



**Minutes for Meeting of
Thursday, June 12, 2014**

Item 1: Call to Order

Commission Vice-Chair O'Neill called the meeting to order at approximately 5:00 p.m.

Item 2: Roll Call

Present – Commission Vice-Chair John O'Neill, Commissioners Deborah Cochran, Faye Detsky-Weil, Clyde Fuller, Alex Kreit, and Greg Zinser

(Commissioner Andrew Poat arrived at 5:25 p.m.)

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Program Manager Steve Ross, Investigator Lauri Davis, Auditor Rosalba Gomez, and Administrative Aide Jennifer Duarte

Item 3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of May 8, 2014

Motion:	Approve
Moved/Seconded:	Fuller/Detsky-Weil
Vote:	Carried Unanimously
Absent:	Poat

Item 4: Non-Agenda Public Comment

None

Item 5: Commissioner Comment

None

Item 6: Executive Director Comment

None

Item 7: General Counsel Comment

None

Item 8: Proposed Amendments to the Election Campaign Control Ordinance

Ms. Fulhorst noted that, in light of the decisions made at the last meeting, there were only two issues left to consider: duplication of candidate materials and vendor credit. She reported that Steve Ross revised the proposed amendments based on suggestions received at the last meeting, and that there were several questions for the Commission to answer: (1) should the 50% duplication threshold apply to text in printed materials and speeches; and (2) should the 50% duplication threshold apply to audio and, if so, should it be limited to audio recordings of a candidate's voice.

Ms. Fulhorst added that, based on a recent email from political law attorney Stephen Kaufman, the Commission might also want to consider: (1) adding an exemption for a single photograph of a candidate; (2) whether the 50% threshold is too low and whether the regulations are too complex. In light of Mr. Kaufman's suggestions, she asked if the Commission wanted to revisit the approach used by the federal government and two California cities which involves a prohibition on substantial duplication. She suggested that if the Commission favors this type of general prohibition, the staff could prepare a fact sheet that delineates some guidelines.

With respect to vendor credit, Ms. Fulhorst stated that an exemption was added to enable committees to include in their bank account balances contributions made via check that have not yet cleared, as well as credit card contributions that have not yet been processed by the vendor.

John Nienstedt with Competitive Edge Research and Communication submitted a public speaker request; however, his comments did not relate to the proposals under consideration. Instead, he asked if the Commission had had an opportunity to consider the comments he made at the last meeting concerning disclaimers required on telephone polling calls. Ms. Fulhorst responded that the Commission Vice-Chair would be sending a letter to him and attorney Jim Sutton in the next few days.

Commissioner Zinser asked if the draft amendments would be moot if the Commission decided to go with the federal approach. Ms. Fulhorst concurred that most of it would be moot, but noted that some of the exemptions might be carried over. She added that if the Commission chose to follow the federal model, the Municipal Code would be relatively straightforward but there would have to be a Commission consensus with respect to the unofficial guidelines that would go into a fact sheet.

Commissioner Fuller asked if it would be considered a violation for someone to attend a public rally, record a candidate's speech, and then use the recording to prepare a campaign ad. Ms. Fulhorst responded that, if the Commission decides to

go with a law that is broad in nature, they could consider one or more exemptions including duplication of text from a candidate's speech or printed materials. She noted that the complaints submitted to the Commission have involved committee duplication of audio and video recordings developed by a candidate.

Commissioner Fuller expressed concern that the lack of clear guidelines could result in different enforcement outcomes that in turn could create the impression that the Commission was favoring one candidate over another.

Vice-Chair O'Neill commented that the root evil the Commission is addressing is the situation they know is happening: candidates are developing audio, video, and text materials in the expectation that an independent expenditure committee will pick up the material and distribute it for them. He does not believe that the same danger exists with a public speech because the candidate is going to make that speech either way. He therefore suggested that public speeches should be exempt from whatever legislative framework the Commission decides to recommend.

Commissioner Kreit expressed his view that a detailed law presents many downsides. He suggested an open-ended law with a rebuttable presumption of some kind, such as duplicating less than 50% of a candidate's materials, as well as an optional form for committees to disclose duplication information.

