



# California Fair Political Practices Commission

March 11, 1986

Elbert Sampson  
117 East Eighth Street, Suite 15  
Long Beach, CA 90813

Re: Your Request for Advice  
Our File No. A-86-043

Dear Mr. Sampson:

This is in response to your letter, dated February 3, 1986, requesting advice on behalf of Long Beach City Councilmember James H. Wilson. The material facts are as follows.

## FACTS

Mr. Wilson has been indicted by a Federal Grand Jury for alleged commissions of mail fraud in connection with his part-time employment. Mr. Wilson has been approached by numerous supporters who would like to contribute to his legal defense.

## QUESTIONS

Mr. Wilson would like to know:

1. Whether he can use existing campaign funds to finance his legal defense?
2. Whether he can collect additional campaign funds for his legal defense?
3. Whether he can create a special defense fund and collect contributions for his legal defense through this fund?
4. Whether funds collected and expended through a special defense fund are accounted and reported as campaign contributions?

### CONCLUSIONS

1. Mr. Wilson should contact the Attorney General to determine whether an expenditure of campaign funds for his legal defense is permissible under Sections 12400, et seq., of the Elections Code.

2. If such expenditures are permissible, then:

(a) Subsequent contributions to Mr. Wilson's campaign committee for his legal defense are reportable pursuant to the Act;

(b) Mr. Wilson may establish a special defense fund pursuant to the provisions of the Act; and

(c) Contributions made to the special defense fund would be reportable pursuant to the Act.

3. If such expenditures are not permissible, then funds collected for Mr. Wilson's legal defense are gifts reportable pursuant to the Act, and may become the basis for future disqualification.

### ANALYSIS

The Political Reform Act<sup>1/</sup> does not contain any prohibitions on the use of campaign funds. However, Sections 12400, et seq., of the Elections Code provide that campaign funds shall not be used for personal purposes. All funds which are collected by a controlled committee within the meaning of the Political Reform Act are campaign funds for the purposes of Sections 12400, et seq., of the Elections Code. (See, 65 Ops. Cal. Atty. Gen. 493.)

Unfortunately, we are not authorized to interpret and give advice regarding Sections 12400, et seq., of the Elections Code; such advice must be obtained from the Attorney General.<sup>2/</sup>

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

<sup>2/</sup> Enclosed is a copy of a recent letter by the Attorney General on this subject. However, as Mr. Wilson's situation differs from that in the letter, separate advice from the Attorney General should be obtained.

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If expenditures of campaign funds for Mr. Wilson's legal defense are deemed permissible under Sections 12400, et seq., of the Elections Code, then the Political Reform Act would require that such expenditures be reported by Mr. Wilson's campaign committee.

The Commission has previously determined that contributions made to an official's campaign committee or a special committee for the purpose of financing the official's legal defense against criminal charges related to his status as an officeholder are "contributions" within the meaning of Section 82015. (See, Advice Letter No. A-84-236, copy enclosed.) Consequently, contributions made to Mr. Wilson's campaign committee or a special defense fund are reportable pursuant to the provisions of the Act.

If expenditures of campaign funds for Mr. Wilson's defense are not deemed permissible under Sections 12400, et seq., then funds (other than campaign funds) collected for that purpose are gifts which are reportable on Mr. Wilson's statement of economic interests and may result in disqualification under the provisions of the Political Reform Act. (See, 65 Ops. Cal. Atty. Gen. 493, copy enclosed.)

If we can provide Mr. Wilson with any additional guidance concerning his responsibilities under the Political Reform Act, please do not hesitate to contact us again.

Sincerely,



John G. McLean  
Counsel  
Legal Division

JGM:JG:plh  
Enclosures

ELBERT SAMPSON  
ATTORNEY AT LAW  
117 EAST EIGHTH ST.  
SUITE 515  
LONG BEACH, CALIFORNIA 90813  
213/435-7008

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February 3, 1986

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 retained by James H. Wilson, City Councilmember, Long Beach, California, to request written advice from the Fair Political Practices Commission (FPPC) pursuant to Government Code Section 83114 (b) concerning whether donations to Mr. Wilson's campaign committee or a special defense committee to pay defense costs in connection with charges filed against Mr. Wilson by the Federal Government subsequent to a Federal Grand Jury indictment should be disclosed as income or campaign contributions. Mr. Wilson has authorized this request to be made on his behalf and can be reached at his office at (213) 590-6816 for verification of this fact.

Mr. Wilson was indicted for alleged commissions of mail fraud in connection with part-time employment, said allegation included allegations that the payment associated with the employment was actually for the purpose of securing influential treatment with respect to votes and influence by Mr. Wilson in his capacity as a member of the Long Beach City Council. All of the events pertinent hereto occurred while Mr. Wilson held his office. If Mr. Wilson is convicted on any of the charges set forth in the indictment he would be required to forfeit his office.

Mr. Wilson has been approached by numerous supporters that would like to support his effort to vindicate himself of these charges. These supporters would like to contribute to his legal defense in the form of contributions to a fund to be established for that purpose or by making contributions to an existing

campaign fund if it is determined that said campaign funds can be used for his legal defense. Participation in the defense of Mr. Wilson is important to these supporters because they believe in Mr. Wilson's innocence and because they believe that because Mr. Wilson is, and has been, the only Black member of this council, their representation would be severely diminished if he is forced to forfeit his office.

In the course of my research of this issue, I have reviewed various court decision and advisory opinions concerning the reporting of contributions and expenditures for legal fees, e.g., Thirteen Committee v. Weinreb, 168 CA3d 528 (1985) and in re: Buchanan, 5 FPPC Opinions 14 (1979). It appears that legal fees spent in connection with litigation arising out of a campaign for office or in 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.

Government Code Section 82015 states in part 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. It is my opinion that any payments to Mr. Wilson's campaign fund previously made or any payments made to that fund or a specially created defense fund would be considered a campaign contribution. I derive such an opinion from the fact that the charges against Mr. Wilson stem from alleged activities that occurred during the course and scope of his duties as an elected official. Further, the defense of these charges is necessary to insure that he can continue to occupy his office.

The questions about which I am seeking an opinion are as follows:

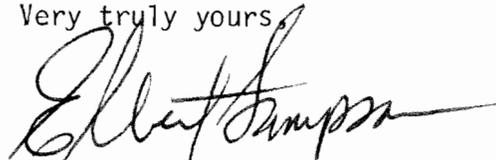
- Can Mr. Wilson use existing funds that are part of his campaign fund to finance his legal defense?
- Can Mr. Wilson collect additional monies in his campaign fund and use that money for his legal defense?
- Can Mr. Wilson create a special defense fund and collect money for his legal defense through this fund?
- If the creation of a special defense fund is allowable, are such funds collected and expended to be accounted and reported as campaign contributions?

It appears that the statutes support the use of the existing campaign fund as well as the creation of and expenditure from a special defense fund because Mr. Wilson is charged with crimes that are directly related to his service in office and because the successful defense of such charges is essential to the retention of his office.

I would greatly appreciate the advice of the FPPC on the above-stated questions.

If I can provide you with further information, please do not hesitate to contact my office.

Very truly yours

A handwritten signature in cursive script, appearing to read "Elbert Sampson". The signature is written in black ink and is positioned above the printed name.

Elbert Sampson