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5 Investigator/Petitioner
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8 **BEFORE THE CAMPAIGN FINANCE ETHICS COMMISSION**
9 **COUNTY OF VENTURA**
10

11 In the Matter of:

CASE NO. 2006-15

12 COUNTY OF VENTURA REPUBLICAN
CENTRAL COMMITTEE,

RECOMMENDATION OF DISMISSAL OF
COMPLAINT AND AMENDED
COMPLAINT, REPORT IN SUPPORT
THEREOF, PROPOSED DECISION AND
ORDER

13
14 Respondent.
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17 Pursuant to Section 3.13 of Article XIII of the Ventura County Campaign Finance Ethics
18 Commission Operating Policies (the "Operating Policies"), revised and adopted June 9, 2006,
19 Petitioner hereby recommends that the Ventura County Campaign Finance Ethics Commission (the
20 "Commission") dismiss the original complaint, dated November 9, 2006, and the amended
21 complaint,¹ in the above-referenced matter, on grounds that the evidence does not support the
22 charges set forth in the original and amended complaints.
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25 ¹ On May 11, 2007, the Commission approved Petitioner's recommendation that the complaint
26 against Respondent be amended to include additional charges based on information obtained after
27 the original complaint was issued. A copy of the recommendation is attached as Exhibit 1 to the
28 Report of Findings. The Commission directed that the amended complaint be prepared and
submitted for a probable cause determination. Since Respondent filed amended reports soon
thereafter, i.e., May 18, 2007, and the information therein sufficiently disposed of the issues raised in
the recommendation, Petitioner did not prepare the amended complaint and submit it for a probable
cause determination. The charges were specified in detail in the recommendation.

1 Petitioner's report in support of the recommendation and a proposed decision and order are
2 attached hereto.

3 DATED: July 2, 2007

COLANTUONO & LEVIN, PC

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KENNETH C. HARDY

Investigator & Petitioner

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REPORT OF FINDINGS
CASE NO. 2006-15

Kenneth C. Hardy was appointed as Investigator/Petitioner in Case No. 2006-15 involving Respondent Ventura County Republican Central Committee ("Respondent"). The election was on November 7, 2006. Mr. Hardy investigated the matter. The following report supports Petitioner's recommendation that the complaint and amended complaint be dismissed.

Analysis of Original Complaint

On November 6, 2006, Respondent filed a Late Contribution Report (California Form 497) stating that a \$9,658.37 contribution was made to Peter Foy for Supervisor ("Foy") and a \$10,000.00 contribution was made to C & L Graphics, Inc., in support of Foy. A copy of this report is attached as Exhibit 2. Thus, according to the report, Respondent contributed \$19,658.37 to Foy.

Section 1268 of the Ventura County Campaign Finance Reform Ordinance (the "Ordinance") provides in part that: "No person shall make to any participating candidate for elective [county] office or the controlled committee of such a candidate . . . any contribution totaling more than six hundred dollars (\$600) per election." A copy of the Ordinance is attached as Exhibit 3.

Thus, according to the report, Respondent exceeded the contribution cap by \$19,058.37. On November 13, 2006, the Elections Division filed a complaint against Respondent for this overage. A copy of the complaint and the probable cause determination is attached as Exhibit 4. Despite the information in the report, Respondent claimed that the amounts were not contributions.² In response,

² Based on information from the Elections Division and some written information from Respondent, it appears that there was some confusion about how Respondent's expenditures should be handled. For example, Respondent apparently claimed that Regulation 18531.7(e), which exempts certain payments from being deemed contributions, was applicable to Respondent. According to the Fair Political Practices Commission, this regulation does not apply to political parties. Counsel for Respondent did explain that the amounts in question were spent on "member communications" and not subject to the contribution limits of the Ordinance. Member communications will be discussed herein. Copies of this initial letter, and later iterations of it, are attached as Exhibit 5. Counsel for Respondent, however, stated that such payments were to be *reported* on the forms used for independent expenditures. Respondent, however, reported the amounts on forms used for late contributions. This was confusing and which forms were used could have legal consequences in certain situations. The letter also stated that Respondent had complied with the reporting requirements of Section 1275 of the Ordinance. Section 1275 provides that independent expenditures of \$1,000 or more must be reported on a special County form, i.e., Form 1275. Respondent did not comply with these requirements because the Treasurer of Respondent never signed the Form 1275. In any event, as more fully set forth herein, Section 1275 is inapplicable to the expenditures in