Commissioner Cochran asked Commissioner Kreit if his suggestions involved applying the federal model and developing a rebuttable presumption, and Commissioner Kreit responded affirmatively. Vice-Chair O'Neill questioned whether such a rebuttal would involve anything more than a statement asserting that a committee duplicated less than 50%. Commissioner Kreit responded that he favors a "safe harbor" rebuttable presumption that would involve duplication of less than 50%, which would mean any committee that duplicates more than 50% would not necessarily be in violation but would be "taking their chances."

Commissioner Detsky-Weil asked if a committee would have to report what they duplicated ahead of time or if the Commission would use the fact sheet to determine if there is a violation. Commissioner Kreit responded that in his "safe harbor" model, there would be a presumption of no violation if a committee used less than 50% and submitted a report with information about where the material came. He noted that this model would create an incentive to provide information to the Commission and would make it easier for staff to collect and verify that information.

Commissioner Zinser commented that if the Commission tries to define a "safe harbor", it will be right back where it started in terms of measurement criteria. Instead of trying to describe how much text and audio can be used, he suggested the Commission provide examples of what is acceptable combined with a general prohibition above the 50% threshold.

Program Manager Steve Ross reminded the Commission that it is not permissible to impose additional reporting requirements on state and county committees. Ms. Fulhorst asked if it is permissible to create an optional reporting requirement to enjoy the "safe harbor" rebuttal presumption, and Mr. Ross replied that the issue would have to be researched.

Vice-Chair O'Neill stated that he does not understand what benefit would be gained by adding a rebuttable presumption. Commissioner Kreit responded that it would enable committees to feel confident in knowing that they are in the "safe harbor" zone if they follow certain procedures.

Commissioner Poat asked if there are any other jurisdictions that have developed regulations that address this issue. Ms. Fulhorst responded that the federal government, the City of Los Angeles, and the City of Long Beach all have broad prohibitions in place.

Commissioner Detsky-Weil asked about contacting these other jurisdictions to find out what types of issues they have encountered. Ms. Fulhorst responded that the staff did not contact the Federal Election Commission because the Commissioners have a history of being deadlocked on this issue, but they did contact the Los Angeles Ethics Commission. According to staff at this agency, Los Angeles interprets the broad prohibition to apply to substantial duplication.

Commissioner Poat stated that he does not feel prepared to vote on this issue and asked Vice-Chair O'Neill if he thought the Commission was going to make a decision at this meeting. Vice-Chair O'Neill responded that his intention was to call for a vote but that if other Commissioners prefer that the issue be tabled until the next meeting he does not oppose doing so.

Commissioner Poat asked if the Commission would be seeking input from the regulated community. Vice-Chair O'Neill responded that notices about this item have gone to the regulated community on numerous occasions.

Commissioner Zinser noted that he originally proposed quantifying duplication thresholds but now understands why the other jurisdictions chose to adopt broad prohibitions. That said, he is in favor of informal guidelines that include examples of what is acceptable and what is a clear-cut violation.

Commissioner Kreit said that he is inclined support the broad prohibition without any additional requirements with the caveat that he is still interested in the possibility of giving people a safe harbor down the road. Commissioner Cochran said that she supports the broader regulation with development of a fact sheet.

Regarding vendor credit, Commissioner Kreit stated that the proposal seems to be very well thought out. He believes that the concerns raised by April Boling have been addressed. Commissioner Poat asked if the draft language for vendor credit is in place in another jurisdiction or if the staff is "innovating," and Ms. Fulhorst responded that they are innovating. Commissioner Poat asked if the language has been distributed for comment. Ms. Fulhorst responded that the draft language has been distributed at least twice and the concept was addressed in a memo distributed in March.

Motion: Adopt the Substantial Duplication Standard with an Exemption for Public Speeches and the Development of a Fact Sheet
Moved/Seconded: O'Neill/Zinser
Vote: 6-1 (Poat Opposed)

Motion: Adopt the Vendor Credit Proposal
Moved/Seconded: Kreit/Fuller
Vote: Carried Unanimously

Item 9: Election of Chair and Vice-Chair

Motion: Elect Commissioner O'Neill as Chair and Commissioner Fuller as Vice Chair effective July 1, 2014
Moved/Seconded: Zinser/Kreit
Vote: Carried Unanimously

Item 10: Adjourn to Closed Session

Commission Vice-Chair O'Neill adjourned the meeting to closed session at approximately 6:00 p.m. He stated the Commission would reconvene into open session following the conclusion of closed session in order to report any action taken during the closed session portion of the meeting.

