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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: February 2, 2009

RE: An Informational Report From The Office Of The City Attorney Regarding Recently Adopted Regulations By The Fair Political Practices Commission

During the past several months, the Fair Political Practices Commission (FPPC) has published new regulations interpreting and implementing provisions of the California Political Reform Act (PRA). Some of these new regulations deal with issues that the Commission has addressed in past complaints and will possibly address in the future. Among the new regulations staff considers to be significant to the Commission's work are:

- **Principal officers** (Regs. 18402.1 and 18427): Requires non-candidate committees to disclose the identities of their "principal officers" -- those individuals primarily responsible for the committee's political activities.

- **Use of campaign funds for gifts, meals or travel** (Reg. 18421.7): Requires candidates to disclose on campaign reports the "political, legislative or governmental purpose" whenever expenditures for gifts, meals or travel expenses are made.

- **Public expenditures for ballot measure communications** (Reg. 18420.1): Governmental agencies that qualify as a committee under the PRA and use public funds to communicate to voters about a ballot measure must disclose the payments as campaign expenditures unless

the communication provides a "fair and impartial presentation of facts" or is otherwise permitted by law.

- **Legal defense funds for local candidates and officials** (Reg. 18530): Sets forth specific requirements relating to the formation and termination of a legal defense fund and the appropriate expenditure of contributions received.

- **Passes or tickets to events** (Reg. 18944.1): Revises rules pertaining to the receipt of tickets by a governmental agency and which are received and/or used by an official of that agency.

For the benefit or the Commission and public, Commission counsel Alix Rosenthal will provide a summary and explanation of each of the above regulations that govern elected officials and candidates in California.

Respectfully submitted,

Daniel D. Purnell
Executive Director

§ 18402.1. Principal Officers.

(a) A committee, other than a committee controlled by a candidate, shall disclose the full name, street address, and telephone number of the principal officer of the committee in its statement of organization required by Section 84101(a) and any 24-hour statement required by Section 84101(b) or (c).

(b) For purposes of subdivision (a), the "principal officer" of a committee is the individual primarily responsible for approving the political activity of the committee including, but not limited to, the following activities:

(1) Authorizing the content of the communications made by the committee.

(2) Authorizing expenditures, including contributions, on behalf of the committee.

(3) Determining the committee's campaign strategy.

(c) If more than one individual shares in the primary responsibility for approving the political activities of the committee as set forth in subdivision (b), each individual is a principal officer. As required in subdivision (a), committees with more than one principal officer shall disclose the following in any filing required by Section 84101:

(1) A committee with three or fewer principal officers shall identify all principal officers.

(2) A committee with more than three principal officers shall identify no fewer than three principal officers.

(d) If no individual other than the committee treasurer has the primary responsibility for approving the political activity of the committee as set forth in subdivision (b), the treasurer shall be identified as both the committee treasurer and the principal officer in any filing required by Section 84101.

(e) In the event of a change in the principal officer or officers identified in a statement of organization, the committee shall file an amendment to the statement within 10 days of the change, pursuant to Section 84103.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84101, 84102, 84103 and 84108, Government Code.

§ 18427. Duties of Treasurers and Candidates with Respect to Campaign Statements.

(a) Treasurers. The treasurer of a committee shall verify that to the best of his or her knowledge the committee campaign statements are true and complete and use all reasonable diligence in the preparation of the statements. To comply with these duties the treasurer shall do all of the following:

(1) Establish a system of record keeping sufficient to ensure that receipts and expenditures are recorded promptly and accurately, and sufficient to comply with regulations established by the Commission related to record keeping.

(2) Either maintain the records personally or monitor record keeping by others.

(3) Take steps to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds and the reporting of funds.

(4) Either prepare campaign statements personally or review with care the campaign statements and underlying records prepared by others.

(5) Correct inaccuracies or omissions in campaign statements of which the treasurer knows, and cause to be checked, and, if necessary, corrected, information in campaign statements a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer is aware or should be aware by reason of his or her duties under this regulation and the Act.