1 the Elections Division required that Respondent comply with the reporting requirements for
2 independent expenditures set forth in Section 1275 of the Ordinance.³

3 Respondent thereafter submitted several amended Form 497s. A copy of one filed on
4 November 15, 2006, is attached as Exhibit 6, one filed on November 30, 2006, is attached as Exhibit
5 7, and one filed on May 18, 2007, is attached as Exhibit 8. According to the amended reports, the
6 \$10,000.00 amount identified in the original Form 497 (Exhibit 2) as a contribution to C&L
7 Graphics in support of Foy was changed to \$4,500.00, with the \$5,500.00 balance going to other
8 candidates (none for Ventura County office). More importantly, the amended reports identify this
9 \$4,500 amount as a payment for "member communications" in support of Foy. Also, the \$9,658.37
10 amount identified in the original Form 497 (Exhibit 2) as a contribution to Foy was described in the
11 later reports as a payment for member communications in support of Foy. In short, all of the
12 "contributions" by Respondent in support of Foy, according to the amended reports, were payments
13 for member communications. Respondent also filed several California Form 460 Recipient
14 Committee Campaign Statements. A copy of the Form 460 filed on January 26, 2007, is attached as
15 Exhibit 9, and a copy of two amended Form 460s filed on May 18, 2007, is attached as Exhibit 10.

16 Member communications are communications made by an organization only to its bona fide
17 members. State law has special provisions for payments made for member communications.
18 Government Code section 85312, a copy of which is attached as Exhibit 11, provides in part:

19 "For purposes of this title, payments for communications to members . . . of an
20 organization for the purpose of supporting or opposing a candidate . . . are not
21 contributions or expenditures, provided those payments are not made for general
22 public advertising However, payments made by a political party for
23 communications to its members who are registered with that party which would
24 otherwise qualify as contributions or expenditures shall be reported in accordance
25 with [Sec. 84200 et seq. and 84600 et seq.]."

26
27 question. The point is that both Respondent and Respondent's counsel did not initially characterize
28 Respondent's payments precisely and even contradicted each other to some degree.

³ Section 1275 of the Ordinance requires independent expenditures of \$1000.00 or more be reported on County Form 1275. (See Exhibit 3.)

1 Section 85312 has two parts. The first part pertains to how to characterize payments made for
2 member communications. Generally, when someone other than the candidate⁴ pays for a
3 communication supporting the candidate, such payment is deemed either a non-monetary
4 contribution to the candidate or an independent expenditure. If the payment was made “at the behest
5 of”⁵ the candidate then it is a non-monetary contribution. The person who made the payment must
6 report making a non-monetary contribution to the candidate, and the candidate must report receiving
7 a non-monetary contribution. If the payment was not made at the behest of the candidate, then it is
8 an independent expenditure. The person who made the independent expenditure may have to report
9 it (depending on the amount spent), but the candidate does not have to report independent
10 expenditures.⁶

11 Under Section 85312, however, payments made by a political party for member
12 communications in support of a candidate (and that comply with other requirements of Section
13 85312), even if made at the behest of the candidate, are not contributions. And if such payments
14 were not made at the behest of the candidate, they are nevertheless not independent expenditures.
15 Section 85312 provides that they are neither contributions nor independent expenditures.

16 The second part of Section 85312 explains how payments for member communications must
17 be reported. Such payments by political parties that would *otherwise qualify as a contribution or*
18 *independent expenditure* must be *reported* as if they were a contribution or independent expenditure
19 on the forms designated for contributions or independent expenditures. (See *In re Fulhorst*, FPPC
20 Op. No. I-05-161 (Oct. 28, 2005).) If a political party makes payments for member communications
21 that would otherwise qualify as a late contribution, then the political party must use Form 497, which
22 is the appropriate form for late contributions. Any member communication payments on such forms
23 must be identified. Respondent did not do this on its initial Form 497. (See Exhibit 2.)

