

**CITY AND COUNTY OF SAN FRANCISCO
ETHICS COMMISSION**

**CANDIDATE COMMITTEE 2018 ELECTION
ASSESSMENT REPORT:**

Tony Kelly for District 10 Supervisor 2018

September 14, 2017 through December 31, 2018



Certified
Public
Accountants



Tony Kelly Committee 2018 Election Assessment Report

Executive Director, Ethics Commission
City and County of San Francisco

Macias Gini & O'Connell LLP (MGO) presents its report concerning the assessment of the Tony Kelly for District 10 Supervisor Committee (Candidate Committee, or Committee) for the period September 14, 2017 through December 31, 2018 as follows:

Background

The Committee was formed on September 14, 2017, to support the election of Tony Kelly to the City and County of San Francisco (City) Board of Supervisors, to represent District 10, in the general election of November 6, 2018. During the period covered by the assessment, the Committee's Treasurer was Audrey Cortes.

MGO was engaged to assess candidate committees per the City's Campaign Finance Reform Ordinance, Section 1.150(a), which requires the Ethics Commission to audit all candidate committees that have received public financing.

Objectives and Scope

The objectives of this assessment were to reasonably conclude whether the Committee:

- Accurately reported all campaign contributions and expenditures, as required by City campaign finance law;
- Supported all contributions and expenditures with sufficient documentation, as required by City campaign finance laws;
- Accepted only contributions that comply with State and City campaign finance laws;
- Made only expenditures that comply with State and City campaign finance laws; and
- Complied with applicable campaign disclosure and disclaimer requirements and timeframes required by applicable laws and regulations.

The scope of our assessment included contributions and expenditures the Committee reported from September 14, 2017 through December 31, 2018.¹ The assessment included determining whether funds remaining in the Campaign Contribution Trust Account on December 6, 2018, were subsequently remitted to the Ethics Commission, as City campaign finance law requires.²

¹ Although the assessment period ended December 31, 2018, we reviewed documentation that supported contributions and expenditures after this date to ensure compliance with campaign finance laws during the reporting period.

² December 6, 2018 is 30 days after the date of the election. Section 1.148(c) of the City's Campaign Finance Reform Ordinance states, "Any candidate who received public financing and whose committee has unexpended public funds shall pay to the City and County of San Francisco and deliver to the Ethics Commission those funds for deposit in the Election Campaign Fund no later than 30 days after the Ethics Commission completes its audit of the candidate's committee." The City's Campaign Finance Reform Ordinance defines unexpended public funds as, "... all funds remaining in the candidate committee's account on the 30th day after the candidate controlling committee is either elected or not elected to office regardless of the source of the funds, but shall not exceed the amount of public funds provided to the candidate."

Methodology

To meet the objectives of this assessment, MGO tested and reconciled contributions listed on the Form 460s³ to deposits listed on the bank statements and vouched them to the Committee's verified records. MGO also reconciled expenditures listed on the Form 460s to the bank statements and vouched to the Committee's verified records. MGO performed other tests to determine whether the Committee complied with State and City campaign finance laws. MGO performed the following procedures: reviewed the Form 460s the Committee filed and the supporting documentation, conducted non-statistical testing of a random selection of contributions and expenditures to confirm that proper documentation was obtained, and reviewed mailings and other advertisements that were listed on the Form 161s⁴ for compliance with City campaign finance laws.

MGO conducted this assessment in accordance with the statements on standards for consulting services as issued by the American Institute of Certified Public Accountants (AICPA) and the terms of our contract agreement. Those standards require that MGO plan and perform the engagement to obtain sufficient, appropriate data to provide a reasonable basis for our conclusions based on our objectives. MGO believes that the data obtained provides a reasonable basis for our conclusions based on our assessment objectives.

Assessment Results

For the assessment period from September 14, 2017 through December 31, 2018, the Committee submitted a total of five Form 460s in which the Committee initially reported receiving \$107,844.72 in monetary contributions, and \$142,553.00 in public funds – for a total of \$250,397.72 – and expended \$235,788.11. However, during MGO's review of the documentation provided by the Committee, it was determined that during four of the five reporting periods, both contributions and expenditures were under-reported and the public funds received by the Committee were over-reported during the final reporting period. Based on MGO's observations, the Committee submitted amended Form 460s. The Committee's amended forms revised the amounts received in monetary contributions to \$109,588.42 and \$135,925.35 in public funds – for a total of \$245,513.77 – and revised the amounts reported for expenditures for a total of \$249,314.77.⁵ The Committee owes no unexpended funds to the City. MGO found that the Committee, in general:

- Did not accurately and completely report campaign contributions, as noted in observation 2019-01 below.
- Did not accurately and completely report campaign expenditures, as noted in observation 2019-02 below.
- Supported reported contributions with sufficient documentation. However, MGO identified 14 expenditures that totaled \$2,471.14 in which the Committee did not provide supporting documentation, as noted in observation 2019-03 below.
- Accepted only contributions that complied with State and City campaign finance laws.
- Only made expenditures that complied with State and City campaign finance laws.
- Complied with applicable campaign disclosure and disclaimer requirements and timeframes.

