



California Fair Political Practices Commission

March 10, 1989

Fred T. Arjani
Controller
Republican Party of Los Angeles County
511 West Mission Street
South Pasadena, CA 91030

Re: Your Request for Informal Assistance
Our File No. I-89-043

Dear Mr. Arjani:

This is in response to your request for advice concerning the limitations placed by the Political Reform Act^{1/} upon the use of campaign contributions received by the Republican Party of Los Angeles County prior to January 1, 1989.

On February 8, 1989, the Los Angeles County Superior Court ruled that Regulations 18536(b)(2) and 18536.1 are invalid because they permit use of campaign funds received before the effective date of Proposition 73 to support or oppose a candidacy for state or local elective office. (California Common Cause v. California Fair Political Practices Commission, Los Angeles Sup. Ct. No. C709383.) These regulations allowed candidates and committees to support or oppose candidacies for elective office by expending campaign funds received prior to January 1, 1989, if those funds were in compliance with the Proposition 73 contribution limits. Due to the court's invalidation of these regulations, we must advise candidates and committees that, pending further action by the courts or the Commission, they may not use any campaign funds received prior to January 1, 1989 to support or oppose a candidacy for state or local elective office.

Several of your questions assume the validity of Regulations 18536(b)(2) and 18536.1. We have restated those questions to take into consideration the court ruling. In addition, because of the current uncertainty of the Commission's response to the court

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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ruling, we treat your request as one for informal assistance under Regulation 18329(c)(4)(G) (copy enclosed).^{2/}

QUESTIONS

1. The Republican Party of Los Angeles ("party") has an existing bank account that contains campaign contributions received prior to January 1, 1989. Can the party use these moneys to both support or oppose candidates and make payments to the party's administrative account to cover its administrative expenses?

2. Can the party transfer campaign contributions that were previously held in a separate account for use in federal campaigns into the administrative expense account and pay its administrative and overhead expenses partially with these moneys?

3. Is there any limit on how much money the party can transfer from its federal campaigns account to its administrative expense account?

4. Is there any limit on how much money the party can transfer from the new account that consists of contributions received prior to January 1, 1989 to its administrative expense account?

5. Can all of the party's expenses be paid out of the administrative expense account?

6. Is the party subject to the same limitations on the use of campaign contributions as a broad based political committee?

CONCLUSIONS

1. Until the question of the use of campaign contributions received prior to January 1, 1989 is finally resolved by litigation or Commission regulation, the Commission advises the party not to use such funds to support or oppose candidates for office. However, these funds may be used for any other lawful purpose, including administrative expenses.

2. The Political Reform Act does not prohibit the party from using campaign contributions previously designated for use in federal campaigns to pay the party's administrative expenses. The party will have to consult federal law to determine whether restrictions may exist at that level.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; Regulation 18329(c)(3).)

3. The Political Reform Act does not place restrictions on how much money the party transfers from its federal campaigns account to its administrative expense account. However, the party will have to consult federal law to determine whether restrictions of this type exist at that level.

4. As stated in our response to question 1 above, campaign contributions received prior to January 1, 1989, regardless of their amount, should not be used to support or oppose candidates for office until the question is definitively resolved by court order or Commission regulation. However, these moneys may be used by the party for any other lawful purpose and, therefore, may be transferred in unlimited amounts to the administrative expense account.

5. All party expenses, so long as they are not to support or oppose a candidate and are for a lawful purpose, may be paid out of the administrative expense account.

6. Under Section 85306, the party is limited in its use of campaign contributions received prior to January 1, 1989 like any "committee." As for the party's receipt and making of campaign contributions on or after January 1, 1989, its activities are governed by Sections 85302 and 85303(b).

FACTS

The party has an existing committee and corresponding bank account into which, in the past, it has deposited campaign contributions it has received. The party has also made its own campaign contributions to candidates and paid its overhead and administrative expenses from this account. The party has several contributions in the account that were made to it prior to January 1, 1989.

The party also has a separate account for moneys to be contributed to federal campaigns.

ANALYSIS

Questions 1, 4 and 5

Section 85306 states that any "person" who possesses campaign funds on the "effective date" of Proposition 73 may expend the funds for any lawful purpose other than to support or oppose a candidacy for elective office.

Section 85102(b) defines "person" to include, among other things, a "committee." Section 82013 defines "committee" as "any person or combination of persons who directly or indirectly does any of the following:

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(a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year;

(b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or

(c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees...."

We assume for the purposes of this letter that the party meets the definition of committee set forth in Section 82013. On this basis, the party is also a "person" for the purposes of Section 85102(b) and, therefore, subject to the restrictions on the use of campaign funds set forth in Section 85306.

In December 1988 the Commission adopted permanent regulations that, among other things, interpreted the language of Section 85306. Regulation 18536 defined the phrase "campaign funds possessed on the effective date of this chapter," as used in Section 85306. Regulation 18536 permitted candidates and committees that possessed campaign contributions on December 31, 1988 to use some or all of the contributions in the future to support or oppose candidates. The criterion for use of these funds in future campaigns was whether they had been made within the contribution limits of Proposition 73. (See Sections 85301-85305.)

If a contribution held on December 31, 1988 was made within the Proposition 73 limits, then Regulation 18536.1 required that it be segregated from contributions that were in excess of the Proposition 73 limits by way of a separate bank account. Once segregated, these funds could be used to support or oppose candidates and the remaining funds could be used for any lawful purpose other than to support or oppose candidates.

