

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

550 Main Street Suite E • Placerville, CA 95667

Phone: (530) 295-2707 • Fax: (530) 295-1208

lafco@co.el-dorado.ca.us

www.co.el-dorado.ca.us/lafco

AGENDA OF DECEMBER 5, 2007

REGULAR MEETING

TO: Ted Long, Chairman, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

**AGENDA ITEM #2e: ADOPTION OF A POLICY RELATED TO THE DISCLOSURE
OF POLITICAL CONTRIBUTIONS AND EXPENDITURES
REGARDING LAFCO PROCEEDINGS**

RECOMMENDATION

Staff recommends that the Commission consider and adopt the recommended language in order to be in compliance with AB 745 (Silva). This law, which takes effect on January 1, 2008, gives LAFCOs the discretion to adopt campaign contribution disclosure requirements.

REASON FOR RECOMMENDED ACTION

AB 745 is optional, so there is no need for the Commission to act simply because the new law takes effect January 1, 2008; however, the law as it is currently written is imperfect. It ties itself very closely to Fair Political Practices Commission rules regarding disclosure of contributions at certain intervals prior to and after an "election date." Since LAFCO does not operate on election dates, it may be best to adopt a local policy, before any controversy erupts, that clarifies when this Commission will require applicants (and their opponents) to disclose expenditures.

BACKGROUND

Historical Background

The post-Watergate era brought mandatory disclosure of financial contributions intended to influence the outcome of elections, such as elections on ballot measures, including incorporation and other proposals to the electorate. California led the pack with the adoption of Proposition 9, the Political Reform Act of 1974, which created the Fair Political Practices Commission (FPPC).

In 1976, the FPPC determined that a City incorporation effort did not become a “measure” to which campaign contribution disclosure applied unless and until the matter was placed on the ballot [*In re Fontana*, 2 FPPC Ops. 25, 75-162 (1976)]. As a result of this decision, public disclosure of the financial backers of an incorporation proposal is not required until fairly late in the process.

In the late 1990s, Valley Vote succeeded in placing on the ballot a proposal to separate the San Fernando Valley from Los Angeles, raising and spending hundreds of thousands of dollars to prepare its petitions and to gather signatures. Los Angeles officials demanded that Valley Vote disclose their donors. Under the *Fontana* opinion, however, disclosure was not required until the measures reached the ballot.

While the Valley secession was pending, the Commission on Local Governance for the 21st Century (CLG), a state blue ribbon panel formed to review what was then known as the Cortese-Knox Local Government Reorganization Act, had been created and heard testimony from Valley Vote and Los Angeles city officials. The Commission recommended to the Legislature that “proponents of reorganization actions be required to report campaign contributions in the same manner that local initiative proponents are required to report.” However, the final version of the Commission’s work, what became the Cortese-Knox-Hertzberg Act (CKH Act) was a heavily negotiated bill and its provision regarding disclosure of contributions was less forceful than CLG’s recommendation.

Current Reporting Requirements

Current law requires the disclosure of gifts by the applicants (or the real party of interest, if different) to commissioners. In relation to applications and current disclosure requirements, Government Code §56100.1 indicates:

A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015 [*i.e.*, the Political Reform Act], expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission’s executive officer, in which case it shall be posted on the commission’s website, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure required by Title 9 (commencing with Section 81000) [*i.e.*, the Political Reform Act] or by local ordinance.

This statute is optional and applicable to petitions for reorganizations, but not to protests of a proposal at the conducting-authority stage.

Assembly Bill 745 (Silva)

AB 745 makes non-substantial amendments to Government Code § 56100.1. Consequently, LAFCOs retain discretion to adopt disclosure requirements with respect to proposals for action by a LAFCO as to expenditures, contributions and – unlike the new statutes discussed below – independent expenditures (*i.e.*, expenditures to

influence the outcome of a petition that are made independently of the proponents of the petition).¹ It also adopts two new provisions of the CKH Act, as follows:

“56700.1. Expenditures for political purposes related to a proposal for a change of organization or reorganization that will be submitted to a commission pursuant to this part [*i.e.*, petitions for organization or reorganization of a local government], and, contributions in support of or in opposition to those proposals, shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act ... as provided for local initiative measures.

