



**Minutes for Meeting of
Thursday, July 10, 2014**

Item 1: Call to Order

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

Item 2: Roll Call

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

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

Item 3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of June 12, 2014

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

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 at the previous meeting the Commission directed staff to amend the draft proposal to include a substantial duplication threshold instead of one based on a particular percentage. The objective was to have a provision similar to the federal model, which contains a blanket prohibition with specific exemptions. She explained that staff recommends that the Commission not use the word "substantial" in the proposed amendments for several reasons. First, when updating the proposed amendments, staff recognized the vague nature of the word "substantial," and realized that the City Council would likely request specific criteria for what is, and what is not, considered substantial duplication. Second, when drafting a fact sheet to provide examples of what actions would constitute a violation versus a safe harbor, staff realized that the Commission would be circling back to the percentage thresholds that it was seeking to avoid.

Ms. Fulhorst reported that staff recommends following the federal model, which includes a blanket prohibition on the duplication of candidate materials with certain exemptions. In light of views expressed by the Commissioners at prior meetings, staff has incorporated exemptions into the draft amendments for a photograph of the candidate as well as language that a candidate uses in a public speech. In addition, staff recommends exempting written statements for several reasons. First, from an enforcement perspective, it might be difficult to determine whether duplicated phrases came from a candidate's speech or printed campaign materials. Second, from a legal and policy perspective, it is questionable whether it is appropriate to prohibit the duplication of a candidate's catch phrases and compel committees to use different words to say essentially the same thing.

Ms. Fulhorst discussed the contents of an email she recently received from Attorney Stephen Kaufman which was distributed at the meeting. She pointed out that several of his concerns were addressed in the current draft proposed by staff, but suggested that changing "written statements" to "written words, phrases, or sentences" might clarify the broad nature of the proposed exemption. With respect to his suggestion that the Commission incorporate the word "substantial," she reiterated the problems with this approach. Finally, she noted that Mr. Kaufman believes the exemption for a single photograph is not broad enough.

According to Ms. Fulhorst, the current draft was reviewed by Paul Ryan with the Campaign Legal Center who expressed support for the concept and opined that it is legally sound. He has also offered to prepare a memo supporting the proposal. Ms. Fulhorst noted that the current draft includes the phrase "in whole or in part," which was added at Mr. Ryan's suggestion.

Commission Chair O'Neill asked if the current draft language would prohibit a committee from duplicating an entire candidate mailer but permit the committee to duplicate text phrases used in a mailer, and Ms. Fulhorst confirmed that this distinction is correct.

Commissioner Kreit noted that the current draft does not include the exemption in previous drafts for duplication of materials in advertisements that oppose the

candidate. Ms. Fulhorst responded that the concept was incorporated into subsection (c) by limiting the duplication restrictions to committee advertisements that support a candidate.

Commissioner Fuller asked whether the exemption for a photograph would apply to videos which are essentially a series of photographs. Ms. Fulhorst responded that videos would not be exempt because the draft language limits the exemption to a single photograph.

Commissioner Detsky-Weil asked if the exemption for written statements would permit committees to duplicate all of the text included in a candidate's mailer and if so, whether this exemption conflicts with the Commission's goal. Ms. Fulhorst confirmed that all words used in a candidate's mailer would be exempt from the duplication prohibition, but explained that the exemption is part of a balanced approach to address the existing problem without a complex set of criteria. She pointed out that the greatest harm occurs when a candidate who cannot afford to pay for a television commercial produces a video and posts it on the campaign website in order to allow an "independent" committee, subject to no contribution limits, to pay for the video to be aired as a television commercial. On the other hand, it is arguably less important, from a public policy perspective, to prohibit a committee from duplicating a campaign phrase such as "endorsed by firefighters."

Commission Chair O'Neill asked about the Los Angeles law that includes the phrase "substantial duplication." Ms. Fulhorst explained that Los Angeles initially adopted a duplication prohibition based on the federal model without any exemptions. After they realized that they wanted to exempt *de minimis* duplication, they incorporated the word "substantial" into their law. She added that Los Angeles has not issued any educational materials that provide guidelines for what is, and what is not, considered "substantial."

Commissioner Kreit pointed out that committees could avoid compliance with the law by duplicating candidate materials that reference the candidate's leadership or vision and claiming that the resulting advertisement does not technically "support" the candidate. He therefore expressed his preference for an exemption applicable to advertisements that clearly advocate for the defeat of a candidate. Ms. Fulhorst noted that this approach would more closely mirror the federal law. In addition, according to Paul Ryan, such an exemption is appropriate because government agencies are only permitted to regulate payments that are considered contributions to the candidate, and an ad that opposes a candidate cannot be considered a contribution.

