



Santa Monica Coalition for a Livable City

STEERING November 30, 2010

COMMITTEE

& ADVISORS

By Email

Ms. Marsha Moutrie

Ms. Maria Stewart

1685 Main Street

Santa Monica, CA. 90401

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jacob samuel

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carol sobel

maryanne solomon

doris sosin

linda sullivan

peter tigler

bill zimmerman

Dear Ms. Moutrie and Ms. Stewart:

We are writing to inquire about the status of your review of Santa Monicans for Quality Government (SMQG) and whether the City intends to make findings and/or seek civil or criminal sanctions against the entity as well as its President, Fred Huebscher, and its Treasurer, Kinde Durkee, who were responsible for the required SMQG's filings with the City Clerk pursuant to the Santa Monica Municipal Code.

When we last communicated on October 29th concerning SMQG, Ms. Stewart had already forwarded a copy of SMCLC's initial complaint to the FPPC for investigation as to possible violations of state law by SMQG. That left the remaining issue of whether SMQG also violated the Santa Monica Municipal Code (SMMC), either as a recipient committee or as a state slate mailer organization, which is within the jurisdiction of Santa Monica, not the FPPC.

With respect to our ongoing City complaint, we are concerned with: 1) the four SMQG mailers that undisputedly relate only to the Santa Monica City Council election; and (2) the refusal by SMQG to timely file certain campaign statements with the City Clerk as required by the SMMC concerning the contributions received and expenditures made for these mailers.

On October 29th, you informed me that you were going to take another look at the matter and asked me whether "[our] claim of violation of local law was based on SMMC Section 11.04.105 or some other Municipal Code section."

I responded and indicated that our claim was also based on SMMC Section 11.04.100. As you know, that section specifically requires a **slate mailer organization or** a recipient committee, among other entities, that files a statement required by the Political Reform Act to also file a copy of that statement with the City

Clerk. The section reads:

“Any candidate, committee, elected official or slate mailer organization filing a statement required by Chapter 4 of Title 9 of the Government Code (Political Reform Act of 1974) shall also file a copy of that statement with the City Clerk by the filing deadline specified in state law. The City Clerk shall post statements on the City’s website within twenty-four hours, excluding weekends, or as soon thereafter as practicable.” (emphasis added, citations omitted).

Section 11.04.100 by its clear terms required SMQG to have filed campaign disclosure statements with the City “by the filing deadline specified in state law” (*e.g.*, if it filed with the state at the time of a deadline, it must be filed on the same day with the City).

Under this section, when SMQG produced and mailed its four mailers exclusively concerning the Santa Monica City Council election, and regardless of whether it did so as a recipient committee or as a slate mailer organization, it was required to report all contributions received and expenditures made for the period 1/01/10 – 10/16/10 by October 21, 2010. That is the deadline by which, under state law, it was required to report them to the Secretary of State. (See Exhibit “17” to SMCLC’s Complaint to the FPPC, which is a copy of the filing made by SMQG as a slate mailer organization). (We leave aside for the moment the question of whether SMQG’s fifth and final mailing, entitled “Democratic Voter Guide” which did include non-city races also would be covered by section 11.04.100; we believe it was but we understand that this is part of a pending review by the City Attorney at the direction of the City Council).

The fact that SMQG additionally registered with the state as a state mailer organization did not in any way relieve it of its local campaign statement filing obligations. As SMMC Section 11.04.100 plainly states, if the FPPC rules would require a filing by the slate mailer organization, a duplicate filing must be made with the City Clerk, who is then required to promptly post it (within twenty-four hours, excluding weekends, or as soon thereafter as practicable).

The FPPC rules do require a filing by a slate mailer organization. Chapter 4 of the Political Reform Act regulates the campaign disclosures required among other things, by slate mailer organizations. Govt. Code Section 84218(c)(3) in Chapter 4 requires a “slate mailer organization” “which produces one or more slate mailers supporting or opposing candidates or measures voted on in only one city shall file campaign reports in the same manner as city general purpose committees” (Govt. Code Section 84218(c)(3)).

Govt. Code Section 84218(b)(1), further provides that “any slate mailer organization which produces a slate mailer supporting or opposing candidates or measures being voted on in an election held upon the first Tuesday . . . of November of an even-numbered year shall file the statements specified in Section 84200.7 if, during the period covered by the preelection statement, the slate mailer organization receives payments totaling five hundred dollars (\$500) or more from any person for the support of or opposition to candidates or ballot measures in one or more slate mailers, or expends five hundred dollars (\$500) or more to produce one or more slate mailers.” Section 84200.7(b)(2) sets the time periods for filing such preelection statements for the November election period and requires that “For the period ending 17 days before the election [here October 16st], a statement to be filed no later than 12 days before the election [here October 21, 2010].” Thus, SMQG had to file by October 21st.

