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VIA ELECTRONIC MAIL

April 8, 2008

San Francisco Ethics Commissioners
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Interpretation of C&GC Code §1.118

Dear Chairperson Studley and Commissioners:

I write to you to request that the Commission issue an informal opinion that Campaign and Governmental Conduct Code ("C&GC Code") section 1.118 attaches personal liability on candidates for accrued expenses—regardless of their participation in the public-financing program.

This request is more than an academic exercise; it is based upon an actual situation implicating a vendor and a candidate.

Here are the pertinent facts: I work for Left Coast Communications ("LCC")—a campaign consulting firm in San Francisco. During the November 2008 election cycle, we provided services to a candidate who ran for supervisor and participated in the pubic-financing program. During the course of the campaign, the candidate contributed $5,000.00 to his campaign which is the maximum he is permitted to contribute under rules of the public financing program. Some of LCC's services have been paid for, but there remains a sizeable outstanding balance for services provided.

Now, the candidate claims he is unable to fundraise to pay for the accrued expenses. He also claims that he is prohibited from personally paying for these accrued expenses because he has already reached the limit he may personally contribute to his campaign.

However, pursuant to C&GC Code §1.118, there is a requirement that candidates pay for accrued expenses. To my knowledge, the Ethics Commission has consistently interpreted this section to impute personal liability upon the candidate him or herself.

Based upon Section 1.118's language and this precedence, I wrote to Director St. Croix on February 17, 2009 to seek clarification that a candidate is indeed individually liable for the debts incurred by his or her campaign. To my dismay, Director St. Croix rendered an informal opinion concluding that Section 1.118 *does not* provide for a candidate's personal liability on accrued expenses; rather it is the candidate's committee that bears this liability.

This tortured interpretation of Section 1.118 is flawed for three primary reasons. First, it completely disregards explicit language defining the term "candidate" in a way that distorts the legislative intent of Section 1.118. Second, the interpretation contravenes previous advice given by the Commission regarding a candidate's personal liability for accrued expenses. Finally, it misapplies rules of statutory construction in a way that misconstrues the law.

1. For purposes of Section 1.118, "candidate" is defined as an individual who seeks elective office in San Francisco.

Section 1.118 provides that, "[a] candidate who accepts goods or services on credit shall pay for such accrued expenses in full no later than 180 calendar days after receipt of a bill or invoice".

To determine whether or not an individual candidate is liable for accrued expenses under Section 1.118, it is necessary to understand what is meant by the term "candidate". Fortunately, the term "candidate" is strictly defined in Section 1.104(a) of the C&GC Code. Section 1.104(a) sets forth the following definition:

> "Candidate" shall mean any individual listed on the ballot for election to any City elective office or who otherwise has taken affirmative action to seek nomination or election to such office. The term "candidate" shall also mean the candidate's campaign committee.

The term "candidate", then, explicitly applies to the individual seeking office. In addition, it applies to that individual's campaign committee. The scope of the word "candidate" includes *both* the individual *and* the committee; it cannot be construed as *either* the individual *or* the committee.

Yet this is precisely what Director St. Croix argues in his informal opinion. In his letter, Director St. Croix concedes that "[d]etermining who is liable for accrued debts under section 1.118 depends on the definition of 'candidate' in the CFRO." *See Letter by John St. Croix to Enrique Pearce dated March 23, 2009* at p.2.

But then he seemingly ignores the language of the statute by concluding that, "the term 'candidate' can mean either the individual running for office, the individual's campaign committee, or both." *Id.* at p.2.

Director St. Croix does not state a rationale for his interpretation for the definition of "candidate" under Section 1.104. Perhaps this is because this interpretation is at strict odds with the plain meaning of the statute. It summarily ignores the first sentence of the definition that declares that the "individual" is what is meant by the term "candidate".

Nowhere in Section 1.104 is there disjunctive language that would indicate that the term candidate could mean either an individual or committee. This suggestion willfully disregards the plain meaning of the statute.

If "candidate" does include the individual running for office, the issue of liability is established and no further examination is required.

2. The Ethics Commission has long advised candidates that they are personally responsible for campaign debt under local law.

The issue of who is ultimately responsible for paying for a campaign's accrued expenses is not a novel question. Campaigns routinely incur some level of debt.

I have personally advised numerous candidates running for office in San Francisco, throughout the last decade. Well before the instant issue arose, I have consulted the Ethics Commission staff on multiple occasions to inquire into this very matter. Without exception, I have *always* been advised that, ultimately, under local law, a candidate was personally liable for a campaign's accrued expenses.

This advice is not without support, as Section 1.118 clearly requires that an individual candidate assume this responsibility.

Only now has the interpretation changed. After years of giving advice that candidates themselves were personally liable for campaign debt, suddenly this is no longer the case.

In order to be effectual, the Ethics Commission must adhere to consistent advice regarding the interpretation of statutes. It is wholly unfair and unreasonable to switch the fundamental meaning of a statute in order to achieve a self-serving purpose.

3. Rules of statutory construction dictate that the Ethics Commission must effectuate the legislative intent of Section 1.118.

As the California Supreme Court has noted time and time again, the cardinal rule of statutory interpretation is to "discern the legislature's intent." *Schatz v. Allen Matkins Leck Gamble & Mallory LLP*, 45 Cal. 4th 557 (2009); *see Musaelian v. Adams*, 45 Cal. 4th 512 (2009). With this goal in mind, courts first look to the plain meaning of the words used in a statute. If the words themselves are not ambiguous, the court presumes that the legislature meant what it said, and the statute's plain meaning governs.

Here, the plain meaning of Section 1.118 is clear and unambiguous. Under any reasonable evaluation a "candidate" under Section 1.118, is personally liable to repay the accrued expenses within 180 days. The definition of "candidate" under Section 1.104 further supports that it is both the individual running for office as well as the committee that bear this responsibility.

Director St. Croix's opinion seems to skip over these rules of statutory interpretation—instead, intent on reaching a different conclusion. In his informal opinion, Director St. Croix states that, "courts generally harmonize the different provisions of a statutory scheme, if possible". *See id.* at p. 3. While this is true, courts only engage in this type of "harmonization" to effectuate the legislative intent.

Considering the definition of "candidate" in Section 1.104, it is unreasonable to argue that the legislature intended for individual candidates to escape personal liability for accrued expenses.

In addition, the Ethics Commission has a unique perspective on evaluating the legislative intent. The Ethics Commission has previously discussed and approved changes to Section 1.118 after the implementation of the public financing program[1]. In so doing, the Commission did not suggest any alternative language to make clear that Section 1.118's definition of "candidate" referred only to the campaign committee and not the candidate him or herself.

Thus, the Ethics Commission has previously played a part in the crafting of Section 1.118, and therefore is in a good position to speak to the true meaning of the statute.

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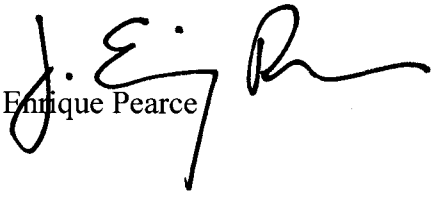
[1] On August 2, 2005, the Ethics Commission approved changes to Section 1.118 and forwarded the legislation to the Board of Supervisors.

Conclusion

Any reasonable interpretation of Section 1.118 points squarely to a conclusion that a candidate bears personal liability for accrued expenses. Left Coast Communications respectfully requests that the Commission issue an informal opinion confirming this interpretation.

Very truly yours,



Enrique Pearce