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FPPC Public Comment Submission

To: Members of the Fair Political Practices Commission
Jodi Remke, FPPC Chair
Gary Winiuk, Chief, Enforcement Division
Zackery P. Morazzini, General Counsel

Via Facsimile: 916.322.6440

From: Constance V. Conley

Meeting Date: **August 15, 2014 FPPC Meeting**

Re: **Consent Item 12 - In the Matter of Steven Detrick FPPC 14/130**

I respectfully submit a rebuttal to the staff report in the above-named case. The sworn complaints filed by both Linda Ford and myself stem from Elk Grove City Council member Steven Detrick using a total **$93,500** from his campaign account to pay for his son's legal fees. Payments were made throughout a one year period and several 460 campaign reporting periods.

The first most glaring statement which must have come directly from the Respondent is that I am a "former employee" of his. **That is absolutely false. I have been never employed by Mr. Detrick.** In fact, Gary Winiuk, Chief, Enforcement Division, issued a findings letter to that effect two years ago in denying a previous complaint. By making this false statement, Mr. Detrick was trying to justify and rationalize the illegal use of campaign funds.

Mr. Detrick's testimony that I was a political rival is also not correct. I do not reside in the same council district as Mr. Detrick and I have never run for public office. Therefore, I cannot be a political rival. I am a member of the public who filed a claim with the FPPC for alleged misuse of campaign funds.

Even more egregious is that I believe that Mr. Detrick knowingly and willingly told the investigator that he paid the legal fees for his son's lawsuit because I was a political rival in order to mislead this Commission.

In written public statements Mr. Detrick issued on more than one occasion he explicitly said, ***"He did not use campaign funds to pay for Brian's lawsuit."*** This was in response to the first complaint filed by Linda Ford.

This statement shows a blatant attempt to deceive the voting public in Elk Grove as well as complicity in that Mr. Detrick knew exactly what he was doing when he authorized the payments to Boutin Jones.

The mere fact that Mr. Detrick continued to use campaign funds to pay his son's legal fees even after he knew he was under investigation shows intent and premeditation. It must be noted that this is Mr. Detrick's second FPPC proposed fine in as many months.

I believe this investigation was one sided as neither the investigator nor the attorney in charge of the case, Dave Bainbridge, contacted either Linda Ford or myself as witnesses to refute testimony given by Mr. Detrick. Ms. Ford filed the initial complaint and I filed the second complaint.

- **It must be reiterated, and this is a very critical point, that Mr. Detrick continued to use campaign funds to pay his son's legal fees after he was already under investigation by the FPPC for the same alleged misuse.**

- **Note:** The first complaint filed in March of 2013 against Mr. Detrick was for the misuse of campaign funds to purchase charitable items Mr. Detrick and his wife used personally. At that time, Mr. Detrick hired former FPPC Counsel Steven Churchwell to represent him. In the filing of the current complaints, Mr. Churchwell continued to represent Mr. Detrick; therefore, he certainly knew what Mr. Detrick was doing was in violation of the CA Political Reform Act. [Please see the attached letter as evidence. There are many, but I have only included one.]

Also, Mr. Detrick issued a statement on August 11, 2014, after the current commission agenda was published that he ***"did not agree to the amount of the fine."*** Does this also mean that he not agree to repay his campaign account **$93,500** so that he wouldn't be subject to additional FPPC counts and fines?

I believe Mr. Detrick did not act in good faith and he deceived both the investigator and attorney assigned to this case. The proposed fine in this case should not be $3,500 but the maximum of $5,000, if not more.

Therefore, I respectfully request that the Commission reject the proposed fine of **$3,500**, and institute a fine much higher commensurate with the amount of money Mr. Detrick unlawfully used.

In addition, giving false testimony in an investigation should carry serious consequences and I ask this Commission to use the power given to you by law to enforce any and all penalties.

Thank you in advance for your consideration in this matter.

Attachment: Letter to Assemblymember Bernie Richter dated Sept. 30, 1993, from General Counsel Steven Churchwell

September 30, 1993

Honorable Bernie Richter
Assemblymember, Third District
P.O. Box 8987
Chico, CA 95927

Re: Your Request for Assistance
Our File No. I-93-355

Dear Assemblymember Richter:

This is in response to your letter requesting advice regarding your responsibilities under the provisions of the Political Reform Act (the "Act") that regulate the permissible use of campaign funds. Since your advice request is general in nature, we are treating your request as one for informal assistance.

