



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

May 17, 2011

Enrique Pearce
Left Coast Communications
3 Embarcadero Center, Suite 420
San Francisco, California 94111

Dear Mr. Pearce:

You write to ask that the Ethics Commission confirm its oral advice to you via phone on April 27, 2011. The Ethics Commission provides two kinds of advice: written formal opinions or informal advice. *See* S.F. Charter § 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. *Id.* Informal advice does not provide similar protection. *Id.*

Because your request seeks advice regarding hypothetical facts and does not describe a specific situation involving your responsibilities or those of your clients, the Commission is treating your question as a request for informal advice.

In your letter, you state:

If a campaign consultant is to work on a general purpose committee created for persuading a particular candidate to run for elective office, would it be legal for the same consultant to be hired by the candidate if he/she subsequently decides to enter the race. For purposes of your opinion, please assume that the general purpose committee established to persuade a candidate to run, will accept and expend contributions.

Because this hypothetical is quite different from the hypothetical facts you presented during your original telephone conversation with staff, the Commission cannot “confirm” its oral advice to you. In a telephone conversation with you subsequent to receiving the letter, you reiterated that no committee has yet been formed to persuade the individual to become a candidate. As we discussed, your hypothetical question is: if a campaign consultant who works for the to-be-established committee performing campaign consulting services for the committee, i.e., participating in campaign management or developing or participating in the development of campaign strategy, may that campaign consultant do the same for Candidate A when and if Candidate A decides to become a candidate for City elective office? In general, under the Campaign Consultant Ordinance, there is no apparent bar against a campaign consultant from providing such services.

However, we also discussed section 1.115 of the Campaign and Governmental Conduct Code, which bars coordination among committees. Section 1.115 provides the following:

SEC. 1.115. COORDINATION OF EXPENDITURES.

(a) GENERAL.

An expenditure is not considered independent and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit the expenditure is made, if the expenditure funds a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate and is made under the following circumstance:

(1) the expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, the candidate on whose behalf, or for whose benefit, the expenditure is made; or

(2) the communication funded by the expenditure is created, produced or disseminated:

(A) after the candidate has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication; or

(B) after discussion between the creator, producer or distributor of a communication, or the person paying for that communication, and the candidate or committee regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is agreement on any of these topics.

(b) REBUTTABLE PRESUMPTION OF COORDINATION.

In addition to subsection (a) of this section, there shall be a presumption that an expenditure funding a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate is not independent of the candidate on whose behalf or for whose benefit the expenditure is made, when:

(1) it is based on information about the candidate or committee's campaign needs or plans provided to the spender by the candidate;

(2) it is made by or through any agent of the candidate in the course of the agent's involvement in the current campaign;

(3) the spender retains the services of a person, including a campaign consultant, who provides, or has provided, the candidate with professional services related to campaign or fundraising strategy for that same election;

(4) the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate; or

(5) in the same election that the expenditure is made, the spender or spender's agent is serving or served in an executive or policymaking role for the candidate's campaign or participated in strategy or policy making discussions with the candidate's campaign relating to the candidate's pursuit of election to office and the candidate is pursuing the same office as a candidate whose nomination or election the expenditure is intended to influence.

(c) EXCEPTIONS.

Notwithstanding the foregoing, an expenditure shall not be considered a contribution to a candidate merely because:

(1) the spender interviews a candidate on issues affecting the spender;

(2) the spender has obtained a photograph, biography, position paper, press release, or similar material from the candidate;

(3) the spender has previously made a contribution to the candidate;

(4) the spender makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditures;

(5) the spender has invited the candidate or committee to make an appearance before the spender's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditure;

(6) the spender informs a candidate that the spender has made an expenditure provided that there is no other exchange of information not otherwise available to the public, relating to the details of the expenditure; or

(7) the expenditure is made at the request or suggestion of the candidate for the benefit of another candidate or committee.

(d) DEFINITION.

For purposes of this section, the terms "candidate" includes an agent of the candidate when the agent is acting within the course and scope of the agency.

We both agreed that section 1.115 could apply in this situation, such that expenditures made by the committee might be considered coordinated expenditures, depending on the facts. I hope this has been helpful to you. Please let me know if you have questions.

Sincerely,

John St. Croix
Executive Director

By: Mabel Ng
Deputy Executive Director

S:\ADVICE\campaign consultant\11-0429 Pearce\letter to Pearce 5.2011.doc