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Via E-mail & U.S. Mail

July 7, 2015

Jonathan Mintzer
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

RE: Request for Advice

Dear Mr. Mintzer:

You requested written advice regarding “the City’s ‘Campaign Consultant’ registration and reporting requirements,” which are mandated by San Francisco Campaign and Governmental Conduct Code § 1.500 et seq., also known as the Campaign Consultant Ordinance.

The Ethics Commission provides two kinds of advice: written formal opinions or informal advice. *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.

Questions

You asked the Commission to consider the following question:

1. Will an individual or entity qualify as a “campaign consultant” under section 1.505(a) if he or she is paid \$1,000 in a calendar year for campaign consulting services by a committee primarily formed to support or oppose a San Francisco candidate?
2. Will an individual or entity qualify as a “campaign consultant” under section 1.505(a) if he or she is paid \$1,000 in a calendar year for campaign consulting services by a general purpose committee that makes independent expenditures (“IEs”) for or against one or more San Francisco candidates?

Short Answers

1. Yes.
2. Yes.

Discussion

Under the City's Campaign Consultant Ordinance (the "Ordinance"), "campaign consultants" are defined as persons or entities that receive or are promised economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services, subject to certain specified exemptions. "Campaign consultant services" means "participating in campaign management or developing or participating in the development of campaign strategy." (*See* Ordinance § 1.505(a), (b).)

"Campaign management" is defined as "conducting, coordinating or supervising a campaign to elect, defeat, retain or recall a candidate, or adopt or defeat a measure, including but not limited to hiring or authorizing the hiring of campaign staff and consultants, spending or authorizing the expenditure of campaign funds, directing, supervising or conducting the solicitation of contributions to the campaign, and selecting or recommending vendors or subvendors of goods or services for the campaign." (*See* Ordinance § 1.505(c).)

"Campaign strategy" is defined as "plans for the election, defeat, retention or recall of a candidate, or for the adoption or defeat of a measure, including but not limited to producing or authorizing the production of campaign literature and print and broadcast advertising, seeking endorsements of organizations or individuals, seeking financing, or advising on public policy positions." (*See* Ordinance § 1.505(d).)

Nothing in the plain language of Section 1.505 limits campaign consultant services to those performed by a person or entity hired by a candidate or ballot measure committee. Instead, Section 1.505 simply indicates that these services are performed in regards to campaigns or plans to elect, defeat, retain or recall a candidate, or adopt or defeat a measure. Primarily formed IE committees and general purpose committees may of course undertake such campaigns and plans, and their consultants may engage the types of activities included in the non-exclusive list of examples listed in the definitions of "campaign management" and "campaign strategy." If these consultants do so in exchange for \$1,000 in compensation in a calendar year, then they are subject to the Ordinance's registration and reporting requirements.

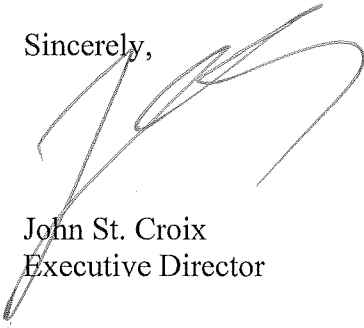
Moreover, in the years since the Ordinance was enacted, the Commission has consistently provided advice following this plain language interpretation. The Commission has previously provided written advice that "[a] person need not work for a local candidate or ballot measure committee to qualify as a campaign consultant under the Ordinance." (*See* SFEC Advice Letter to James R. Sutton (8/16/99).) The advice letter stated that whether a person qualifies as a "campaign consultant" depends on the nature and quantity of the services provided to clients, rather than the identity of the clients, and that a person would qualify as a campaign consultant

“even if the [campaign consulting] services are provided to corporations, nonprofit organizations and general purpose political committees.” In addition to past informal written advice, the Commission has repeatedly provided this advice over the telephone to members of the public and regulated community.

In short, section 1.505 of the Ordinance does not apply only to “individuals [or entities] hired by actual candidate or ballot measure campaigns.” Such an interpretation of the Ordinance would not further its purpose of “assist[ing] the public in making informed decisions and [protecting] confidence in the electoral and governmental processes.” (*See* Ordinance § 1.500(b).) Instead, a person will qualify as a campaign consultant if he or she earns \$1,000 or more in a calendar year to perform campaign consulting services, if those services are provided to a primarily formed committee a general purpose committee, or any other type of committee.

I hope you find this letter responsive to your inquiry. Please call me at (415) 252-3100 if you have questions or require additional advice.

Sincerely,

A handwritten signature in black ink, appearing to read "John St. Croix", written over the word "Sincerely,".

John St. Croix
Executive Director

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