County Pays $1.35 Million Penalty for Public Funds Spent in Support of Ballot Measure

09.01.2020

ATTORNEYS

Craig A. Steele

Los Angeles County will pay $1.35 million in penalties for failing to report expenditures supporting its 2017 special tax ballot measure for homeless services. In a case that underscores the potential stakes for public agencies that cross the line between providing impartial information about the effects of a ballot measure and impermissibly advocating for a particular result, the Fair Political Practices Commission ("FPPC") approved a stipulated settlement recently. This case likely foreshadows an increased enforcement focus on public agency activities in connection with ballot measures.

Shortly after putting the tax measure on the ballot, the stipulation alleges, the County authorized a $1 million budget for communications relating to the measure, and a contract with a consultant to execute the communications campaign. The County's paid media advertisements focused on the message "Measure H. Real Help. Lasting Change. Vote March 7," rather than any impartial information. The measure narrowly obtained the required 2/3 voter approval.

Howard Jarvis Taxpayers Association ("HJTA") strategically sought advice from the FPPC, asking whether expenditures by a private entity for the same message in connection with a fictitious local tax measure would constitute a reportable campaign expenditure. After the FPPC advised in writing that such expenditures would be considered reportable campaign expenditures, HJTA filed a complaint accusing the County of making improper expenditures and failing to report them. Under the stipulation, the County will pay $600,000 each to the State and HJTA, and $150,000 in attorneys' fees to settle the complaints. The total penalty could have exceeded $2.4 million.

A public agency or employee may not spend or use public resources for campaign activity in support of or opposition to a ballot measure, and all campaign expenditures must be reported to the FPPC. The complaint and FPPC enforcement action alleged that the County's payments for electronic advertisements and the political slogan constituted expenditures in favor of the ballot measure under the factors in FPPC Regulation 18420.1. Public agencies that engage in communications activities in connection with a ballot measure should carefully compare the communications - often prepared by consultants - with the factors set forth in that regulation to be sure payments for those communications will not be considered campaign expenditures.

For further information about public agency communications about ballot measures, or other political law matters, please contact **Craig Steele**.