57009. Expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part [*i.e.*, conducting authority proceedings], and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act ..., as provided for local initiative measures.”

The first section is included in the chapter of the CKH Act governing petitions to a LAFCO for organization or reorganization of a local government. As to such petitions, it has the following consequences:

- “Expenditures for political purposes” and “contributions in support of or in opposition” to these proposals must be disclosed to LAFCO under the rules of the Political Reform Act for local initiative measures. This is a mandatory duty of those who make such expenditures – *i.e.*, those who spend \$1,000 or more to influence the outcome of a proposal that has reached the signature-gathering stage. *LAFCO has no discretion to allow expenditures to go unreported and it must accept the disclosure itself*, as Government Code § 56100.1 would permit. Thus, once the proponents or opponents of a petition for LAFCO action spend \$1,000 with respect to that proposal, they must report their contributions of \$100 or more and all of their expenditures. In theory, organizers of an independent expenditure campaign which neither supports nor opposes a proposal are exempt from this disclosure. However, it is very likely that expenditures will be viewed as being in support or opposition; so, disclosure from all who spend more than \$1,000 with respect to a proposal is likely required.
- The second new section of the CKH Act is placed in the chapter of the statute governing conducting authority proceedings and it has these same consequences: Once a person or group spends \$1,000 or more to influence the outcome of a conducting authority proceeding, that person or group must disclose contributions and expenditures to LAFCO.

Although the statute references the Political Reform Act, it does not amend that Act. *Accordingly, the Fair Political Practices Commission has no jurisdiction to enforce the*

¹ “Independent expenditures” usually arise only with respect to candidate elections, and such expenditures must be independent of the candidate. It is not clear how an “independent expenditure” in the context of a measure differs from an expenditure by a committee or individual supporting or opposing the measure. Thus, the exclusion of “independent expenditure” from the newly adopted sections of the CKH Act may not have much significance.

requirements for disclosure until a LAFCO matter is placed on the ballot and becomes a "measure" within the meaning of the Political Reform Act. Enforcement will be up to the LAFCO and, absent cooperation of the persons obligated to make disclosure, enforcement will require a lawsuit. Although the legislation is not clear on this point, it is likely the courts will allow third parties to sue to enforce disclosure – as newspapers and opposing political forces may wish to do. CALAFCO is working with other parties to transfer the jurisdiction to the FPPC; however, if successful, the transfer would not occur until January 1, 2009 at the earliest. Consequently, LAFCO is "stuck" with this requirement for at least a year.

In theory, a LAFCO could enforce this statute just as it is written. However, this will lead to difficulties, as the analogy of a petition for (or a protest of) a LAFCO action to an initiative measure to be acted upon by the voters is imperfect. For example, the FFPC rules tie disclosure to election dates, requiring disclosures before and after the election and require expedited disclosure of large, last-minute contributions. However, unless there is an election because of the number of qualified protests submitted during the Conducting Authority hearing, there is no "election date." In addition, the law does not specify whether the payment of LAFCO fees is subject to disclosure.

To that effect, the California Association of LAFCOs asked counsels and LAFCO staff members to recommend a model policy that can be used by any LAFCO that wishes to have a policy in place prior to January 1, 2008. El Dorado LAFCO counsel has reviewed the attached policy and staff recommends incorporating it into the Commission's Policies & Guidelines Section 3.1.1.1. In essence, the proposed policy establishes the circumstances, timelines and manner in which applicants (or opponents) must disclose their expenditures to LAFCO. It expressively excludes from disclosure requirements the preparation of environmental reviews, LAFCO fees and deposits as well as the fees paid to other agencies as a result of processing a LAFCO petition. In addition, it designates the Executive Officer as the filing officer for these disclosures.

Attachment:

Attachment A: Recommended Disclosure Language (to be incorporated into Policies & Guidelines Section 3.1.1.1)