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Public Ethics Commission

October 6, 2016

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Matthew C. Alvarez, Esq.
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150 Post Street, Suite 405
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Re: OCRA Sec. 3.12.230 – Merging of IE mailer disclosure language with state-required disclosure (PEC AL 16-01)

Dear Mr. Alvarez:

This letter responds to your request for written advice regarding the Oakland Campaign Reform Act (OCRA), which is contained in Oakland Municipal Code Chapter 3.12. You have submitted a joint request for advice to both the Fair Political Practices Commission (FPPC) and the City of Oakland (City) Public Ethics Commission (PEC). The FPPC has advised you on state law (see FPPC Advice Letter No. A-16-166) and the PEC is advising you as to OCRA only.

I. QUESTION

Can political committees modify the language in the “not authorized by” requirement under state law and/or the “Notice to Voters” requirement under Oakland law so that political committees do not have to print both full statements on their independent expenditure mailers. Specifically, would it be legally permissible for a political committee putting out a mailer supporting or opposing an Oakland candidate to merge the two statements into one as follows:

“This mailing was not authorized, approved or paid for by a candidate for City office, a committee controlled by a candidate for City office, or an election official.”

This merged sentence would be printed with the “Notice to Voters” as follows:

Notice to Voters

(Required by the City of Oakland)

This mailing was not authorized, approved or paid for by a candidate for City office, a committee controlled by a candidate for City office, or an election official

It is paid for by NAME OF PAC

123 Street, Oakland, CA 99999

Total cost of this mailing is: \$_____.

II. SHORT ANSWER

Yes, the proposed language is in compliance with OCRA section 3.12.230.

III. FACTS

You represent several political committees which seek to make independent expenditures supporting or opposing candidates for City office in the November 2016 election, and which therefore need to determine what disclaimers are required on their mailers and other communications. You note that state law contains several provisions requiring independent expenditure communications to include various disclaimers.

You note that the underlying purpose of both of these disclaimer requirements is presumably to inform voters that the mailer was put out by an independent group not affiliated with the candidate's campaign - i.e., that the mailer was not "authorized by," "approved by," or "paid for by" a "candidate" or "a committee controlled by a candidate." City law also seeks to inform voters that the mailer was not authorized by an "election official." You could not locate any information in the legislative history of either provision which reveals a different intent for the disclaimer. Although state and City law have chosen slightly different words to convey this message, the purpose of the disclaimers is the same.

IV. LAW

City law requires an additional disclaimer on all advertisements paid for by independent expenditures. (Oakland Municipal Code section 3.12.230 - the "Notice to Voters" requirement.) This advice request relates to the relationship between these disclaimer requirements of the state and City law.

More specifically, the "not authorized by" requirement under the state law requires political committees to print the following statement on independent expenditure mailers:

This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.

The "Notice to Voters" requirement under City law requires political committees to print a similar but different statement on independent expenditure mailers supporting or opposing candidates for City office:

Notice to Voters
(Required by the City of Oakland)
This mailing is not authorized or approved by any City candidate or election official.
It is paid for by (name) _____
_____ (address, city, state)
Total cost of this mailing is: (amount)

V. ANALYSIS

One of the purposes of the disclosure requirements of OCRA section 3.12.230 is to inform voters that the campaign material is paid for by an independent group and that the campaign material was not authorized or approved by a candidate for the office or an election official. The California Political Reform Act (CPRA) requires a similar disclaimer on all independent expenditure advertisements. Both of the disclaimers are required to be printed in 14 point font.

The CPRA's required disclaimer for all independent expenditure advertisements is the following:

(a) An advertisement supporting or opposing a candidate that is paid for by an independent expenditure must include the following statement: This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.

You ask whether it would be legally permissible for a political committee putting out a mailer supporting or opposing a candidate for City office to merge the two statements into one as follows:

Notice to Voters

(Required by the City of Oakland)

This mailing was not authorized, approved or paid for by a candidate for City office, a committee controlled by a candidate for City office, or an election official

It is paid for by NAME OF PAC

123 Street, Oakland, CA 99999

Total cost of this mailing is: \$ _____.

Because your suggested merged statement includes almost all of the exact words of the OCRA-required notice in a manner that embeds them within the more comprehensive statement required by the CPRA, and because the merged language still meets the purpose of the OCRA-required language, the merged language you propose satisfies the requirements of OCRA section 3.12.230.

VI. CONCLUSION

The language you propose in this situation satisfies the disclosure requirements of OCRA section 3.12.230.

Thank you for your inquiry. If need further assistance, please contact the PEC at (510) 283-3593.

Sincerely,



Whitney Barazoto
Executive Director