Reconvene to Open Session

Commission Vice-Chair O'Neill called the meeting back into open session at approximately 6:30 p.m.

Reporting Results of Closed Session Meeting of June 12, 2014:

Ms. Cameron reported the results of the closed session meeting of June 12, 2014:

Item-1: Conference with Legal Counsel (9 potential matters)

Case No. 2014-22 - In Re: Alleged Failure to Properly File Campaign Statements

Motion: Initiate Investigation
Moved/Seconded: Fuller/Detsky-Weil
Vote: Carried Unanimously

Case No. 2014-23 - In Re: Alleged Failure to Include Proper Identification Disclosure on Mass Campaign Literature

Motion: Initiate Investigation
Moved/Seconded: Fuller/Zinser
Vote: Carried Unanimously
Recused: Poat

Case No. 2014-24 - In Re: Alleged Acceptance of Unlawful Gifts

Motion: Dismiss
Moved/Seconded: Poat/Detsky-Weil
Vote: Carried Unanimously

Case No. 2014-25 - In Re: Alleged Making and Acceptance of Unlawful Contribution

Motion: Initiate Investigation
Moved/Seconded: Detsky-Weil/Fuller
Vote: Carried Unanimously
Recused: Kreit

Case No. 2014-26 through 2014-28 - In Re: Alleged Failure to Disclose Campaign Contributions on Lobbyist Quarterly Disclosure Reports

Motion: Initiate Investigation
Moved/Seconded: Fuller/Zinser
Vote: Carried Unanimously

Case No. 2014-29 - In Re: Alleged Failure to Properly File Lobbyist Quarterly Disclosure Report

Motion: Initiate Investigation
Moved/Seconded: Fuller/Cochran
Vote: Carried Unanimously

Case No. 2014-30 - In Re: Alleged Conflict of Interest

Motion: Initiate Investigation
Moved/Seconded: Fuller/Detsky-Weil
Vote: Carried Unanimously

Item-2: Conference with Legal Counsel (6 potential matters)

Case No. 2013-15 - In Re: Alleged Making of Contribution in the Name of Another Person

No Reportable Action

Case No. 2013-16 - In Re: Alleged Making of Contribution in the Name of Another Person

No Reportable Action

Case No. 2013-17 - In Re: Alleged Making of Contribution in the Name of Another Person

No Reportable Action

Case No. 2013-46 - In Re: Alleged Failure to File Lobbyist Quarterly Disclosure Report

Motion: Approve Stipulation
Moved/Seconded: Detsky-Weil/O'Neill
Vote: Carried Unanimously
Recused: Kreit

Case No. 2014-05 - In Re: Alleged Failure to Properly File Campaign Statements

No Reportable Action

Case No. 2014-08 - In Re: Alleged Failure to Pay Registration Fees and File Lobbyist Quarterly Disclosure Report

Motion: Dismiss
Moved/Seconded: Detsky-Weil/O'Neill
Vote: Carried Unanimously

Item-3: Conference with Legal Counsel (2 potential matters)

Presentation of Final Audit Reports Regarding the Audits of:

- **Carl DeMaio for Mayor 2012 Committee**
- **Comprehensive Pension Reform for San Diego (CPR for San Diego) – Yes on B, with major funding by The Lincoln Club of San Diego County and San Diegans for Pension Reform, advocates for responsible city financing Committee.**

Motion: Accept Final Audit Reports
Moved/Seconded: Kreit/Cochran
Vote: Carried Unanimously

Adjournment

The meeting adjourned at approximately 6:35 p.m.

[REDACTED]

John C. O'Neill, Commission Chair
Ethics Commission

[REDACTED]

Jennifer Duarte, Administrative Aide
Ethics Commission

THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.