

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18530.45. Legal Defense Funds - Local Candidates and Officers.

(a) Application and Definitions.

(1) This regulation applies to the bank account permitted by Section 85304.5(a).

(2) For purposes of this regulation, the following definitions apply:

(A) “Legal defense funds” means money in the legal defense account.

(B) “Legal defense account” means the bank account established at a financial institution located in the State of California pursuant to Section 85304.5(a).

(C) “Legal defense committee” means a committee formed pursuant to subdivision (c) of this regulation.

(D) “Candidate” means a candidate for elective office in a local government agency.

(E) “Officer” means an elected officer in a local government agency.

(b) Local Regulation of Legal Defense Account.

(1) Except as provided in paragraphs (2) and (3), this regulation shall govern the legal defense account and legal defense committee established by a candidate or officer under Section 85304.5.

(2) A local government agency may impose different requirements, including a contribution limit, on a legal defense account and legal defense committee maintained by a candidate or officer in its jurisdiction if its requirements regarding establishment of the committee, recordkeeping, and reporting are at least as strict as those provided in subdivisions (c), (e), and (f) of this regulation.

(3) If the local government agency does not enact local contribution limits applicable to legal defense funds, the local requirements must also be at least as strict as those provided in subdivision (i).

(c) Establishing the Legal Defense Account and Legal Defense Committee. A candidate or officer who raises legal defense funds under this regulation shall deposit the funds in and expend the funds from a bank account separate from any other bank account held by the candidate or officer, including a campaign bank account and a legal defense account for a state official and a candidate under Section 85304. The candidate or officer shall establish a controlled committee for the legal defense account by filing a statement of organization pursuant to Section 84101. The statement of organization shall contain a description of the specific legal dispute or disputes for which the account is established, and shall be amended pursuant to Section 84103, as legal disputes are either resolved or initiated. The words “Legal Defense Fund” and the candidate's or officer's last name shall be included in the committee name.

(d) Separate Accounts For Each Local Elective Office. The candidate or officer shall establish a separate legal defense account and legal defense committee for each local elective office to which the legal proceeding or proceedings relate.

(e) Required Recordkeeping and Audits. The candidate or officer, and the treasurer of the legal defense committee, are subject to recordkeeping requirements specified in Section 84104 and shall keep separate detailed accounts, records, bills, and receipts, for each legal proceeding including documentation to support the basis and timing, as set forth in subdivision (i)(3), for raising legal defense funds. The legal defense committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. An audit under Section 90001 of a candidate or officer, or

any controlled committee of the candidate or officer, shall include that candidate's or officer's legal defense committee maintained during the audit period as described in Section 90002(a)(1).

(f) Reporting Requirements. The legal defense committee shall file campaign statements and reports pursuant to Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other candidate controlled committee in the jurisdiction in which the legal defense committee was established.

(g) Contributions and Expenditures Not Subject to Certain Provisions. A contribution to and an expenditure from a legal defense account under Section 85304.5 is not subject to the provisions of Sections 85200 or 85201.

(h) State Legal Defense Accounts. A candidate or officer who is also a state candidate or officer may establish a legal defense committee under Section 85304.

(i) Limitations. For the purposes of Section 85304.5 the following limitations apply:

(1) Legal defense funds may only be raised in an amount reasonably calculated to pay, and may only be expended for, attorney's fees and other related legal costs.

(A) "Attorney's fees and other related legal costs" includes only the following:

(i) Attorney's fees and other direct legal costs related to the defense of the candidate or officer.

(ii) Administrative costs directly related to compliance with the requirements of subdivisions (c) and (f) and the recordkeeping requirements of subdivision (e) of this regulation.

(B) "Attorney's fees and other related legal costs" does not include for example expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or, except as expressly authorized by subdivision (c) of Section 89513, a payment or reimbursement for a

fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.

(2) A candidate or officer may only raise funds under this regulation for defense against a civil or criminal proceeding, or for defense against a government agency's administrative enforcement proceeding arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. An administrative enforcement proceeding includes a discretionary audit initiated under Section 90003, but not an audit initiated under Section 90001 until the candidate or officer reasonably concludes that a government agency has commenced an investigation based upon the audit. A candidate or officer may raise funds under this regulation and Section 85304.5 to defend against an election contest conducted pursuant to Division 16 (commencing with Section 16000) of the Elections Code, but may not raise or spend legal defense funds for attorney's fees and other legal costs incurred in an election recount conducted pursuant to Chapter 9 (commencing with Section 15600) of Division 15 of the Elections Code.

(3) Legal defense funds may not be raised in connection with a proceeding until the following has occurred:

(A) In a proceeding brought by a government agency, when the candidate or officer reasonably concludes the agency has commenced an investigation or the agency formally commences the proceeding, whichever is earlier.

(B) In a civil proceeding brought by a private person, after the person files the civil action.

(j) Remaining Funds. Funds remaining in the legal defense account following payment of all attorney's fees and other related legal costs for which the account and committee are established shall be returned or disposed of as follows:

(1) If the total amount of remaining legal defense funds is more than \$5,000, the entire sum shall be returned to legal defense account donors on a pro rata basis.

(2) Remaining legal defense funds not required to be returned under subdivision (j)(1) shall be disposed of for any of the purposes set forth in subdivisions (b)(1) through (b)(5) of Section 89519. Remaining legal defense funds may not be transferred, except as permitted under subdivisions (b)(1) through (b)(5) of Section 89519.

(k) Termination and Reopening of Committees. A legal defense account and legal defense committee shall be terminated, and all attorney's fees and other related costs returned or disposed of, within 90 days of the date the last legal dispute for which the account and committee are established has been resolved. The local ethics agency, or in the absence of an agency, the FPPC Executive Director, may for good cause, and consistent with the purposes of Section 85304.5 and this regulation, extend the termination date or permit the candidate or officer to reopen the account. The application to extend the termination date or to reopen the account shall be in writing and shall include copies of all supporting documents including copies of billing statements.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 85304, 85304.5 and 90002, Government Code.

HISTORY

1. New section filed 9-4-2008; operative 10-4-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924,

California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 36).

2. Amendment of subsection (i)(1)(B) filed 4-2-2015; operative 5-2-2015. Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 14).

3. Change without regulatory effect amending subsection (e) filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).

4. Amendment of subsection (e) and Note filed 9-14-2020; operative 10-14-2020 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2020, No. 38).