24 _____
25 ⁴ By “candidate” we mean the candidate or his or her committee.

26 ⁵ A payment is made “at the behest of” a candidate or his or her committee if the payment is made
27 under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at
28 the request or suggestion of, or with the express prior consent of, the candidate or his or her
committee or an agent of the candidate or the committee. (2 CCR § 18225.7.)

⁶ Government Code sections 82031, 84506, 85501.

1 Consequently, under Government Code section 85312 and based on the available evidence,⁷
2 the \$9,658.37 and \$4,500.00 payments made by Respondent on member communications in support
3 of Foy may not be treated as contributions for purposes of the contribution cap of Section 1268 of
4 the Ordinance. Likewise, these amounts may not be treated as independent expenditures. Thus, the
5 reporting requirements of Section 1275 of the Ordinance are not applicable.

6 Give the current state of the law, and the available evidence, we conclude that there is not
7 sufficient evidence to support the charges set forth in the original complaint.

8 **Analysis of Amended Complaint**

9 On May 11, 2007, the Commission approved Petitioner's recommendation that the complaint
10 against Respondent be amended to include additional charges based on information obtained after
11 the original complaint was issued. (See Exhibit 1.) Since Respondent filed amended reports soon
12 thereafter, and the information contained therein sufficiently addressed the issues raised in the
13 recommendation, Petitioner did not prepare and submit the amended complaint for a probable cause
14 determination.

15 The first potential violation relates to an expenditure of \$3,372.59 by Respondent "to support
16 Peter Foy" reported on the Form 460 filed on January 26, 2007. (See Exhibit 9, pp. 8 and 20). The
17 expenditure was not identified as either a contribution or an independent expenditure or as made for
18 a member communication. Without amendment to this report, such payment as reported would be
19 deemed an independent expenditure and thus subject to Section 1275 of the Ordinance or, more
20 likely given the information of Respondent's other reports, a non-monetary contribution to Foy. If a
21 contribution, it would have violated the \$600 contribution cap of Section 1268 of the Ordinance.

22 According to the amended reports, Respondent spent \$3,372.59 on postage for member
23 communications. Based on this reported information and in the absence of evidence to the contrary,
24 under Government Code section 85312 this amount, as a payment by Respondent for member
25 communications, is not a contribution to Foy and is therefore not subject to the contribution cap of
26 Section 1268 of the Ordinance.

27 _____
28 ⁷ No evidence has been presented that any of the member communications in question were
delivered to non-members.

1 The second potential violation relates to an apparent non-monetary contribution made by
2 Coronado Communications to Respondent in support of Foy and which was not originally reported.
3 Coronado Communications designed a mailer that was used in a non-member communication issued
4 by Coronado Communications. The design of the mailer, however, was used in a member
5 communication issued by Respondent. Respondent did not report receiving this non-monetary
6 contribution from Coronado Communications. (See Exhibit 1.) In the absence of any other
7 information in the original reports, such contribution was a contribution to Respondent and may
8 have been, depending on the facts, a contribution to Foy. Petitioner also found that since a member
9 communication was directly linked to a non-member communication issued by an organization
10 consulting to Foy, clarification on Respondent's relationship to the design was necessary to
11 determine whether any contribution had been made by Respondent, potentially violating the \$600
12 contribution cap of Section 1268.

13 According to the amended reports, Respondent received a \$600 non-monetary contribution
14 from Coronado Communications in the form of the communication design in question. The amended
15 reports also state that this design contribution was for a member communication. (See Exhibit 9, p.
16 6.) It seems likely that the market value of the design is over \$600. It is a complicated, professional,
17 and multi-color design layout. But that is an issue for the Fair Political Practices Commission. For
18 purposes of this Commission's jurisdiction, to the extent that such design effort related to a member
19 communication, and we have no direct evidence to the contrary, the value of the design effort is not
20 a contribution by Respondent to Foy under Government Code section 85312 and, hence, not subject
21 to the contribution cap of Section 1268 of the Ordinance.

