

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18420.1. Payments by State or Local Agencies for a Campaign Related Communication.

(a) A payment of public moneys by a state or local governmental agency, or by an agent of the agency, made in connection with a communication to the public that expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Section 82025(c)(1), or that taken as a whole and in context, unambiguously urges a particular result in an election is one of the following:

(1) A contribution under Section 82015 if made at the behest of the affected candidate or committee.

(2) An independent expenditure under Section 82031.

(b) For the purposes of subdivision (a), a communication paid for with public moneys by a state or local governmental agency unambiguously urges a particular result in an election if the communication meets either one of the following criteria:

(1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television, electronic media or radio spots.

(2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.

(c) For purposes of subdivision (a), payments of public moneys by a state or local governmental agency made in connection with a communication include payments for both the direct and indirect costs of the communication. Indirect costs of a communication are costs

reasonably related to designing, producing, printing, or formulating the content of the communication including, but not limited to, payments for polling or research; payments for computer usage, software, or programming; and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants.

(d) For purposes of subdivision (b)(2), when considering the style, tenor, timing of a communication, factors to be considered include, but are not limited to, whether the communication is any of the following:

(1) Funded from a special appropriation related to the measure as opposed to a general appropriation.

(2) Is consistent with the normal communication pattern for the agency.

(3) Is consistent with the style of other communications issued by the agency.

(4) Uses inflammatory or argumentative language.

(e) Notwithstanding subdivision (a), a payment for the following communications are not considered a contribution or an independent expenditure:

(1) An agency report providing the agency's internal evaluation of a measure made 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 clearly and unambiguously authorized by law.

(f) A state or local governmental agency that qualifies as a committee under Section 82013 must file campaign statements and reports pursuant to Chapter 4 and any other relevant provisions of the Act.

COMMENT: Nothing in this regulation should be read as condoning or authorizing use of public moneys for campaign related activities by a state or local governmental agency. Under many circumstances these activities may be illegal. (See Penal Code Section 424; Government Code Sections 8314, 54964, and 89001; Education Code Section 7054; and *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.)

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82013, 82015 and 82031, Government Code.

HISTORY

1. New section filed 1-8-2009; operative 2-7-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2009, No. 2).

2. Amendment of section heading, section and Note filed 9-22-2009; operative 10-22-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2009, No. 39).

3. Amendment of subsection (a) filed 8-6-2015; operative 8-6-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing pursuant to

Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 32).

4. Amendment of subsections (a), (b)(1) and (e)-(f) filed 2-13-2018; operative 3-15-2018 pursuant to title 2, section 18312(e)(1)(A) of the California Code of Regulations. Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2018, No. 7).

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