Please note, as we discussed in our telephone conversation of September 23, 1993, your first question concerning whether a campaign committee can sue as plaintiff for defamation is beyond the provisions of the Act. Thus, we are unable to provide advice with respect to that question.

QUESTION

May you use campaign funds to pay attorney's fees and other costs incurred in connection with a lawsuit contending that you were defamed?

CONCLUSION

Campaign funds may be used to pay attorney's fees for general advice and the portion of a civil action directed to obtaining a retraction or injunctive relief. However, any attorney's fees attributable to a civil action seeking damages may not be paid from campaign funds because the expenditures are not directly related to a political, legislative, or governmental purpose and the personal benefit to you would be substantial.

DISCUSSION

The Personal Use Law

Effective January 1, 1990, the Act was amended to include new provisions which regulate the appropriate use of campaign funds. (Section 89510, et seq., the "personal use" law.) The use of campaign funds was formerly governed by provisions of the Elections Code as interpreted by the Attorney General's Office.

The general rule of the new personal use law is that any expenditure of campaign funds must, at a minimum, be reasonably related to a political, legislative, or governmental purpose associated with the candidate's office. (Section 89512.) However, where an expenditure confers a substantial personal benefit on the candidate, the expenditure must be directly related to a political, legislative, or governmental purpose. (Section 89512.)

The primary purpose behind these provisions was "to ensure that candidates, elected officers and the people clearly recognize acceptable and unacceptable uses of campaign funds." (Senate Elections Committee Analysis of SB 1431.) Thus, pursuant to the personal use provisions and other provisions of the Act, campaign funds have never been regarded as the personal property of the candidate.

Moreover, in 66 Ops.Cal.Atty.Gen. 331 (1983), the Attorney General determined that campaign funds are not the personal property of the candidate which becomes part of his estate. The Attorney General stated:

[I]n our view it cannot be said that an officeholder "owns" the campaign funds held by the committee. The contributions or gifts were made to the committee, albeit for his or her benefit or use.

* * *

[W]e further note that the law does not appear to give the officeholder absolute control of the funds in the hands of his or her committee during the officeholder's lifetime.

Defamation

Section 89514 provides:

Expenditures of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee's activities or out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action arising from an election contest or recount.

In the past, we have advised that so long as potential litigation arises directly out of a candidate's activities, duties, or status as a candidate or elected officer, campaign funds may be used to pay

attorney's fees incurred in consulting with an attorney. (Lively Advice Letter, No. A-91-241.) This would include an action to enjoin the publication of defamatory material.

However, we have also cautioned that any portion of an action to recover damages is solely personal and is not related to a political, legislative, or governmental purpose and therefore, may not be paid with campaign funds. (Lively, supra.) This interpretation of the personal use laws is consistent with that set forth in two opinion letters of the Attorney General's Office. They provided:

[W]e have concluded that attorney fees for that portion of the civil action directed to the injunctive proceedings referred to above may be paid from campaign funds. Any attorney fees that arise from other services performed in conjunction with the civil action against her opponent would be considered a personal expense, must be apportioned, and not paid from campaign funds. For example, the civil action seeks recovery of damages resulting from defendant's alleged improper conduct. Any attorney fees attributable to that portion of the claim cannot be paid from campaign funds as that would not be reasonably related to a political, legislative or governmental purpose and the personal benefit would be substantial.

(Donaldson Letter, March 25, 1983, emphasis added.)

You indicated the attorney fees relate to a suit for defamation. In such an action a plaintiff seeks damages or a redress for the wrong committed by the defendant. We believe that where the legal proceeding is one to recover damages, the action is intended to personally benefit the plaintiff and is not reasonably related to a political, legislative or governmental purpose. However, an attorney's actions can be related to such purposes where the actions of the attorney are directed to the termination of the alleged improper publication -- such as demanding and obtaining a retraction, or injunctive proceedings.

* * *

We believe attorney fees and expenses that arise from a civil action to recover damages -- here an action in defamation -- would be considered a personal use of campaign funds.... [However,] [f]ees charged...to cause the discontinuance of the alleged improper activity and to obtain a retraction can be paid from campaign funds....

(Maldonando Letter, April 4, 1983.)

As stated above, the personal use statutes were amended in 1990 to include new stricter provisions which regulate the appropriate use of campaign funds. Section 89514 now provides that expenditures of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation must be directly related to a political, legislative, or governmental purpose. Thus, we do not believe that the amendment would reverse the 1983 conclusions of the Attorney General's Office.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.\

Sincerely,

Steven G. Churchwell

General Counsel

By: John W. Wallace
Counsel, Legal Division