22 The third potential violation relates to a full page ad in the Simi Valley Acorn, dated October
23 27, 2006, urging support of various candidates, including Peter Foy, which was not originally
24 reported. The ad, being located in a public newspaper, is not a member communication, and thus is
25 either an independent expenditure or a contribution. An independent expenditure of \$1,000 or more
26 would have to be reported on County Form 1275 pursuant to Section 1275 of the Ordinance.

27 According to the amended reports, Respondent expended a total of \$416.34 for a newspaper
28 ad for "local candidates" and such expenditure was an independent expenditure. We have no direct

1 evidence that the expenditure was not an independent expenditure. We note that the portion of the ad
2 in support of Foy was one text line item among many line items supporting many candidates and
3 measures. Based on this evidence, the expenditure was independent and under the \$1,000 reporting
4 threshold of Section 1275 of the Ordinance.

5 Give the current state of the law, and the available evidence, we conclude that there is not
6 sufficient evidence to support the charges set forth in the amended original complaint.

7 **Conclusion**

8 Although it is recommended that the complaint and the amended complaint be dismissed, it
9 is worth mentioning that Respondent's reporting and information to the Elections Division was, at
10 least initially and for some time thereafter, not entirely accurate, and cooperation with the Elections
11 Division was uneven. Also, the amendments to Respondent's reports were not made until after
12 Petitioner filed with the Commission the recommendation to amend the complaint. Petitioner is also
13 troubled by the fact that Respondent did not originally report receiving the design contribution from
14 Coronado Communications whatsoever. Petitioner discovered this connection purely from his own
15 research. Furthermore, Respondent placed a value on the design that matched the contribution limits
16 of the Ordinance. This amount is therefore arbitrary and likely does not reflect the market value of
17 the design services. As discussed above, this may be an issue for the FPPC, but is not within the
18 jurisdiction of the County.

19 It should also be noted that much of the law that relates to this case is complex, unsettled, and
20 under review by the Legislature and the FPPC. There is a bill pending – Assembly Bill No. 1430 –
21 which if signed into law would specifically regulate the limits of local legislation on membership
22 communications. The FPPC is also considering adopting further regulations on the topic. Some of
23 the transactions of Respondent in this case are of a type that are of concern to certain proponents of
24 more restrictive local campaign finance reform. The FPPC has been clear that it will not broadly
25 interpret existing law and regulations in order to allay some of these concerns, but rather, will review
26 the issues and adopt additional regulations if necessary. The current recommendation is based on
27 those areas of the law regarding membership communications that do not appear to be in dispute.
28

1 The foregoing indicates that the available evidence, given the current state of the law, does
2 not support the charges set forth in the original complaint and the amended complaint. Petitioner
3 recommends that the original and amended complaints against Respondent be dismissed pursuant to
4 Section 3.13 of Article XIII of the Ventura County Campaign Finance Ethics Commission Operating
5 Policies.

6 DATED: July 2, 2007

COLANTUONO & LEVIN, PC

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9 KENNETH C. HARDY
Investigator & Petitioner

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DECISION AND ORDER

The Ventura County Campaign Finance Ethics Commission, having reviewed the Recommendation of Dismissal of Complaint and Amended Complaint and Report of Findings at its meeting on _____, hereby adopts such Recommendation of Dismissal of Complaint and Amended Complaint and Report of Findings as its final decision and determination with respect to the original complaint and the amended complaint in Case No. 2006-15. It is hereby ordered that all complaints and charges in Case No. 2006-15 are hereby dismissed.

DATE: _____

Honorable William L. Peck
Chair, Campaign Finance Ethics Commission

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Los Angeles, CA 90013

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DECISION AND ORDER

The Ventura County Campaign Finance Ethics Commission, having reviewed the Recommendation of Dismissal of Complaint and Amended Complaint and Report of Findings at its meeting on July 11, 2007, hereby adopts such Recommendation of Dismissal of Complaint and Amended Complaint and Report of Findings as its final decision and determination with respect to the original complaint and the amended complaint in Case No. 2006-15. It is hereby ordered that all complaints and charges in Case No. 2006-15 are hereby dismissed.

DATE:

July 11, 2007



Honorable William L. Peck
Chair, Campaign Finance Ethics Commission