It is undisputed that SMQG produced and mailed four mailers devoted exclusively to the City Council election. Those four, exclusively city mailers are attached to the latest FPPC Complaint filed by SMCLC, copies of which were sent to you electronically on November 17, 2010.

It is also undisputed that SMQG, as a state slate mailer organization filed its Slate Mailer Campaign Statement with the Secretary of State. See Exhibit “17” to SMCLC’s Complaint to the FPPC which is an executed copy of SMQG’s Slate Mailer Campaign Statement, received by the Secretary of State on October 22, 2010.

No such Campaign Statement was filed with the City Clerk on October 21, 2010. Instead, after repeated unsuccessful attempts to get copies of SMQG’s filings either from the Secretary of State or SMQG, at the eleventh hour on November 1st, the afternoon before the election, Ms. Stewart finally received an undated and unsigned copy of SMQG’s Form 401 reporting \$31,000 in contributions received and \$12,750 in expenditures made covering the period 1/1/10 through 10/16/10. This untimely submission by SMQG also violated SMMC Section 11.04.155(b) and other sections of the law which require all campaign disclosure documents that are filed to be signed. The very late SMQG filing was unsigned and therefore unverified.

SMQG violated SMMC Section 11.04.100 as well as Govt. Code Section 84218(c)(3) by failing to file its slate mailer campaign statements on October 21st. SMQG also violated SMMC Section 11.04.155(a) (Time Deadline) which requires that: “all documents required to be filed under this Chapter, the California Elections Code or the California Political Reform Act must be received by the City Clerk by the close of business on the date specified for filing”

The wisdom and transparency of these sections of the SMMC as to timely and full disclosure of campaign contributions and expenditures is clear. If SMQG had followed this law, voters would have known who was funding these slick, deceptive mailers well before the November 2nd election. By refusing all attempts by the press and the City to get timely answers to this question and by violating the Municipal Code, SMQG violated the plain face of the law and its clear meaning. In doing so, SMQG and those who donated to SMQG for these city mailers made a mockery of the election process.

To this day, SMQG continues to boldly claim that it has no responsibility to file with the City because it is a slate mailer organization. (See Nov 18, 2010 *Santa Monica Daily Press*, article entitled “Fines sought for alleged election shenanigans,” reporting that Huebscher has all along insisted his group is a statewide ‘slate mailer organization,’ not a local campaign committee, and has no obligation to provide Santa Monica’s City Clerk with records of its activities. The article goes on to say that [o]n Wednesday, he said he believed SMQG had followed all of the rules. **“Since there’s no legal authority saying we’ve done anything wrong,** I see no reason to be concerned about paying fines,” he [Huebscher] said (emphasis added).

Fortunately for residents, there is local legal authority saying SMQG has done something wrong. But it’s up to the City to investigate and report to residents concerning all of SMQG’s violations so that residents have confidence that their City is properly enforcing the City’s own laws. This is particularly important where significant contributions were made by developers with pending projects in the City for two sitting City Councilmembers and two other sitting City Councilmembers hired Mr. Huebscher as their campaign consultant. This is a cloud over the election that will not go away.

Even taking for point of argument only that SMQG, as a recipient committee, could retroactively transmogrify into a slate mailer organization, SMQG was obligated to file campaign reports as a state slate mailer organization with the City by the state deadline under the SMMC. This it refused to do, depriving Santa Monica voters of key information on a timely basis --- namely that developers with large projects that are likely to come before the City Council were funding SMQG’s deceptive Santa Monica election mailers and funding certain City Council candidates.

These SMMC violations were not merely technical in nature or a “no harm, no foul” situation. These violations subvert the fundamental purpose of the law – to have an informed electorate apprised of who is financing the campaigns of elected officials. There was a concerted, coordinated effort to keep Santa Monica voters from being informed as to who was funding these four city mailers.

For all the foregoing reasons, we urge you to complete this investigation as to all of the local laws which may have been violated by SMQG (and its President and Treasurer) as a state slate mailer organization or a recipient committee in addition to those cited above and seek all appropriate fines or penalties under SMMC Section 11.04.200.

If you have any questions, please call or otherwise let me know.

Thank you,

Diana Gordon for SMCLC

Cc: Rod Gould (by email)

Neighborhood Association Leaders (by email)