(b) Candidates with respect to candidate campaign statements. A candidate shall verify that to the best of his or her knowledge his or her own campaign statements are true and complete and use all reasonable diligence in the preparation of the statements. To comply with these duties the candidate shall be subject to the same duties imposed upon treasurers as stated in subdivision (a).

(c) Candidates with respect to campaign statements of committees they control. A candidate shall verify to the best of his or her knowledge that the campaign statements filed by a committee he or she controls are true and complete and that the treasurer has used all reasonable diligence in the preparation of the statements. To comply with these duties, the candidate shall do all of the following:

(1) Ascertain whether the treasurer is exercising all reasonable diligence in the performance of his or her duties including those duties specified under subdivision (a).

(2) Take whatever steps are necessary to replace the treasurer or raise the treasurer's performance to required standards, if the candidate knows or has reason to know that the treasurer is not exercising all reasonable diligence in the performance of his or her duties.

(3) Review with care the campaign statements prepared for filing by the committee.

(4) Correct any inaccuracies and omissions in campaign statements of which the candidate knows, and cause to be checked, and, if necessary, corrected, any information in campaign statements a person of reasonable prudence would question based on all the surrounding circumstances of which the candidate is aware or should be aware by reason of his or her duties under this regulation and the Act.

(5) Perform with due care any other tasks assumed in connection with the raising, spending or recording of campaign funds insofar as the tasks relate to the accuracy of information entered on campaign statements.

(6) Unless such steps are required to meet the standards set forth in subdivision (c)(1) through (4), a candidate is not responsible for establishing a record keeping procedure for a committee, monitoring committee record keeping, reviewing campaign finance records other than campaign statements, or personally taking steps to corroborate any information contained on a campaign statement.

(d) Committees where no treasurer is designated. If a committee fails to designate a treasurer as required by Government Code Section 84100, the individual or group of individuals primarily responsible for approving the political activity of the committee, as defined in Regulation 18402.1(b), will be considered the treasurer or treasurers and will be subject to all the duties set forth in subdivision (a).

§ 18421.7. Reporting an Expenditure for a Gift, a Meal, or Travel.

(a) When reporting an itemized expenditure under Section 84211(k) or Section 84303 for a gift, a meal, or travel, a committee controlled by a candidate shall briefly describe the political, legislative, or governmental purpose of the expenditure and the following:

(1) For an itemized expenditure on a gift, the date of the gift, the nature of the gift, and if made to an individual recipient, the name of the recipient, or if made to a group of recipients, the name of each recipient who received a benefit of $50 or more.

(2) For an itemized expenditure on a meal, other than a meal reported as an expenditure for travel, the date of the meal, the number of individuals for whom the expenditure was paid, and whether these individuals included the candidate, a member of the candidate's "household" as defined by Section 89511(b)(4), or an individual with the authority to approve expenditures of the committee's campaign funds.

(3) For an itemized expenditure on travel, including lodging or a meal, the date or dates of travel, the destination, the goods or services paid for by the expenditure, the number of individuals for whom the expenditure was paid, and whether these individuals included the candidate, a member of the candidate's "household" as defined by Section 89511(b)(4), or an individual with authority to approve expenditures of the committee's campaign funds.

(b) A committee required to identify the recipient of a gift under subdivision (a)(1) that has not determined the recipient prior to the closing date of the reporting period in which it made the expenditure for the gift shall identify the recipient as "undetermined recipient" on the committee's campaign disclosure statement, and shall amend the statement to disclose the name of the recipient within 45 calendar days of the date the recipient receives the gift if the benefit to the recipient is $50 or more.

(c) The reporting requirements of this Regulation are in addition to the reporting requirements of Section 84211(k)(1), (2), (3), (5), and (6).

§ 18530.45. Legal Defense Funds - Local Candidates and Officers.

