



TRUCKEE TAHOE AIRPORT DISTRICT

BOARD OF DIRECTORS STAFF REPORT

AGENDA TITLE: Discussion Regarding Policy on Campaign Contributions

MEETING DATE: February 27, 2019

PREPARED BY: BRENT P. COLLINSON, ATTORNEY AT LAW

RECOMMENDED ACTION: Provide further instruction to staff regarding a policy on campaign contributions so a formal Policy Instruction can be considered and adopted.

DISCUSSION: At the October 24, 2018 Board Meeting, the Board unanimously requested Staff to investigate and propose possible policies regarding campaign contributions received by Board Members, and also to inquire regarding whether other local districts have any such policies.

OTHER LOCAL AGENCY POLICIES

As to other districts' and Town's policies, the following special districts were contacted: Truckee Fire Protection District; Truckee Donner Recreation and Park District; Truckee Sanitary District, Truckee Donner Public Utility District and Tahoe Truckee Unified School District.

Other than the School District, if a District has a policy, it is simply to comply with federal, state and local election laws. The School District goes slightly further, encouraging "all candidates to sign and adhere to the principles in the Code of Fair Campaign Practices pursuant to Elections Code 20440" (copy attached). That Code relates more to the conduct of a campaign and not the financial aspects of campaign contributions, which is regulated by the Political Reform Act ("PRA") and the Fair Political Practices Commission ("FPPC"). The PRA expressly permits local agencies to impose additional requirements as long as they do not conflict with the PRA or FPPC regulations. If a policy is adopted, amended or repealed regarding campaign contributions or expenditures, a copy of that policy must be filed with FPPC (Government Code section 81009.5)

Contact was also made with the Town. Their policy is to follow the requirements of the FPPC and state law. However, they have adopted "Council Norms" (copy attached) that sets out "wants and expectation from Council Members". Although many of those items relate to conduct before and during Council meetings and meetings with staff, the second page does have a section on Elections and endorsements. These provisions include a council member not

endorsing any candidate for Town council or any “local” district candidate or measures (unless the Council as a whole has taken a position). A “local” election is at the County level or the special districts. Former council members are not prohibited from making any endorsement, but are not to use their former title.

Finally, in a review of the District’s current Policy Instructions, reference is made to PI 201 (referencing the Political Reform Act) and PI 204, which adopted the District’s Conflict of Interest Code. That Code notes that Board Members are required to file their Conflict of Interest Statements pursuant to Government Code section 87200.

RESTRICTIONS ON CONTRIBUTIONS OR EXPENDITURES

There are also First Amendment considerations for candidates themselves as any limits on campaigning could be a restriction on their First Amendment rights of free speech. As with all such constitutional rights, there are limits that can be imposed if there is 1) an important governmental interest and 2) it is closely drawn to avoid unnecessary infringement on those rights. The most common example is that one cannot go into a crowded theater and yell “Fire”.

In the field of campaign contributions, restrictions on *quid pro quo* contributions have been upheld; restrictions enacted to pursue the goal of equalizing campaign contributions or expenditures have been stricken by the courts.

However, courts have upheld narrowly drawn and specific restrictions on imposing a dollar limit on campaign contributions, after reviewing the size of the jurisdiction, media and other advertising costs in that area, the amount of news media coverage and the like. The courts do apply the “strict scrutiny” scope of review and the District would have the burden of proof in justifying such restrictions and limits. I therefore do not recommend imposing limits on campaign contributions.

Note that “outside independent expenditure committees” (“Super PAC’s”) may not be subject to these regulations as long as they are not directed by a specific candidate or a controlled committee.

The District could, however, suggest a *voluntary* limit on campaign contributions and/or expenditures, but being voluntary, any candidate could opt out of that limit (as was recently done in the state gubernatorial election). The Board could, however, indicate on the ballot and any of its publications which candidates have agreed to that voluntary limit, but of course there would be little recourse if a candidate agreed to that limit, obtained the benefit of that indication, but then exceeds that limit and it is not disclosed until after the election (other than a recall election).

REQUIREMENTS FOR DISCLOSURE

The above proposals have addressed limits on campaign contributions and expenditures, which are subject to strict scrutiny due to the First Amendment considerations. However, the *disclosure* of contributions are less likely to conflict with the First Amendment.

All Board Members are subject to the Political Reform Act and the restrictions on conflicts of interest as promulgated by the FPPC. Those restrictions require disclosure and recusal (and potentially leaving the room) when a matter is discussed in which a Board Member has an identified conflict.

Candidates must file with the FPPC their campaign contributions if their total contributions exceed a specified amount, currently \$2,000. That report is then posted on the FPPC website. However, many citizens may not be aware of their ability to navigate the FPPC website in order to find the particular campaign of interest.

The Board could consider adopting a policy that the candidates also provide their FPPC disclosure to the District, or have the District locate that information, so that the FPPC disclosure would then be posted on the District's website. That would impose additional requirements on staff to constantly monitor the FPPC website for any new postings. A concern also exists if the staff member responsible for such postings was involved in other time-sensitive matters (such as preparing the Board Meeting package) or was out ill, attending a conference, or on vacation and there was a delay in posting that information. Such a delay in posting could open up the District and the employee of charges of favoritism.

However, the District could prominently post on its website a link to the portion of the FPPC website that reports the contributions specifically for the District so that members of the public could quickly and easily access that information.

The Board could also adopt a Policy Instruction based on Government Code section 84308. As has been noted previously, that section does not apply to the District as its members are directly elected by the voters. However, it is noted that part of that section does require a disclosure by a Board Member (and a presenter) if that presenter has donated more than \$250 to the Board Member in the past 12 months. Other Districts that are subject to this disclosure requirement have struggled with making presenters aware of that disclosure requirement, so it is recommended that if the Board wants to adopt this as their policy, only the Board Member be required to make that disclosure.

NEXT STEPS: The Board should give further directions to staff regarding these or other options so that a formal Policy Instruction can be presented at a future Board Meeting.

FISCAL IMPACT: Unknown at this time as it is dependent on which policies the Board wishes to adopt.

PUBLIC COMMUNICATION: This matter has already received local media coverage. It will also be agendized on the February Agenda.

POSSIBLE MOTIONS: None recommended at this time.

ATTACHMENTS:

- Elections Code section 20440
- Town of Truckee "Council Norms"