create more parks. The communication does not inform the public that Supervisor Smith likes parks. The communication contains the name of a candidate who will appear on the ballot within the next 90 days. Accordingly, the second requirement is also met in this hypothetical; and the communication is an electioneering communication.

In the third hypothetical, the organization asks the public to contact “your Supervisors” to indicate support for a proposed ordinance to create more parks. The communication does not

¹ The hypotheticals you presented state that the communications in question are letters sent to the “public.” For the purposes of this advice letter, we assume the term “public” includes 500 individuals who are registered to vote or eligible to register to vote in the hypothetical upcoming election where Supervisor Smith will appear on the ballot.

mention any Supervisor by name or otherwise appear to refer to any specific supervisor. This communication is not an electioneering communication because it does not "refer to a clearly identified candidate." The communication, by asking members of the public to contact "your supervisors," does not contain a candidate's name, nickname or image. Nor, by using the phrase "your supervisors," does the communication make an unambiguous reference to the candidate, Supervisor Smith. In other words, the use of the term "your supervisors" is generic. The phrase could mean any of the eleven members of the Board of Supervisors, some of whom may not be candidates for elective office at the upcoming election. Accordingly, the second requirement is not met in this hypothetical, and the communication is not an electioneering communication.

Please keep in mind that this is informal advice and does not provide the requestor immunity from enforcement action. In addition, please note that each communication will be evaluated on an individual basis to determine whether it is an electioneering communication.

Finally, as you may know, Supervisor Mirkarimi has introduced legislation to amend the electioneering communications provisions of CFRO, and I am enclosing a copy of the proposed legislation for your review. The Commission will conduct a hearing on this legislation on January 23, 2006 at 5:30 p.m. in Room 400 City Hall. We welcome your comments and would be pleased to have you testify about your concerns.

In the meantime, I hope you find this information helpful. If you have questions, please do not hesitate to contact me.

Sincerely,

John St. Croix
Executive Director