³ California Form 460 – Recipient Committee Campaign Statement.

⁴ San Francisco Ethics Commission Form 161 – Itemized Disclosure Statement for Mass Mailings.

⁵ In addition to monetary contributions, the Committee reported that it received \$3,300 in miscellaneous increases to cash - that was a refund of a security deposit - which was not identified as a contribution on the Form 460. With the addition of the \$3,300, the Committee had a cash balance of negative \$501. The Committee is unsure as to why the cash balance is negative.

The exceptions are noted below:

Observation 2019-01 – The Committee did not accurately and completely report unitemized and itemized contributions on the Form 460s during four of the five reporting periods.

Based on documentation reviewed, MGO identified that the Committee under-reported contributions during four reporting periods: 1/1/18-6/30/18, 7/1/18-9/22/18, 9/23/18-10/20/18 and 10/21/18-12/31/18. See Exhibit 1 below for the contributions that were under-reported during the four reporting periods. In total, MGO identified that the Committee under-reported contributions by \$1,743.70 (approximately two percent of the total campaign contributions).

Exhibit 1		Under-Reported Contributions		
Reporting Period	Contributions Reported by Committee	Contributions Calculated by MGO	Under-Reported Amount	
1/1 - 6/30/18	\$ 20,476.00	\$ 20,646.00	\$ 170.00	
7/1 - 9/22/18	12,335.72	12,522.39	186.67	
9/23 - 10/20/18	10,272.00	11,591.00	1,319.00	
10/21 - 12/31/18	8,285.00	8,353.03	68.03	
Total	\$ 51,368.72	\$ 53,112.42	\$ 1,743.70	

During the reporting period of 1/1/18-6/30/18, MGO identified three discrepancies related to the reporting of contributions. MGO identified one contribution for \$125.00 that was deposited into the Committee's bank account, but was not included in the list of contributions on the Form 460. MGO identified one contribution for \$45.00 that was reported inaccurately on the Form 460 as being a \$100.00 contribution. The Committee attempted to reduce a contributor's nonmonetary contribution from the prior reporting period, but incorrectly reduced monetary contributions during the reporting period by \$100.00 instead of reducing the nonmonetary contribution amount. As a result of these three discrepancies, contributions were under-reported by \$170.00 during the reporting period of 1/1/18-6/30/18. The Committee agreed that the contributions during this reporting period were under-reported and submitted an amended Form 460 to update the contribution amount for this reporting period.

During the reporting period of 7/1/18-9/22/18, MGO identified two discrepancies related to the reporting of contributions. MGO identified one contribution for \$100.00 that was deposited into the Committee's bank account, but was not included in the list of contributions on the Form 460. MGO also identified an \$86.67 variance when comparing MGO's unitemized⁶ contribution amount, \$2,952.39, to the Committee's reported unitemized contribution amount, \$2,865.72. As a result of these two discrepancies, contributions were under-reported by \$186.67 during the reporting period of 7/1/18-9/22/18. The Committee agreed that the contributions during this reporting period were under-reported and submitted an amended Form 460 to update the contribution amount for this reporting period.

During the reporting period of 9/23/18-10/20/18, MGO identified two discrepancies related to the reporting of contributions. MGO identified six contributors that made contributions totaling \$1,190.00 that were deposited into the Committee's bank account, but were not included in the list of contributions on the Form 460. MGO also identified a \$129.00 variance when comparing MGO's unitemized contribution amount, \$1,564.00, to the Committee's reported unitemized amount, \$1,435.00. As a result of these two discrepancies, contributions were under-reported by \$1,319.00 during the reporting period of 9/23/18-

⁶ A contribution may be recorded as an unitemized contribution if the contributor has contributed less than \$100 during the election period.

10/20/18. The Committee agreed that the contributions during this reporting period were under-reported and submitted an amended Form 460 to update the contribution amount for this reporting period.

