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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 14/596
13)
14 KENNETH G. MANN,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17

18 Complainant, the Fair Political Practices Commission, and Respondent Kenneth G. Mann agree
19 that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its
20 next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Kenneth G. Mann violated the Political
4 Reform Act by making an expenditure of campaign funds in the amount of \$5,000, which conferred a
5 substantial personal benefit on Respondent Mann, that was unrelated to a political, legislative, or
6 governmental purpose, in violation of Section 89512 (1 count). This count is described in Exhibit 1,
7 which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
8 true and accurate summary of the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
11 of Three Thousand Five Hundred Dollars (\$3,500). A cashier's check from Respondent in said amount,
12 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
13 payment of the administrative penalty, to be held by the State of California until the Commission issues
14 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
15 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
17 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
18 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

21
22 Dated: _____
23 Gary S. Winuk, Chief of Enforcement
24 Fair Political Practices Commission

25 Dated: _____
26 Kenneth G. Mann, Respondent
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Kenneth G. Mann,” FPPC No. 14/596,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Kenneth G. Mann (“Respondent Mann”) was a Lancaster City Council member and a successful candidate for reelection to that office on April 10, 2012. Re-elect Mann for City Council 2012 (“Committee”) was his candidate controlled committee.

This case arose from the Franchise Tax Board’s (“FTB”) audit of the Committee for the period July 1, 2008 through June 30, 2012. Contributions totaling \$52,419 were reported and expenditures totaling \$24,021 were reported for the time period. The subsequent investigation by the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (the “Enforcement Division”) revealed that Respondent Mann committed a violation of the personal use prohibitions of the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On or about October 25, 2011, Respondent Kenneth G. Mann made an expenditure of campaign funds in the amount of \$5,000, which conferred a substantial personal benefit on Respondent Mann, that was unrelated to a political, legislative, or governmental purpose, in violation of Section 89512.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 89510, subdivision (b), is that all contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office.

Prohibition on the Personal Use of Campaign Funds

All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Section 89510, subdivision (b).) An expenditure to seek office must be reasonably related to a political purpose, but if it confers a direct and substantial personal benefit on the candidate or any individual with authority to approve the expenditure of campaign funds held by a committee of more than \$200, the expenditure must be directly related to a political, legislative or governmental purpose. (Sections 89511, subdivision (b)(3), and 89512.)

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE FACTS

At all relevant times, Respondent Kenneth G. Mann (“Respondent Mann”) was a Lancaster City Council member and a candidate for re-election to that office. Re-elect Mann for City Council 2012 was his candidate controlled committee. Respondent was re-elected to that office on April 10, 2012.

This case arose from the FTB audit of the Committee. The audit and subsequent investigation by the Commission’s Enforcement Division revealed that Respondent Mann committed a violation of the personal use prohibitions of the Act.

COUNT 1

Personal Use of Campaign Funds

In this matter, Respondent issued a check, payable to himself, in the amount of \$5,000 on October 25, 2011, and deposited this check into his personal bank account. He stated that this money was intended as a personal loan, to pay for expenses that were not related to his campaign. On December 21, 2011, almost two month later, Respondent repaid the same amount to the campaign bank account. The expenditure and repayment were not disclosed on the semi-annual campaign statement filed for the period ending December 31, 2011.

By making an expenditure to himself in the amount of \$5,000 which conferred a substantial personal benefit on him, for purposes other than directly related to a political, legislative or governmental purpose, Respondent Mann violated Section 89512.

CONCLUSION

This matter consists of one count, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Recent penalties approved by the Commission for personal use of campaign funds include:

In the Matter of Jon McQuiston and Diane Oglesby; FPPC No. 13/1144 involved a very similar fact pattern to the *Mann* case. In this matter, Respondent Diane Oglesby, committee Treasurer, made an expenditure of campaign funds, totaling \$6,000, to pay for her husband's tuition. Approximately one month later, she deposited \$6,000 from her personal joint checking account into the campaign bank account. The commission approved settlement of this case, with a \$3,500 penalty for this violation, on August 21, 2014.

Historically, a middle-to-high range fine is levied against the violator for personal use of campaign funds. Personal use of campaign funds violates the trust of the contributors giving to that campaign, and is therefore a very serious violation of the Act. In this case, Respondent Mann used campaign funds to pay personal expenses, an expense unrelated to any political, legislative or governmental purpose. In mitigation, Respondent did pay back the \$5,000 approximately two months later to the Committee prior to any contact from the FTB or Enforcement Division, and has no history of violating the Act. After notification by the FTB, an amendment was filed with the Lancaster City Clerk on March 27, 2014, disclosing the \$5,000 loan and repayment. Respondent's violation appears negligent rather than intentional. As in the *McQuiston* case, Respondent Mann repaid the Committee not long after making the expenditure, and the violation was not part of a larger pattern of misconduct. Also, Respondents cooperated with the Commission in reaching an early settlement in this case.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Three Thousand Five Hundred Dollars (\$3,500) is recommended.