

Fair Political Practices Commission

Memorandum

To: Vice Chair Eskovitz and Commissioners Casher, Wasserman, and Wynne

From: Zackery P. Morazzini, General Counsel
Valentina Joyce, Commission Counsel

Subject: Adoption of Proposed Regulation 18417:
Campaign Reporting - LAFCO Proposals

Date: November 4, 2013

Proposed Commission Action and Staff Recommendation:

Adopt Regulation 18417.

Background

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH”), found at Government Code Section 56000, *et seq.*, provides for the existence of a local agency formation commission (“LAFCO”) in each county for the purpose of overseeing and controlling the boundaries of cities and most special districts. LAFCOs are charged with reviewing and approving or disapproving boundary changes.

There are two ways that a boundary change (called a reorganization or change of organization) can be initiated. The proposal can come from a government agency (usually a city or special district) or from private parties. For government agencies, the process begins with the filing of a resolution of application. For private parties, it is the filing of a petition application.

CKH, as first enacted, included provisions requiring the reporting of payments made by individuals or groups for communications in support of or opposition to a LAFCO proposal. The intent was to require disclosure of the same kind of information required for ballot measures under the Act, with the exception that the reports must be filed monthly. In 2008 the disclosure rules were moved to Sections 84250 – 84252 of the Political Reform Act (“Act”) and placed under the Commission’s jurisdiction.

Discussion

Reporting of Contributions and Expenditures

Section 84250 states:

“All requirements of this title applicable to a measure, as defined in Section 82043, also apply to a LAFCO proposal, as defined in Section 82035.5, except as set forth in Section 84252.”

By defining “LAFCO proposal” by reference to provisions of CKH, Section 84250 makes clear that the section applies to both types of LAFCO proposals, those initiated by petition and those initiated by a resolution of application by a government agency. However, Section 84252, which sets forth the reporting requirements, fails to include proposals brought by resolution of application. Section 84252 provides, in pertinent part:

“(a) A committee primarily formed to support or oppose a LAFCO proposal shall file all statements required under this chapter except that, in lieu of the statements required by Sections 84200 [semiannual statements] and 84202.3 [quarterly ballot measure statements], the committee shall file monthly campaign statements from *the time circulation of a petition begins* until a measure is placed on the ballot or, if a measure is not placed on the ballot, until the committee is terminated pursuant to Section 84214.”

The omission of agency-initiated LAFCO proposals has led to requests for clarification that these types of proposals are, indeed, subject to the same disclosure rules as petition-initiated proposals. We have also been asked when the reporting obligations start. The proposed regulation tracks CKH by stating that these obligations begin at the time the resolution of application has been filed with the LAFCO.

With respect to petition-initiated LAFCO proposals, we have been asked what is meant by the statement in Section 84252(a) that campaign statements must be filed from “the time circulation of a petition begins.” Consistent with prior advice, the regulation provides that circulation begins on the date the petition application is filed with the LAFCO.

Payments for preparation of reports, studies and analyses

The proposed regulation also codifies advice that payments for the preparation of reports, studies and analyses are not reportable expenditures because they are not made for political purposes.

Reporting by government agencies

Staff has declined to include suggested language that would have required disclosure of payments for communications made by government agencies. The suggestion was first raised in a 2010 advice letter and then again in a 2012 enforcement matter. The impetus for this suggestion was a campaign that was waged by a water district urging voters to communicate with the LAFCO in support of the district's proposal.

This suggestion was well vetted at the February 16, 2012 Interested Persons meeting. All but one commentator were opposed to interpreting Section 84250 in this manner. Among the stated reasons was that other statutes already regulate the misuse of public funds and that the LAFCO legislation was not intended to regulate government disclosures. Staff believes this issue is best addressed by further legislation.

Summary and Staff Recommendation.

The proposed regulation (1) clarifies that the LAFCO reporting rules apply equally to LAFCO proposals initiated by petition and those initiated by local government agencies, (2) specifies that reporting obligations commence upon the filing of a petition application or resolution of application and (3) provides that payments made for the preparation of reports, studies and analyses are not reportable expenditures.

Staff recommends that the Commission adopt proposed Regulation 18417.

Attachments:

- 1 - Regulation 18417
- 2 - Government Code Sections:
 - 82035.5
 - 84250
 - 84251
 - 84252
 - 56067
 - 56069

1 Adopt 2 Cal. Code Regulations, Section 18417 to read:

2 **§ 18417. Campaign Reporting – LAFCO Proposals.**

3 (a) A committee primarily formed to support or oppose a LAFCO proposal (as defined in
4 Section 56069) shall file the monthly campaign statements required under this title from the
5 date that a petition application or resolution of application is filed until a measure is placed on
6 the ballot. If a measure is not placed on the ballot, the committee shall file monthly statements
7 until the committee is terminated under Section 84214.

8 (b) The following payments are neither contributions nor expenditures.

9 (1) Payments made for the cost, including staff time, if applicable, of preparing reports,
10 studies or analyses, including environmental impact reports, feasibility studies, and fiscal
11 analyses.

12 (2) Processing and similar fees paid to a LAFCO.

13 Note: Authority cited: Section 83112, Government Code. Reference: Sections 82035.5 and
14 84250 – 84252, Government Code.

§ 82035.5. "LAFCO proposal"

"LAFCO proposal" means a proposal, as defined in Section 56069, including a proceeding, as defined by Section 56067.¹

§ 84250. Requirements applicable to "measure" also applicable to LAFCO proposals

All requirements of this title applicable to a measure, as defined in Section 82043, also apply to a LAFCO proposal, as defined in Section 82035.5, except as set forth in Section 84252.

§ 84251. Payment made for "political purposes"

A payment made for "political purposes," as that term is used in Sections 82015 and 82025, includes a payment made for the purpose of influencing or attempting to influence the actions of voters or a local agency formation commission for or against the qualification, adoption, or passage of a LAFCO proposal.

§ 84252. Filing of statements

(a) A committee primarily formed to support or oppose a LAFCO proposal shall file all statements required under this chapter except that, in lieu of the statements required by Sections 84200 and 84202.3, the committee shall file monthly campaign statements from the time circulation of a petition begins until a measure is placed on the ballot or, if a measure is not placed on the ballot, until the committee is terminated pursuant to Section 84214. The committee shall file an original and one copy of each statement on the 15th day of each calendar month, covering the prior calendar month, with the clerk of the county in which the measure may be voted on. If the petition results in a measure that is placed on the ballot, the committee thereafter shall file campaign statements required by this chapter.

(b) In addition to any other statements required by this chapter, a committee that makes independent expenditures in connection with a LAFCO proposal shall file statements pursuant to Section 84203.5.

¹ § 56067. "Proceeding," "proceeding for a change of organization," or "proceeding for a reorganization"

"Proceeding," "proceeding for a change of organization," or "proceeding for a reorganization" means proceedings taken by the commission for a proposed change of organization or reorganization pursuant to Part 4 (commencing with Section 57000).

§ 56069. "Proposal"

"Proposal" means a desired change of organization or reorganization initiated by a petition or by resolution of application of a legislative body or school district for which a certificate of filing has been issued.