

MARK VANNI
Deputy City Attorney

April 18, 2018

Via Email and Regular U.S. Mail

Matthew C. Alvarez, Esq.
The Sutton Law Firm



Re: Request for Advice

Dear Mr. Alvarez:

This letter responds to your April 12, 2018 request for a written opinion regarding San José Municipal Code¹ section 12.06.1010. Anyone may ask the San José City Attorney for written advice about their duties under the City's campaign ordinances.² Relying on the City Attorney's opinion is a complete defense in an enforcement proceeding before the San José Board of Fair Campaign and Political Practices and is evidence of good faith conduct in a civil or criminal proceeding, but only if the requestor sought the City Attorney's advice in good faith and truthfully disclosed all material facts.³

1. Question

According to your letter, your firm represents political committees that seek to make independent expenditures supporting or opposing City of San José candidates in the June 2018 and November 2018 elections. You note that State and San José law require independent committees to include a written disclaimer on campaign advertisements, but these disclaimers differ in form. To reconcile this difference, you ask for permission to merge the two statements as follows:

¹ Unless otherwise stated, all statutory references are to the San José Municipal Code.

² SJMC § 12.05.080

³ *Id.*

Notice to Voters

(Required by the City of San José)

This electioneering communication is not authorized or approved by any candidate for City office, a committee controlled by a candidate for City Office, or an election official.

It is paid for by (NAME OF PAC).

123 Santa Clara St. San Jose, CA 92123; FPPC ID No. 987654.

Total cost of this mailing is \$_____.

You also offer a legal rationale for merging the disclaimers, as well as opinions from the FPPC and the Oakland Public Ethics Commission approving a similar merger request in 2016.

2. Short Answer

The merged disclaimer complies with Section 12.06.1010.

3. Analysis

Under San José law, every printed electioneering communication from an independent committee must have this disclaimer:

Notice to Voters

(Required by the City of San José)

This electioneering communication is not authorized or approved by any candidate for city office or by any election official.

It is paid for by (committee name and committee identification number).

(Address, city, state).

Total cost of this mailing is (amount).

Under California law, an advertisement supporting or opposing a candidate paid for by an independent expenditure must disclose the committee that paid for the advertisement with a statement “that [the advertisement] was not authorized by a candidate or a committee controlled by a candidate.”⁴ And if a candidate for another office authorized or paid for the advertisement, the advertisement must instead include a statement that “this advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”⁵

The State does not require “approved by” or “by any election official,” and the City does not require “a committee controlled by a candidate.” Although the City and State use

⁴ Gov. Code §§ 84305, 84506.5

⁵ Gov. Code § 84506.5

slightly different language, the purpose of these disclaimers is to inform voters about the source and funding of a campaign advertisement when sent by an independent committee.⁶ The City Attorney cannot offer an official opinion about State law, but the merged language you propose is consistent with the purpose of Section 12.06.1010. The merged language includes all the information required under Section 12.06.1010 and combines it with the State disclaimer in a way that is reasonable and informative.

4. Conclusion

The merged language you propose satisfies the disclosure requirements under Section 12.06.1010.

If you need further campaign guidance, you may call (408) 535-1900 or email SJElections@sanjoseca.gov.

Very truly yours,

RICHARD DOYLE, City Attorney

By: Mark Vanni
MARK J. VANNI
Deputy City Attorney

MJV/mjv

⁶ See Alvarez Advice Letter A-16-166 (2016)