ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

March 23, 2009

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

Dear Mr. Pearce:

You asked for an informal opinion from the Ethics Commission regarding San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 1.118. The Ethics Commission provides two kinds of advice: formal and informal. *See* S.F. Charter § C3.699-12. Formal advice provides the requester with 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.* As I am providing you with informal advice, this letter does not provide you with immunity under Charter section C3.699-12.

Although this letter mentions State law, the letter provides advice only about local law, specifically the San Francisco Campaign Finance Reform Ordinance ("CFRO"). For more information about State law, you should contact the Fair Political Practices Commission ("FPPC").

Question Presented

If a publicly financed candidate already has contributed $5,000 to his own campaign committee, and the committee has accrued expenses which the campaign has no funds to pay, is the candidate personally liable to pay the debt under C&GC Code section 1.118?

Short Answer

Under C&GC Code section 1.118, the candidate's committee – not the candidate – is liable to pay the debts of the campaign. But if the committee fails to pay the debt in violation of C&GC Code section 1.118, then the candidate may be liable for penalties imposed in administrative, civil or criminal proceedings.

Facts

You state that you are a vendor who provided campaign services to a candidate who received public financing in the November 2008 election cycle. While some of your services have been paid, an outstanding balance remains. The campaign has ended, the candidate for whom you worked lost the election, and you state that the candidate's campaign committee no longer has any funds. You also state that the candidate has already contributed $5,000 of his own money to the campaign committee. Under section 1.140(a)(2)(D) of the San Francisco Campaign and Governmental Conduct Code ("C&GC Code"), the candidate cannot loan or donate any more of his own money to the campaign.

Discussion

Section 1.118 of the C&GC Code provides:

> 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 and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute.

Determining who is liable for accrued debts under section 1.118 depends on the definition of "candidate" in the CFRO. Under section 1.104 of the C&GC Code, a candidate is "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."

Thus, the term "candidate" can mean either the individual running for office, the individual's campaign committee, or both. The term is used in different ways throughout the CFRO – sometimes applying to the individual, sometimes to the committee and sometimes to both. For example, section 1.114(a) uses the term to refer to the *individual*, stating that "no person other than a candidate shall make" contributions over $500, but section 1.114(b) uses the term to refer to the *committee*, prohibiting corporations from contributing "to a candidate for City elective office." *See also* §§ 1.107(a), 1.116, 1.120(a) (using term "candidate" to refer to individual); §§ 1.108(a)(1), 1.130, 1.144 (using term "candidate" to refer to committee). At other times, the CFRO explicitly refers to both the "candidate" and the "candidate's campaign" or "committee" in the same section, suggesting in that context that the term "candidate" does not include the committee. *See, e.g.*, §§ 1.122 (referring to "intended candidate" and "committee acting on behalf of a candidate"), 1.161 (referring to "mass mailing paid for by a candidate for City elective office with funds raised for the candidate's campaign"). Therefore, the fact that section 1.118 uses the term "candidate" does not mean that the individual candidate is personally responsible for repayment of the committee's debt.

Considered in context, the term "candidate" in section 1.118 refers to the committee, not the individual, for the reasons discussed below. First, under established rules of statutory construction, courts avoid construing statutes and ordinances in ways that would lead to absurd

results. *See California Ins. Guar. Assn. v. Workers' Comp. Appeals Bd.*, 117 Cal. App. 4th 350, 362 (2004). Additionally, courts generally harmonize the different provisions of a statutory scheme if possible, giving full effect to each. *See Cacho v. Boudreau*, 40 Cal.4th 341, 352 (2007). If section 1.118 imposes individual liability on a candidate, then a candidate would be individually liable for all debts of his or her committee, even when the committee owes more than $5,000. But section 1.140(a)(2) prohibits publicly financed candidates from personally contributing or loaning their campaigns more than $5,000. Imposing personal liability on the candidate for committee debts would place the two provisions in conflict, putting candidates in the untenable position of choosing between violating section 1.118 by failing to pay a debt or violating section 1.140 by contributing more than $5,000 to his or her own committee. To avoid this conflict and harmonize our interpretation of the ordinance, section 1.118 should be read as imposing liability only on the committee.

Second, section 1.118 does not expressly provide for candidate liability. In two other sections of the CFRO, the law provides for personal liability of candidates – specifically for fines and penalties imposed on the committee. *See* C&GC Code §§ 1.160 (no limitation on candidate liability for "fines or other payments imposed pursuant to administrative or judicial proceedings"), 1.170(g) (candidates and treasurers "may be held personally liable for violations by their committees"). The fact that section 1.118 does not expressly impose personal liability on the individual candidate, when other sections in the CFRO do, implies that no such liability was intended.

Although section 1.118 does not impose personal liability on candidates, other sections of the CFRO penalize a candidate for his or her committee's failure to pay its debts promptly. For instance, if committee debt goes unpaid for 180 days, the committee commits a separate violation of the CFRO on each calendar day that an accrued expense remains partially or wholly unpaid in violation of section 1.118. *See* C&GC Code § 1.118(c). And although section 1.118 does not make the candidate personally liable to repay the committee's debt, the candidate is personally liable for penalties imposed for violations of the CFRO. *See* C&GC Code § 1.170(g). This statutory framework effectively may make some publicly financed candidates responsible for the ensuring that committee debt is repaid without allowing them to repay the debt themselves. But a candidate may avoid this situation by ensuring that the committee does not assume debts it will be unable to satisfy and by engaging in fundraising necessary to pay off any outstanding committee debts.

This interpretation of C&GC Code section 1.118 is consistent with the FPPC's interpretation of the Political Reform Act. Like the CFRO, nothing in the Political Reform Act specifically makes candidates liable for the debts of their committees, and the FPPC has declined to read such personal liability into the statute. The FPPC has suggested that other state laws concerning agency liability might require candidates to pay the debts of their committees, but neither the FPPC nor any published judicial decision in California has directly addressed and resolved that question. *See* Burns Adv. Letter, FPPC Adv. G-92-651, 1992 WL 778698 ("[T]he provisions of the Act do not address a candidate's liability for payment of debts. However, there may be other state laws which are applicable."); Larocque Adv. Letter, FPPC Adv. I-99-161, 1999 WL 551050 ("[P]ersuasive authority has held that a candidate may be personally liable for the debts of his or her committee") (citing *Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1288 (1994));

Sandoval Adv. Letter, FPPC Adv. I-06-204, 2007 WL 80889 (noting in description of Larocque Advice Letter that "official may be liable for the debts of his controlled committee").

In sum, section 1.118 does not impose personal liability on a candidate for the accrued expenses of his committee. Rather, section 1.118 requires the committee to pay its debts. Because section 1.118 requires the committee to pay for accrued expenses within 180 days of their accrual, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute, the committee should raise funds to pay off its debts expeditiously. If the committee fails to pay debts within 180 days of their accrual, the candidate may be personally liable for penalties imposed for violations of the CFRO. *See* C&GC Code § 1.170(g).

I hope you find this information helpful. Please let me know if you have additional questions.

Sincerely,

John St. Croix
Executive Director

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