

Memo

To: Commission

From: Wayne Barnett

Date: April 29, 2009

Re: Credit Card Contributions

QUESTION

Does the Commission still endorse Elections Code Rule 6.G.5, which details the information that campaigns must collect when a contribution is made by credit or debit card, and 6.G.6, which requires that certain affirmations be made by people who make contributions online?

LAW AND RULES

SMC 2.04.180 provides that, “[n]o person may make a contribution of more than Fifty-five Dollars (\$55), other than an in-kind contribution, except by a written instrument containing the name of the contributor and the name of the payee except that candidates and political committees may, consistent with rules adopted by the Commission, receive contributions by credit card, if the contributor's identity is verified as required for compliance with SMC Section 2.04.260.” SMC 2.04.260 requires that campaigns provide the name and address of all donors who contribute more than \$25 in aggregate to the campaign, as well as the occupation and employer of those who contribute more than \$100 in the aggregate.

Rules 6.G.5 and 6.G.6 provide as follows:

5. A committee must collect the following information regarding credit card contributions, in addition to the information that otherwise must be reported under the Elections Code:
 - a. Name on Card
 - b. Date Contribution Processed (submitted to the bank)
 - c. Authorization Code provided by the bank
 - d. Expiration Date of Credit/Debit Card
 - e. Credit/Debit Card Type (Visa, MasterCard, American Express, etc.)
 - f. Last Four Numbers of Credit/Debit Card

6. A web page on which credit/debit card contributions are solicited shall provide the following boxes for the contributor to check for self-screening and affirmation that: (a) the funds being contributed are the personal funds of the contributor and are not those of another, (b) the contributor is not a foreign national who lacks permanent resident status in the United States, (c) the contributor is making the contribution via the contributor's personal credit or debit card for which the contributor has a legal obligation to pay, and not through a corporate or business entity card or the card of another, and (d) the contributor is at least 18 years old. If the contribution exceeds \$100, the web site must also require the contributor to list his or her occupation and the name, city and state of his or her employer.

COMPARABLE PROVISIONS FROM OTHER JURISDICTIONS

The City's requirements are in line with guidance provided by the PDC in 2000, which is appended to this memo. They are also in line with New York City, which has adopted the following rule:

(6) Credit card contributions. For each instance in which a candidate accepts contributions by credit card, including contributions received over the Internet, the candidate shall maintain a copy of the unique merchant account agreement as well as copies of all merchant account statements, credit card processing company statements and correspondence, transaction reports or other records demonstrating that the credit card used to process the transaction is that of the individual contributor (including proof of approval by the credit card processor for each contribution and proof of real time address verification), and a separate written record of the contributor's name, residential address, credit card account type, credit card account number, and credit card expiration date. This record shall contain the statement: "I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution is being made from my personal credit card account, billed to and paid by me for my personal use, and having no corporate or business affiliation, and is not being made as a loan." This record shall be signed by the contributor, or if the contributor is unable to sign his or her name, marked with an "X" and signed by a witness. Adjacent to the signature or mark, the contributor or witness shall write the date on which he or she signed the record. The Board shall provide a specimen of this card. Notwithstanding the requirements of this paragraph, in the case of credit card contributions made over the Internet, authorization cards need not be signed by the contributor. In addition, if the candidate accepts credit card contributions over the Internet, the candidate shall maintain a copy of all website content concerning the solicitation and processing of credit card contributions.

California state law, which governs campaigns for local office in San Francisco and Los Angeles, provides that “[i]n the case of contributions made through wire transfer, credit card transaction, debit account transaction, or similar electronic payment option (including those made via the Internet), the original source documentation shall also include all credit card receipts, transaction slips or other writings signed by the contributor, credit card vouchers, and other documentation of credit card transactions, including credit card confirmation numbers and itemized transaction reports, as well as any other information collected when debiting the contributor's account. In the case of contributions made through electronic transactions via the Internet, original source documentation shall also include a record of the transaction created and transmitted by the cardholder including the name of the cardholder, the cardholder's address and the card number.” FPPC Regulation §18401.

DISCUSSION

A few campaigns for City office are utilizing PayPal to process credit card contributions made on-line. PayPal does not provide campaigns with the information required to comply with Rule 6.G.5, and the campaigns have not been taking steps to collect this information, nor is it my understanding that they intend to. One campaign e-mailed the following to us:

Whether a person uses a credit card to fund a contribution to the campaign through PayPal, or uses a credit card to purchase a cashiers check at a bank made out to the campaign, I don't see how we can trace back a second level to see where the transaction originated, nor do I see how that helps meet the legal requirement that an individual be limited to \$700 in contributions to a single candidate, and that those funds must be the individuals. I feel that PayPal's reporting serves the former requirement as well as a check - we have a name, an address and an account. Neither serve the second requirement well at all (determining the original source of the funds).

The last time the Commission took up this issue was in 2006, and at the time there was some disagreement among Commissioners about the need for the City's rule. At this point in the election cycle, I would prefer to resolve this issue with the campaigns in a non-adversarial setting, which is why I've issued an invitation to treasurers to attend this meeting. If the Commission wishes to retain the rule, then campaigns can take steps to bring their practices in line before the campaign shifts into high gear. If the Commission wishes to change the rule, then it is important that we initiate that process immediately.

Staff continues to believe that campaigns must collect the required information in order for the staff to effectively audit campaigns, and that any benefit to treasurers from adopting less demanding reporting standards is outweighed by the risks inherent in the acceptance of contributions that cannot effectively be audited. (Attached is a *National Journal* article that deals with issues at the federal level arising out of web-based contributions in the 2008 election.) Staff notes that the City's rules are consistent with the state's guidelines, and also consistent with those in other large cities that the staff sampled.

RECOMMENDATION

The Commission should retain Rules 6.G.5 and 6.G.6, and direct staff to inform campaigns that they must bring their recordkeeping into compliance with the Commission's rules.