

Transportation Solutions Defense and Education Fund

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December 19, 2018
By E-Mail to
CommAsst
@fppc.ca.gov

Alice Germond, Chair
California Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Re: In the Matter of San Francisco Bay Area Rapid Transit District (BART)
FPPC No. 16/19959

Dear Ms. Germond:

The Transportation Solutions Defense and Education Fund, TRANSDEF, is a California environmental non-profit dedicated to reducing the climate impacts of transportation. Part of our strategy is attempting to deny public agencies the funds to continue operating with status quo policies that increases greenhouse gases from transportation. We have campaigned against a host of transportation sales taxes and bridge toll increases (and even came under FPPC investigation ourselves as the result of a complaint by a vengeful opposing campaign--which was dismissed within 24 hours).

We applaud the Commission for taking this long-needed enforcement action. However, we believe this violation to be merely the tip of the iceberg of a problem that arises whenever public agencies seek additional revenue from the public. In this letter, we seek to make the Commission aware that the problem of public agency campaigning raised by the BART matter is far more widespread and complicated than Commissioners may be aware.

The Supreme Court addressed this issue in *Stanson v. Mott*, (1976) 17 Cal.3d 206, setting out the distinction between impermissible campaigning and the provision of information to the public. The Attorney General provided guidance for school districts considering bond measures:

However, **we also concluded that a district may not use public funds to hire a consultant to develop a strategy for building support for the measure.** Impermissible activities could include, for example, assisting the district chancellor in scheduling meetings with civic leaders and

potential campaign contributors in order to gauge their support for the bond measure, if the purpose or effect of such actions was to develop a campaign to promote the bond measure. Surveying the relevant judicial decisions, we reasoned that “a community college district board may not spend district funds on activities that form the basis for an eventual campaign to obtain approval of a bond measure.” (California Attorney General Opinion No. 13-304 (2016), with citations to 88 Ops.Cal.Atty.Gen. 46 (2005) omitted, emphasis added.)

Over the past decade, we have observed public agencies devoting considerable public funds to "consensus-building" processes, which develop sales tax expenditure plans. The same consulting firm that ends up with the contract to run the campaign typically runs these processes. By design, there is a very porous wall between legally proper public expenditures and illegal public campaigning. This practice, which clearly violates the Attorney General's Opinion, should be eliminated through FPPC regulation.

Materials are transferred from one side of the legal wall to the other, including: polling, to find out what voters want to hear; the development of messaging, to determine what to tell voters about what they want to hear; and the development of supporter lists, which often become the basis of a campaign's funding and volunteer efforts. Sometimes, these materials are directly used in media developed by campaigns.

This pattern, which we've seen over and over again, where materials developed at public cost end up being used by a campaign, is improper, as was seen in the BART matter. **We assert that detailed FPPC regulations are needed to clarify the murky legal status of election-related materials that were developed using public funds.** Handing election-sensitive materials over to a campaign should be considered a campaign expenditure. The fact that the expenditures were made prior to a measure being placed on the ballot is immaterial in our view. There is longstanding FPPC precedent that such expenditures by a public entity are reportable as campaign expenditures. See *In re Fontana* (1976), 2 F.P.P.C. Ops. 2.

We urge the Commission to adopt rules for election-related public expenditures prior to measures being placed on the ballot that establish a clear boundary between those that are reportable as campaign expenditures, and those constituting non-reportable expenditures. We would be pleased to assist staff in the development of such rules. Please do not hesitate to contact us.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President