During the reporting period of 10/21/18-12/31/18, MGO identified one discrepancy related to the reporting of contributions. MGO identified one contribution for \$68.03 that was deposited into the Committee’s bank account, but was not included in the list of contributions on the Form 460. The Committee agreed that the contributions during this reporting period were under-reported and submitted an amended Form 460 to update the contribution amount for this reporting period.

According to the California Government Code, Section 84211(a), “Each campaign statement required by this article shall contain all of the following: The total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received.”

Observation 2019-02 – The Committee did not accurately and completely report unitemized and itemized expenditures on the Form 460s during four of the five reporting periods.

Based on documentation reviewed, MGO identified that the Committee under-reported expenditures during four reporting periods: 1/1/18-6/30/18, 7/1/18-9/22/18, 9/23/18-10/20/18 and 10/21/18-12/31/18. See Exhibit 2 below for the expenditures that were under-reported during the four reporting periods. In total, MGO identified that the Committee under-reported expenditures by \$13,526.66 (approximately six percent of the total campaign expenditures).

Exhibit 2		Under-Reported Expenditures		
Reporting Period	Expenditures Reported by Committee	Expenditures Calculated by MGO	Under-Reported Amount	
1/1 - 6/30/18	\$ 6,560.61	\$ 9,140.21	\$ 2,579.60	
7/1 - 9/22/18	104,139.36	107,807.95	3,668.59	
9/23 - 10/20/18	60,567.41	66,356.97	5,789.56	
10/21 - 12/31/18	60,846.53	62,335.44	1,488.91	
Total	\$ 232,113.91	\$ 245,640.57	\$ 13,526.66	

During the reporting period of 1/1/18-6/30/18, MGO identified one discrepancy related to the reporting of expenditures. MGO identified three expenditures that totaled \$2,579.60 that were recorded on the Committee’s bank statements, but were not included in the list of expenditures on the Form 460. The Committee agreed that the expenditures during this reporting period were under-reported and submitted an amended Form 460 to update the expenditure amount for this reporting period.

During the reporting period of 7/1/18-9/22/18, MGO identified three discrepancies related to the reporting of expenditures. MGO identified seven expenditures that totaled \$5,249.39 that were recorded on the Committee’s bank statements, but were not included in the list of expenditures on the Form 460. MGO identified one expenditure for \$1,581.90 that was reported on the Form 460, but was not reflected on the Committee’s bank statements. The Committee said this was not an expenditure and was incorrectly recorded on the Form 460 as an expenditure. MGO also identified a \$1.10 variance when comparing MGO’s unitemized⁷ expenditure amount, \$445.85, to the Committee’s reported unitemized amount, \$444.75. As a result of these three discrepancies, expenditures were under-reported by \$3,668.59 during the reporting period of 7/1/18-9/22/18. The Committee agreed that the expenditures during this reporting period were under-reported and submitted an amended Form 460 to update the expenditure amount for this reporting period.

⁷ An expenditure may be recorded as an unitemized expenditure if the Committee has incurred less than \$100 in charges to the same vendor during the election period.

During the reporting period of 9/23/18-10/20/18, MGO identified two discrepancies related to the reporting of expenditures. MGO identified seven expenditures that totaled \$7,935.23 that were recorded on the Committee's bank statements, but were not included in the list of expenditures on the Form 460. MGO identified two sets of expenditure transactions that were duplicated on the Form 460 that resulted in expenditures being overstated by \$2,145.67. As a result of these two discrepancies, expenditures were under-reported by \$5,789.56 during the reporting period of 9/23/18-10/20/18. The Committee agreed that the expenditures during this reporting period were under-reported and submitted an amended Form 460 to update the expenditure amount for this reporting period.

During the reporting period of 10/21/18-12/31/18, MGO identified three discrepancies related to the reporting of expenditures. MGO identified six expenditures that totaled \$1,959.28 that were recorded on the Committee's bank statements, but were not included in the list of expenditures on the Form 460. MGO identified two expenditures that were over-reported by \$482.37 on the Form 460. MGO also identified a \$12.00 variance when comparing MGO's unitemized expenditure amount, \$47.00, to the Committee's reported unitemized amount, \$35.00. As a result of these three discrepancies, expenditures were under-reported by \$1,488.91 during the reporting period of 10/21/18-12/31/18. The Committee agreed that the expenditures during this reporting period were under-reported and submitted an amended Form 460 to update the expenditure amount for this reporting period.

