

April 4, 2016

Sent Via Email

Re: San Jose Campaign Guidance – FCC Equal Time and Campaign Contribution

Dear Mr. Diep:

You have asked the following questions:

1. In the event that political ad time is acquired through invoking the FCC's Equal Time Rule, is such political ad time subject to campaign finance reporting rules?
2. If the value of the political ad must be disclosed, is the value of such time limited to \$600?
3. How would the airtime acquired by enforcing the FCC Equal Time Rules be reported?
4. Does it count as an in-kind contribution?
5. Am I limited by the \$600 contribution limit when my political opponent has been granted free access to public airwaves without limit?

Answer:

1. It depends. The San Jose Municipal Code (SJMC) defines "contribution" in SJMC 12.06.050 as "any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, or it is clear from the surrounding circumstances that the contribution is not made for political purposes." The term "contribution" includes...the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates... The definition of "contribution" in the Municipal

Code is similar to the definition under state law. The Municipal Code provides that the terms and provisions of the Campaign Ordinance are interpreted in accordance with the definitions and provisions of the Political Reform Act of 1974, as amended, (Gov. Code Section 81000, et seq.) and the regulations of the Fair Political Practices Commission (FPPC). The FPPC has opined that "...to the extent that free air time is provided under compulsion of law, it is not a contribution. To the extent that providing free air time is discretionary, the free air time will constitute a reportable contribution." (See CA FPPC Adv. I-92-473.) Therefore, whether political ad time is subject to campaign finance reporting rules depends upon how the political ad time was acquired.

2. If the political ad is deemed a contribution, the value of the political ad is subject to the campaign contribution limitations set forth in Part 2 of Chapter 12.06 of the San Jose Municipal Code. The campaign contribution limits for the Primary Municipal Election to be held on June 7, 2016 and the General Municipal Election to be held on November 8, 2016 is currently \$600.00 per Election.
3. The airtime acquired would be reported under the requirements set forth under Part 9 of Chapter 12.06 of the San Jose Municipal Code. If deemed a legal requirement to have the free air time, then it is not reported as contribution. However, absent a legal requirement to provide such free air time or any other exception in the FPPC code and regulations, then you must report it in your Form 460.
4. If the political ad time acquired is deemed to be a contribution, then it is a nonmonetary contribution. When a nonmonetary contribution is received, the fair market value of the goods or services must be reported. Please contact the FPPC for assistance regarding the valuation of nonmonetary contribution.
5. Each candidate is subject to the contribution limits set forth in SJMC 12.06.210 as adjusted by Council Resolution 77583. As long as there is no express advocacy advocating for the nomination or election, or the defeat of an opponent, then the access to the public airwaves will not be considered a contribution and subject to campaign contribution limits. (See CA FPPC Adv. I-00-219.) While the Municipal Code imposes campaign contribution limitations by any person to a Council Candidate or any Controlled Committee by the Candidate, the Municipal Code does not impose limits as to contributions made by a Candidate in aid of himself or herself or limits upon expenditures.

Please note that this letter is intended to interpret only the City's Municipal Code. The California Fair Political Practices Commission is charged with interpretation and enforcement of the Political Reform Act and implementing FPPC regulations. Court

Re: Campaign Guidance – FCC Equal Time and Campaign Contribution

April 4, 2016

Page 3

decisions have held that reliance on the advice of a city attorney is not a defense in the event of an inquiry as to whether the state regulations have been violated.

We hope that this addresses your question concerning the City's Campaign Ordinance. Please feel free to call if you have further questions or need clarification with regard to this letter.

Very truly yours,

RICHARD DOYLE, City Attorney

By: 
ARLENE SILVA
Deputy City Attorney

cc: Toni J. Taber, CMC, City Clerk