(a) Application and Definitions.
(1) This regulation applies to the bank account permitted by Section 85304.5(a).
(2) For purposes of this regulation, the following definitions apply:
(A) "Legal defense funds" means money in the legal defense account.
(B) "Legal defense account" means the bank account established at a financial institution located in the State of California pursuant to Section 85304.5(a).
(C) "Legal defense committee" means a committee formed pursuant to subdivision (c) of this regulation.
(D) "Candidate" means a candidate for elective office in a local government agency.
(E) "Officer" means an elected officer in a local government agency.
(b) Local Regulation of Legal Defense Account.
(1) Except as provided in paragraphs (2) and (3), this regulation shall govern the legal defense account and legal defense committee established by a candidate or officer under Section 85304.5.
(2) A local government agency may impose different requirements, including a contribution limit, on a legal defense account and legal defense committee maintained by a candidate or officer in its jurisdiction if its requirements regarding establishment of the committee, recordkeeping, and reporting are at least as strict as those provided in subdivisions (c), (e), and (f) of this regulation.
(3) If the local government agency does not enact local contribution limits applicable to legal defense funds, the local requirements must also be at least as strict as those provided in subdivision (i).
(c) Establishing the Legal Defense Account and Legal Defense Committee. A candidate or officer who raises legal defense funds under this regulation shall deposit the funds in and expend the funds from a bank account separate from any other bank account held by the candidate or officer, including a campaign bank account and a legal defense account for a state official and a candidate under Section 85304. The candidate or officer shall establish a controlled committee for the legal defense account by filing a statement of organization pursuant to Section 84101. The statement of organization shall contain a description of the specific legal dispute or disputes for which the account is established, and shall be amended pursuant to Section 84103, as legal disputes are either resolved or initiated. The words "Legal Defense Fund" and the candidate's or officer's last name shall be included in the committee name.
(d) Separate Accounts For Each Local Elective Office. The candidate or officer shall establish a separate legal defense account and legal defense committee for each local elective office to which the legal proceeding or proceedings relate.
(e) Required Recordkeeping and Audits. The candidate or officer, and the treasurer of the legal defense committee, are subject to recordkeeping requirements specified in Section 84104 and shall keep separate detailed accounts, records, bills, and receipts, for each legal proceeding including documentation to support the basis and timing, as set forth in subdivision (i)(3), for raising legal defense funds. The legal defense committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. An audit under Section 90001 of a candidate or officer, or

any controlled committee of the candidate or officer, shall include that candidate's or officer's legal defense committee maintained during the audit period as described in Section 90002(c).
(f) Reporting Requirements. The legal defense committee shall file campaign statements and reports pursuant to Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other candidate controlled committee in the jurisdiction in which the legal defense committee was established.
(g) Contributions and Expenditures Not Subject to Certain Provisions. A contribution to and an expenditure from a legal defense account under Section 85304.5 is not subject to the provisions of Sections 85200 or 85201.
(h) State Legal Defense Accounts. A candidate or officer who is also a state candidate or officer may establish a legal defense committee under Section 85304.
(i) Limitations. For the purposes of Section 85304.5 the following limitations apply:
(1) Legal defense funds may only be raised in an amount reasonably calculated to pay, and may only be expended for, attorney's fees and other related legal costs.
(A) "Attorney's fees and other related legal costs" includes only the following:
(i) Attorney's fees and other direct legal costs related to the defense of the candidate or officer.
(ii) Administrative costs directly related to compliance with the requirements of subdivisions (c) and (f) and the recordkeeping requirements of subdivision (e) of this regulation.
(B) "Attorney's fees and other related legal costs" does not include for example expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.
(2) A candidate or officer may only raise funds under this regulation for defense against a civil or criminal proceeding, or for defense against a government agency's administrative enforcement proceeding arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. An administrative enforcement proceeding includes a discretionary audit initiated under Section 90003, but not an audit initiated under Section 90001 until the candidate or officer reasonably concludes that a government agency has commenced an investigation based upon the audit. A candidate or officer may raise funds under this regulation and Section 85304.5 to defend against an election contest conducted pursuant to Division 16 (commencing with Section 16000) of the Elections Code, but may not raise or spend legal defense funds for attorney's fees and other legal costs incurred in an election recount conducted pursuant to Chapter 9 (commencing with Section 15600) of Division 15 of the Elections Code.
(3) Legal defense funds may not be raised in connection with a proceeding until the following has occurred:
(A) In a proceeding brought by a government agency, when the candidate or officer reasonably concludes the agency has commenced an investigation or the agency formally commences the proceeding, whichever is earlier.
(B) In a civil proceeding brought by a private person, after the person files the civil action.