Commissioner Poat asked if there are any reporting requirements involved in the proposed amendments. Ms. Fulhorst responded that the amendments will not affect any of the reporting requirements that currently exist under state and local law. Commissioner Poat asked if committees are currently required to submit campaign materials to the Commission and Ms. Fulhorst responded that there is no such requirement. Commissioner Poat asked how the Commission would learn about potential violations, and Ms. Fulhorst said she expects the Commission would learn about violations through the complaint process.

Commissioner Kreit stated that he is sympathetic to Mr. Kaufman's concerns concerning the exemption for a single photograph and suggested expanding the

exemption to five photographs. Commissioner Fuller stated that he would support expanding the exemption to three photographs.

Commissioner Poat stated that he was not prepared to take action on the proposed amendments and that he would like additional input from the regulated community. He asked if the proposed amendments were posted on the Commission's website before the meeting, and Ms. Fulhorst confirmed that they were posted on the website and were also distributed via email to the Commission's interested persons list. Commissioner Fuller commented that he has been in touch with members of the regulated community who have informed him that they are well aware of the proposed amendments under consideration by the Commission. Commissioner Detsky-Weil noted that in her experience serving on other boards it is frequently difficult to get people involved.

Motion:	Adopt the Staff's Proposal with the following changes: (1) delete the words "in support of" in subsection (c) and add a provision to subsection (d) exempting advertisements that clearly advocate the defeat of the candidate; (2) change "statements" in subsection (d)(1) to "words, phrases, or sentences"; and (3) amend subsection (d)(3) to exempt the duplication of up to three photographs of the candidate.
Moved/Seconded:	Fuller/Zinser
Vote:	Carried Unanimously
Abstain:	Poat

Item 9: Presentation of Final Audit Report Regarding the Mat Kostrinsky for City Council 2012 Committee

Motion:	Accept Final Audit Report
Moved/Seconded:	Fuller/Cochran
Vote:	Carried Unanimously
Abstain:	Poat

Item 10: Adjourn to Closed Session

Commission Chair O'Neill adjourned the meeting to closed session at approximately 5:40 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 Chair O'Neill called the meeting back into open session at approximately 7:15 p.m.

Reporting Results of Closed Session Meeting of July 10, 2014:

Ms. Cameron reported the results of the closed session meeting of July 10, 2014:

Item-1: Conference with Legal Counsel (1 potential matter)

Case No. 2014-31 - In Re: Alleged Failure to Disclose Campaign Contributions on Lobbyist Quarterly Disclosure Reports

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

Item-2: Conference with Legal Counsel (11 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. 2013-25 - In Re: Alleged Making of Contribution in the Name of Another Person

No Reportable Action

Case No. 2013-26 - In Re: Alleged Making of Contribution in the Name of Another Person

Motion: Approve Stipulations (8)
Moved/Seconded: Fuller/Detsky-Weil
Vote: Carried Unanimously

Case No. 2013-45 - In Re: Alleged Failure to Timely Pay Vendor Debts

Motion: Approve Stipulation
Moved/Seconded: Fuller/Zinser
Vote: Carried Unanimously

Case No. 2014-01 - In Re: Alleged Making of Contribution in the Name of Another Person

Motion: Dismiss
Moved/Seconded: Fuller/O'Neill
Vote: Carried Unanimously

Case No. 2014-14 - In Re: Alleged Failure to File Behested Payment Report

Motion: Dismiss
Moved/Seconded: Fuller/Cochran
Vote: Carried Unanimously

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

Motion: Dismiss
Moved/Seconded: Poat/Fuller
Vote: Carried Unanimously

Case No. 2014-27 - In Re: Alleged Failure to Disclose Campaign Contributions on Lobbyist Quarterly Disclosure Reports

Motion: Dismiss
Moved/Seconded: Poat/O'Neill
Vote: Carried Unanimously

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

Motion: Dismiss
Moved/Seconded: Poat/Fuller
Vote: Carried Unanimously

Staff: Outside Counsel John E. Edwards

Item-3: Conference with Legal Negotiator

No Reportable Action

Item-4: Public Employee Performance Evaluation

No Reportable Action

Adjournment

The meeting adjourned at approximately 7:20 p.m.

[REDACTED]

John C. O'Neill, Commission Chair
Ethics Commission

[REDACTED]

Jennifer Blasier, Administrative Aide
Ethics Commission

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