



California Fair Political Practices Commission

November 26, 1985

Mike Jenkins
City Attorney
City of West Hollywood
Richards, Watson, Dreyfuss & Gershon
333 South Hope Street
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-85-238

Dear Mr. Jenkins:

This is in response to your letter dated November 12, 1985, requesting advice on behalf of West Hollywood Councilmember Valerie Terrigno.

FACTS

Ms. Terrigno has recently been indicted by the federal grand jury for alleged violation of federal law in connection with expenditures made by a federally funded program she previously administered. Ms. Terrigno has been approached by various persons who would like to contribute to her campaign committee or create a new campaign committee to help Ms. Terrigno defend against the indictments.

QUESTION

Ms. Terrigno wishes to know whether donations to her campaign committee or a special committee created for the purpose of paying defense costs in connection with the charges filed against Ms. Terrigno should be treated as campaign contributions or as income under the Political Reform Act of 1974.^{1/}

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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ANALYSIS

Before it can be determined whether donations to Ms. Terrigno should be classified as campaign contributions for the purposes of the Political Reform Act a determination must be made as to whether an expenditure for the purpose of assisting Ms. Terrigno in her defense against charges arising from the federal grand jury indictment would be prohibited by Sections 12400 through 12407 of the Election Code, which establishes limitations on uses of campaign funds.

All funds which are collected by a controlled committee within the meaning of the Political Reform Act (Section 82016) are "campaign funds" for the purposes of Sections 12400 through 12407 of the Elections Code and may not be expended for the personal use of the public official. (See 65 Ops. Cal. Atty. Gen. 493.)

Unfortunately, we are not authorized to interpret and give advice regarding Sections 12400 through 12407 of the Elections Code; such advice must be obtained from the Attorney General.

CONCLUSION

If such an expenditure is permissible under Sections 12400, et seq., of the Elections Code, then any donations to Ms. Terrigno's campaign committee for the purpose of paying her defense costs must be reported pursuant to the filing requirements of the Political Reform Act (Sections 84200, et seq.).

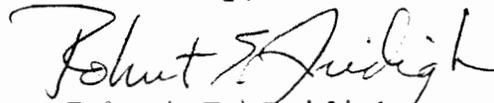
If, however, such an expenditure is not a permissible use of campaign funds, then any donation for this purpose could not be made to her campaign committee and would have to be as a "gift" to Ms. Terrigno and would be treated as income under the Political Reform Act (Section 82030). As such, these "gifts" would have to be disclosed on Ms. Terrigno's statement of economic interests (Sections 87200, et seq.). In addition, any gift of \$250 or more would trigger the conflict of interest provisions (Sections 87100, et seq.) and could require that Ms. Terrigno disqualify herself from participating in certain governmental decisions.

After it is determined whether or not such an expenditure is a permissible use of campaign funds, if Ms. Terrigno requires additional advice regarding the requirements of the

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Political Reform Act, please do not hesitate to contact us
again at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Leidigh". The signature is written in dark ink and is positioned above the typed name.

Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh

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JAMES K. HERBERT

November 12, 1985

Ms. Barbara Milman
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Request for Written Advice

Dear Ms. Milman:

I have been asked by West Hollywood Councilmember Valerie Terrigno to request written advice pursuant to Government Code Section 83114(b) concerning whether donations to Ms. Terrigno's campaign committee or a special defense committee to pay defense costs in connection with charges filed against Ms. Terrigno by the federal government should be disclosed as income or campaign contributions. Ms. Terrigno can be reached at (213) 854-7440 for verification that she has authorized this request to be made on her behalf.

Ms. Terrigno has recently been indicted by the federal grand jury for alleged violations of federal law in connection with expenditures made by a federally funded program she previously administered. All events surrounding the expenditures occurred prior to Ms. Terrigno's election. Ms. Terrigno would be required to forfeit her office if convicted of the charges.

Ms. Terrigno has been approached by various persons who would like to contribute to her campaign committee or create a new campaign committee to help Ms. Terrigno defend against the indictments. These persons believe Ms. Terrigno has been singled out for prosecution because of her political beliefs and sexual orientation. They feel that she is performing a valuable function on the City Council by serving as a spokesperson for the expression of these beliefs. These potential contributors want to ensure that her defense is successful so that she can continue to represent their viewpoints.

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I have reviewed various court decisions and advisory opinions concerning the reporting of contributions and expenditures for legal fees (e.g., *Thirteen Committee v. Weinreb*, 168 CA3d 528 (1985) and F.P.P.C. advice letter A-84-236). It appears that legal fees spent in connection with litigation arising out of a campaign for office or the holding of public office are campaign contributions and should be reported as such. It also appears that expenditures for legal services in connection with purely personal matters having no impact on the person's public office are not considered campaign expenditures, and that donations by third parties to pay for such expenses are to be treated as income.

The situation at present does not appear to fall within either of these categories. The events leading to the indictments did not arise in connection with a campaign for office or with holding office. Nevertheless, conviction of the charges would result in forfeiture of office. The purpose behind the contributions is to ensure that Ms. Terrigno retains her office.

Government Code Section 82015 and 2 Cal.Admin.Code Section 18215 provide that a payment is to be considered a campaign contribution "unless it is clear from the surrounding circumstances that it is not made for political purposes." The donations to Ms. Terrigno's committee would be for the express purpose of ensuring that she is not removed from office. This would seem to be far different than expenditures for purely personal reasons that would have no impact on the person's right to hold public office. In the circumstances, it appears that the statute and the regulation support the position that the donations should be considered campaign contributions and should be reported as such.

This result would also ensure that unsuccessful candidates would report such donations made during a campaign. If such expenditures are considered income, receipt thereof would never be disclosed by an unsuccessful candidate.

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Please contact me or Steven Dorsey of this office
if you have any questions.

Very truly yours,


Mike Jenkins
City Attorney
City of West Hollywood

MJ:cb