(j) Remaining Funds. Funds remaining in the legal defense account following payment of all attorney's fees and other related legal costs for which the account and committee are established shall be returned or disposed of as follows:

(1) If the total amount of remaining legal defense funds is more than $5,000, the entire sum shall be returned to legal defense account donors on a pro rata basis.
(2) Remaining legal defense funds not required to be returned under subdivision (j)(1) shall be disposed of for any of the purposes set forth in subdivisions (b)(1) through (b)(5) of Section 89519. Remaining legal defense funds may not be transferred, except as permitted under subdivisions (b)(1) through (b)(5) of Section 89519.
(k) Termination and Reopening of Committees. A legal defense account and legal defense committee shall be terminated, and all attorney's fees and other related costs returned or disposed of, within 90 days of the date the last legal dispute for which the account and committee are established has been resolved. The local ethics agency, or in the absence of an agency, the FPPC Executive Director, may for good cause, and consistent with the purposes of Section 85304.5 and this regulation, extend the termination date or permit the candidate or officer to reopen the account. The application to extend the termination date or to reopen the account shall be in writing and shall include copies of all supporting documents including copies of billing statements.

§ 18944.1. Recipient of the Gift: Passes or Tickets Given to an Agency. Passes or tickets which provide admission or access to facilities, goods or services, or other tangible or intangible benefits (including passes to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places or events, but not including travel or lodging), which are provided to an official are not gifts to the official whenever (a), (b), (c), (d), or (e) applies:

(a) The donor gives the tickets or passes to the official's agency, through a responsible official of the agency, for the sole purpose of distributing the passes or tickets to officials of the agency and their spouses and immediate families and use of the tickets or passes is so limited by the agency; and The tickets or passes are not earmarked by the donor for any specific officials of the agency; and The agency retains a written public record of the terms under which the tickets were accepted by the agency and the terms under which the tickets or passes were distributed and to whom they were distributed.

(b) The tickets or passes are provided to the agency for an event at a publicly-owned facility under the jurisdiction of the agency and neither the agency nor any official of the agency receiving or distributing the tickets or passes for the agency gives any of the tickets or passes to any person who is not an official of the agency, or not the official's spouse or immediate family member.

(c) The tickets or passes are provided to the agency as part of the contract for the use of the facility and the distribution and use of the passes or tickets are regulated by an officially adopted policy of the agency.

(d) The tickets or passes are provided to the official of the agency for use by the official and his or her spouse and immediate family because the official has an official or ceremonial role or function to perform on behalf of the agency at the event in question. (e) The tickets or passes are provided to an agency or officials of the agency for use at an event at a publicly-owned facility constructed or operated under the provisions of a joint exercise of powers agreement and such agency is a party to the joint exercise of powers agreement, and the distribution and use of the passes or tickets are regulated by an officially adopted policy of the agency.

§ 18420.1. Payments by State or Local Agencies for a Communication about a Measure.

(a) A payment of public moneys by a state or local governmental agency, or by an agent of the agency, for communications directed to the voters of the jurisdiction, about a measure shall be considered an expenditure, for purposes of Section 82025, unless the information provided about the measure in the communications constitutes a fair and impartial presentation of facts relating to the measure.

(b) As used in subdivision (a), a communication is about a measure if the communication clearly identifies a measure as defined in Regulation 18225(b)(1)(C) or (D).

(c) Notwithstanding subdivision (a), a payment for the following communications shall not be considered an expenditure:

(1) An agency report providing the agency's internal evaluation of a measure made 13 available to a member of the public upon the individual's request.

(2) The announcement of an agency's position at a public meeting or within the agenda or hearing minutes prepared for the meeting.

(3) A written argument filed by the agency for publishing in the voter information pamphlet.

(4) A departmental view presented by an agency employee upon request by a public or private organization, at a meeting of the organization.

(5) A communication required by law.

(d) A governmental agency that otherwise qualifies as a committee under Section 82013 shall report all contributions and expenditures, including any expenditure under subdivision (a), pursuant to Chapter 4 of the Act.