On February 8, 1989 the Superior Court of the County of Los Angeles, in the case of California Common Cause v. California Fair Political Practices Commission, Case No. C709383, invalidated a portion of Regulation 18536 and all of Regulation 18536.1. Though the court order is not final at this time, the court's ruling effectively prohibited candidates and committees from using any campaign contributions possessed on June 8, 1988 to support or oppose candidates on or after January 1, 1989. As for campaign contributions received between June 8, 1988 and December 31, 1988, the court ruled that the Commission could adopt regulations to determine whether these funds, or any portion thereof, can be used to support or oppose candidates on or after January 1, 1989.

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Although the Commission has decided to appeal this order, it is not final at this time. Therefore, Commission staff is advising all candidates and committees that possess campaign contributions received prior to December 31, 1988 not to spend these contributions to support or oppose candidates at this time.

Accordingly, if the party has not yet separated contributions received prior to January 1, 1989 into "restricted" and "unrestricted" accounts based upon Regulations 18536 and 18536.1, it is advised not to do so at this time. It is also advised not to spend these funds to support or oppose candidates for office at this time. This advice will remain in effect pending resolution of this question by final court order or by appropriate Commission action.

The party should note, however, that it is not precluded from using the contributions in question for any other lawful purpose so long as it is not to support or oppose a candidate for office.

Regulation 18536.2 (copy enclosed) defines the terms "lawful purpose" and "support or oppose a candidacy for elective office" for the purposes of Section 85306. Subdivision (b) describes the types of expenditures of campaign contributions that constitute support or opposition to a candidate for office. Subdivision (c) describes the types of expenditures that are not. Expenditures of campaign contributions that do not support or oppose a candidate for office are permitted if they are made for a "lawful purpose," as defined in subdivision (a).

You have asked whether campaign contributions received by the party prior to January 1, 1989 can be used to pay the party's administrative expenses. Subdivision (c)(2) of Regulation 18536.2 states that the payment of overhead expenses is not an expenditure to support or oppose a candidate. You have also asked whether these contributions can be used to pay all of the party's expenses. Based on the discussion above, it is clear that these contributions cannot be used to pay for all of the party's expenses. As stated, Section 85306 prohibits the use of at least a portion of these contributions to support or oppose a candidate for office.

Questions 2 and 3

You have also asked whether monies that the party holds in a separate account for use in federal campaigns can be used to pay the party's administrative expenses and, if so, whether there are any limits on the amounts that can be used. The Act permits expenditure of these monies for payment of legitimate administrative expenses. To determine whether a particular administrative expense is legitimate under California law, please refer to Elections Code Sections Section 12400 et seq. If you

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have any questions on this subject, we recommend that you contact the Attorney General's office. The Commission does not administer or interpret the provisions of the Elections Code. We also recommend that you consult federal law to determine whether it imposes any restrictions upon the party's use of these funds.

Question 6

Finally, you ask whether the party, in its receipt and use of campaign contributions, has the same limitations as those placed upon broad based political committees. As to the application of Section 85306, the party is a "committee" as defined in Section 82013 and its use of contributions is limited under Section 85306 like any committee, broad based or otherwise. (See discussion above.) However, for contributions received or made by the party on, or after January 1, 1989, Sections 85302 and 85303(b) apply.

Section 85302 prohibits political committees, broad based political committees and political parties from soliciting or accepting funds for contribution to candidates in excess of \$2,500 in any fiscal year. Section 85303(b) prohibits broad based political committees and political parties from making contributions to any candidate in excess of \$5,000 in any fiscal year. These limitations would obviously apply to the party.

I hope that this reply has been of assistance. However, if you should have any questions, please contact me at (916) 322-5901.

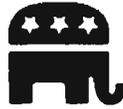
Sincerely,

Diane M. Griffiths
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

Enclosures



511 West Mission Street, South Pasadena, California 91030 · (818) 441-5800

JAN 23 9 22 AM '89
FPP/C

January 18, 1989

Diane Griffith
General Counsel
Fair Political Practices Commission
Box 807
Sacramento, CA 95804

Dear Ms. Griffith:

We are writing this letter to request a ruling on if our proposed scenario, listed below, will comply with Prop 73 regulations.

We currently have an existing committee and corresponding bank account. What we plan to do is open a new bank account and apply for a new I.D. # for that account.

The new account will be used for deposits which are within Prop 73 limits. We plan on using the old account for deposits not within Prop 73 limits. We also plan on using the old account for all administrative and overhead expenses in 1989. We also plan on continuing to make transfers from our Federal Account to our old account. These transfers are both reimbursements of state expense as well as contributions from the Federal account to the State account. Our new candidate account which is for "clean 73 money" will also make transfers to our administrative account. Our reasoning for this is that the only disbursements out of the new account will be for direct candidate support and for making transfers to our old account.

Besides getting a general approval for the above scenario, we have the following questions:

- a) Is there any limitation on the amount of contributions our Federal account can make to our administrative account?
- b) Is there any limitation on transferring money form the "clean 73 money account" to the administration account?
- c) Is there any problem with paying all expenses out of the old account:
- d) As the political party in Los Angeles County, are we automatically considered a broad-based committee and thus entitled to limitations imposed on broad-based committees?

We are eagerly awaiting your written response so that we may handle our accounts in the following manner. I can be reached at 818-441-5806 if you need any clarification.

Thank you for your cooperation in advance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Arjani".

Fred T. Arjani
Controller

FTA/clm



California Fair Political Practices Commission

January 24, 1989

Fred T. Arjani
Los Angeles County
Republican Party
511 West Mission Street
South Pasadena, CA 91030

Re: Letter No. 89-043

Dear Mr. Arjani:

Your letter requesting advice under the Political Reform Act was received on January 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel

DMG:plh