According to the California Government Code, Section 84211(i), "Each campaign statement required by this article shall contain all of the following: The total amount of expenditures made during the period covered by the campaign statement to persons who have received one hundred dollars (\$100) or more."

Observation 2019-03 – Out of over 300 expenditures, the Committee did not provide supporting documentation for 14 expenditure transactions that totaled \$2,471.14.

Our assessment included reviewing supporting documentation for 100% of all expenditures incurred by the Committee and determining whether the expenditures were appropriately recorded. Out of 306 expenditure transactions, MGO identified 14 expenditures (approximately five percent of the total number of expenditure transactions) that totaled \$2,471.14 (approximately one percent of the total campaign expenditures), for which the Committee failed to maintain appropriate documentation. The expenditures for which there was a lack of supporting documentation were made over four reporting periods: 7/1/17-12/31/17; 7/1/18-9/22/18; 9/23/18-10/20/18; and 10/21/18-12/31/18. See Exhibit 3 below for the number and amount of expenditures within each reporting period that lacked supporting documentation. The Committee was unable to provide the invoices or receipts for the expenditures summarized below.

Exhibit 3		Expenditures Reported Without Supporting Documentation	
Reporting Period	Number of Expenditures	Amount	
7/1 - 12/31/17	1	\$	18.52
7/1 - 9/22/18	9		1,003.02
9/23 - 10/20/18	1		67.96
10/21 - 12/31/18	3		1,381.64
Total	14	\$	2,471.14

According to the City's Campaign Finance Reform Ordinance, Section 1.109(a), "All candidates and committees that are required to file statements prescribed by this Chapter shall maintain detailed accounts, records, bills, and receipts as necessary to prepare those statements. Each candidate or committee shall retain for a period of four years detailed information and original source documentation supporting those statements."

Conclusion

The observations identified in this report will be reviewed further by the Ethics Commission's Enforcement Division, who will determine whether or not any further action is warranted based on the degree to which the Committee substantially complied with State and City campaign finance laws as outlined in the objectives and scope section of this report.

The Committee was provided a copy of this report and an opportunity to respond. The Committee's response is attached to this report.

This report is intended for the information and use of the Ethics Commission and the Committee. The report will be posted to the Ethics Commission website for the purpose of informing the public of the Committee's compliance with State and City campaign finance laws.

Macias Gini E' O'Connell LAP

Walnut Creek, California
May 14, 2020

Tony Kelly for Supervisor
250 Connecticut Street #6
San Francisco CA 94107

May 14, 2020

Executive Director, Ethics Commission
City and County of San Francisco

The Tony Kelly for Supervisor campaign thanks the Ethics Commission and Macias Gini & O'Connell LLP (MGO) for their thorough and respectful work auditing the Tony Kelly for District 10 Supervisor Committee for the period September 14, 2017 through December 31, 2018.

As a relatively small campaign with an all-volunteer financial & reporting team, we strove to comply with City and state campaign finance laws and requirements to the best of our abilities. MGO's auditors were very helpful in their review and we were gratified to find appropriate resolutions to nearly all of the issues raised; we have amended our Form 460 filings to incorporate the results of the audit.

In reviewing MGO's Assessment Report, it should be clear that our errors and discrepancies were promptly acknowledged and not intended to hide any transactions from campaign finance oversight.

- All contributions were deposited into the campaign's bank account, with a limited number of errors (8) attributable to our recording of the transactions in NetFile. These transactions amounted to two percent of our campaign contributions.
- All expenditures were paid from the campaign's bank account, with a limited number of errors (24) attributable to our recording of the transactions in NetFile, and a few duplicate entries in NetFile. These transactions amounted to six percent of our campaign expenditures.
- We are lacking documentation for 14 transactions (five percent of expenditure transactions), totaling one percent of campaign expenditures. We regret that lack of documentation, but wish to note that 10 of those 14 transactions are campaign debit-card expenditures for online transactions (for printer cartridges via Amazon, online advertising, and a news subscription), and in modern times it is sometimes difficult to get hard-copy documentation for these kinds of online transactions beyond the bank statements. We suspect we are not the only campaign that has struggled with this issue, and future campaigns may need some guidance about how to properly document these transactions for audit purposes.

We are more than happy to discuss in detail any particular error or discrepancy, upon request.

We believe we have substantially complied with all applicable campaign finance laws, to the best of our abilities, and look forward to the Ethics Commission's consideration of the Assessment Report.

Thank you for your consideration.

A handwritten signature in black ink that reads "Tony Kelly". The signature is written in a cursive, flowing style.

Tony Kelly