Exhibit A
Pirayou Advice Letter No. A-05-125

FAIR POLITICAL PRACTICES COMMISSION
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July 8, 2005

Bianca Pirayou
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6950 Almaden Expressway, Suite 125
San Jose, CA 95120

Re: Your Request for Advice
Our File No. A-05-125

Dear Ms. Pirayou:

This letter is in response to your request on behalf of the Friends of Ellen Corbett for Assembly and Friends of Ellen Corbett for advice regarding campaign provisions of the Political Reform Act (the "Act").[1]

QUESTION

Does the Act allow a candidate to transfer surplus funds among the candidate's committees where the funds in question have become surplus by virtue of section 89519 due to the mistake of the candidate and/or her treasurer?

CONCLUSION

No.

FACTS

Ellen Corbett was first elected as a member of the California Assembly for District 18 on November 3, 1998. She was reelected to two subsequent terms of the same office on November 7, 2000 and November 5, 2002. The Friends of Ellen Corbett for Assembly ("Assembly Committee") was used as the candidate controlled committee for Ms. Corbett's three elections to the California Assembly.

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[1] Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

On February 14, 2003, Ms. Corbett established the Friends of Ellen Corbett committee ("Senate Committee") to seek election to the California State Senate for District 10 in 2006.

On June 10, 2003, Ms. Corbett retained Rita Copeland of River City Business Services ("Treasurer") for treasurer and professional accounting services for both the Assembly and Senate committees. Amended Form 410s were filed for both committees to reflect the change in the treasurer position. The new treasurer obtained possession over the funds and records of both committees.

Ms. Corbett's term as a member of the California Assembly expired on November 30, 2004. As of December 31, 2004, the ending cash balance for the Assembly Committee was $97,851.43. Prior to expiration of her final term in the California State Assembly, Ms. Corbett asked that the treasurer transfer the cash balance in the Assembly Committee to the Senate Committee.

However, the funds in the Assembly Committee were not transferred to the Senate Committee before Ms. Corbett's state Assembly term of office expired. Therefore, the Assembly Committee funds became surplus funds on November 30, 2004.

Ms. Corbett discovered in April 2005 that the funds had not been transferred. You state that Ms. Corbett relied on the erroneous advice of her professional treasurer who believed the funds would become surplus nine months after Ms. Corbett would leave office. This has resulted in hardship to her candidacy for the Senate. Ms. Corbett established the Senate Committee on February 14, 2003, with the intention that the sizable balances of funds in the Assembly Committee account could be transferred to the Senate committee.

ANALYSIS

Section 89519 states that an officeholder's campaign funds become surplus when, inter alia, the officeholder leaves office. (§ 89519, subd. (a); Reg. 18951, subd. (a)(1).) Therefore, the funds maintained in Friends of Ellen Corbett for Assembly became surplus funds under the Act when the Assembly member left office on November 30, 2004. Section 89519 of the Act governs surplus funds, which states that they may only be used for the specifically delineated purposes set forth in the statute. (§ 89519, subd. (b)(1)-(6).)

Despite the circumstances of your case, the statute does not allow surplus funds to be used for a candidate's future election. In a few extraordinary circumstances where hardship would otherwise result and the purposes of the Act would not be furthered by a strict application of the law the Commission has allowed committees to remedy an error made due to a misreading of the law. We do not find those circumstances to be present in the matter at issue here. The letters you have cited, *Campbell*, No. A-04-153, *Miller*, No. A-03-017, *Tomberlin*, No. A-97-505 and *Johannessen*, No. A-96-281, are distinguishable

in three important ways. First, each of the letters cited involved a mistake leading to a personal hardship on the particular candidate.[2] In contrast, the hardship at issue here falls on a committee's ability to receive an injection of money for a future election instead of having to raise it via traditional methods. Second, the mistakes at issue in the letters flowed from a mistaken characterization of a given historical transaction or event, which had a personal consequence after an election.[3] There, correction of the mistake served the purposes of the Act to accurately follow the reporting laws. In contrast, Ms. Corbett's treasurer missed a deadline to do a certain act which has consequences for a future election.

Finally, section 89519 and regulation 18951, subdivision (a)(1), make abundantly clear the deadline when campaign funds become surplus and the consequences of allowing that deadline to lapse. Therefore, the action you request is expressly prohibited by the statute. The funds have already become surplus by operation of law and there is no Commission discretion to change that result. Indeed, the regulation states the rule in the first sentence of subdivision (a)(1) and reiterates in the second sentence that a candidate "who wishes to use funds for a future election must transfer those funds to a new committee for a future election no later than this date." Thus, the statute and the Commission have considered the issue of missing the deadline and emphasized the consequences for doing so. As such, it could not be said that application of the law would not further the purposes of the Act. In light of these differences, we do not find authority for allowing Ms. Corbett to transfer her surplus funds to her future Senate account nor would it further the general purposes of the Act.[4] As a result, Ms. Corbett may not transfer the surplus funds to her Senate account.

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[2] For instance, in the *Miller* letter the candidate was liable to lose her personal funds used to pay a filing fee; in *Johannessen* at stake was the candidate's ability to recover personal funds from the campaign after an inadvertent reimbursement; in *Tomberlin* and *Campbell* the inadvertent characterization of personal loans as "forgiven" instead of "outstanding" prevented repayment of personal funds and personal tax consequences, respectively.

[3] In each scenario of these letters at issue was how to record a prior event or transaction – in *Miller* it was how to characterize the payment of a filing fee; in *Johannessen* it was how to characterize a payment to the campaign by the official; in *Tomerblin* and *Campbell* at issue was the characterization of the status of a loan after the campaign concluded.

[4] We note that section 85319 now allows a candidate to return all or part of any contribution to the donor who made the contribution at any time, regardless of whether other contributions are returned. Thus, nothing prohibits Ms. Corbett from returning her contributions (pursuant to sections 89519, subdivision (b)(2), and section 85319) to contributors who might be identified as willing in turn to make a contribution to her future Senate committee.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

C Scott Tocher

By: C. Scott Tocher (rd)
Senior Counsel, Legal Division

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