



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

October 11, 2005

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Vigo G. Nielsen, Jr.
Christopher Skinnell
Nielsen, Merksamer, Parrinello,
Mueller & Naylor, LLP
591 Redwood Highway # 4000
Mill Valley, California 94941-3039

Dear Mr. Nielsen and Mr. Skinnell:

The Ethics Commission received your letter, dated September 26, 2005, in which you requested that the Commission: (1) exempt state major donors from local filing requirements under section 1.135 and its implementing regulations; (2) provide written assurance to the public that the Commission will not enforce any filing requirements imposed by these provisions against major donors who were unaware of the requirement; and (3) confirm that any penalties applied for violation of these filing requirements apply only to contributions to San Francisco candidate committees and not to non-San Francisco contributions disclosed on these filings.

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 for the public regarding the local filing requirements that apply to major donors, the Commission is treating your inquiry as a request for informal advice.

Questions

Your letter presents the following questions:

1. Whether local pre-election filing requirements under Campaign and Governmental Conduct Code section 1.135 and regulation 1.135-1 apply to state major donors;
2. Whether the Commission will enforce these filing requirements against major donors who were unaware of the requirements; and

3. Whether any penalties that would be applicable to violation of these filing requirements would apply only to contributions to San Francisco candidate committees and not to non-San Francisco contributions disclosed on these filings.

Summary of Advice

Section 1.135 and its implementing regulation apply to state major donors. The Commission is currently in the process of revising the Campaign Finance Reform Ordinance, including section 1.135. In any enforcement matter, the Commission takes into account the particular circumstances, including such circumstances as lack of notice and the harm to San Francisco voters.

Discussion

With respect to your first question, section 1.135 of the San Francisco Campaign and Governmental Conduct Code ("C&GC Code"), which was originally adopted by the voters in 2000, provides that "any committee that makes contributions or independent expenditures totaling \$500 or more in a calendar month during the six months immediately preceding an election, to support or oppose a candidate for City elective office at that election, shall disclose, prior to the date of the election, all contributions and loans received and all expenditures made." The C&GC Code incorporates the definition of committee that appears in the Political Reform Act, Government Code section 82013. *See* C&GC Code § 1.104(d). The definition of committee includes a person or combination of persons that make contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees. Gov't Code § 82013(c). These committees are known as major donor committees. Thus, by its plain terms, section 1.135 applies to major donor committees.

Nevertheless, to address confusion that existed related to the meaning of this provision, the Ethics Commission adopted a regulation to implement section 1.135. Ethics Commission regulation 1.135-1, which took effect this year, implements section 1.135 by requiring "all committees, including recipient, major-donor and independent expenditure committees, regardless of whether such committees are active only in San Francisco or in jurisdictions other than San Francisco, that make contributions or independent expenditures totaling \$500 or more in a calendar month during the six months immediately preceding an election to support or oppose a candidate for City elective office at that election, to file pre-election campaign disclosure reports with the Ethics Commission."

The Ethics Commission is currently undertaking a comprehensive review of the Campaign Finance Reform Ordinance, including section 1.135. Throughout the past six months, the Commission has held a number of interested persons meetings to obtain input from the public and established a schedule for consideration of possible amendments. The second discussion of section 1.135 is scheduled for the Commission's next regular meeting, which will be held on October 17, 2005. You may wish to provide input to the Ethics Commission at that time.

With respect to your second and third questions, when considering whether to bring an enforcement action under the CFRO and what an appropriate penalty would be, the Commission

always takes into account the particular circumstances involved. Such factors as lack of notice and the extent of harm to San Francisco voters caused by the violation would necessarily be taken into account in any particular case.

Conclusion

For the reasons explained above, section 1.135 and its implementing regulations apply to state major donors. The circumstances of any individual filer are always taken into account in any enforcement matter.

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

Sincerely,

John St. Croix
Executive Director

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