



California Fair Political Practices Commission

March 31, 1989

Frances Hong, City Clerk
City of Stockton
Stockton, CA 95202

Re: Your Request for Advice
Our File No. A-89-133

Dear Ms. Hong:

You have requested advice on behalf of Stockton Mayor Barbara Fass regarding the campaign provisions of the Political Reform Act,^{1/} specifically with regard to the provisions added by Proposition 73, passed by the voters on the June 1988 Primary election ballot.

QUESTIONS

1. What campaign funds may be used by an officeholder who is the subject of a recall election?
2. What are the requirements for filing the candidate intention and campaign bank account statements (Forms 501 and 502) when an officeholder is the subject of a recall election?

CONCLUSIONS

1. To defend against a recall effort, an officeholder who is the subject of a recall may use campaign funds she received prior to January 1, 1989 ("restricted funds"), or may use campaign funds received after January 1, 1989, which have been deposited in a campaign account for paying expenses associated with the office she currently holds or for reelection to the office she currently holds. The officeholder also may raise new funds specifically in

^{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.

connection with the recall which are not subject to Proposition 73's contribution limitations if they are deposited in a separate bank account.

2. The candidate intention and campaign bank account statements (Forms 501 and 502) are required before a candidate may solicit or receive any campaign contributions on or after January 1, 1989, for election or reelection to a specific office and for expenses associated with holding office. However, the candidate intention and campaign bank account statements are not required to be filed for contributions raised specifically in connection with a recall by the officeholder who is the subject of the recall.

FACTS

During our telephone conversation of March 10, 1989, you confirmed that you are requesting advice on behalf of Barbara Fass, the Mayor of Stockton, who may be the subject of a recall election during 1989. Mayor Fass has some campaign funds which were received prior to January 1, 1989, but has raised no new funds during 1989.

ANALYSIS

Proposition 73, which was passed by the voters in the June 1988 Primary election, imposes limitations on contributions received by officeholders, candidates, and committees which make contributions to officeholders and candidates. Proposition 73 also prohibits candidates, officeholders and committees from using campaign funds received prior to January 1, 1989 ("restricted funds"), to support or oppose a candidacy for elective office. (Sections 85300-85307.) In addition, Proposition 73 requires candidates to file a notice of intention to raise funds for a specific elective office and a bank account notice, and states that funds raised for a specified elective office are held in trust for expenses associated with election to the office and for expenses associated with holding that office. (Sections 85200-85202.)

Committees which do not make contributions to candidates and officeholders are not subject to the contribution limitations. Therefore, the contribution limits do not apply to ballot measure committees, including committees primarily formed to support or oppose a recall measure.

Expenses incurred by an officeholder who is the subject of a recall appear to fall into two categories. First, they can be defined as "expenses associated with holding office" as referred to in Section 85202(b). In addition, they can be defined as expenses in connection with a ballot measure.

Therefore, if Mayor Fass had begun raising funds on or after January 1, 1989, for current officeholder expenses or for reelection to the office of Mayor, she would be able to use those funds in connection with the recall pursuant to Section 85202(b). Forms 501 and 502 would be required for those funds, and the funds would be subject to the contribution limitations.

In addition, Mayor Fass may raise separate contributions to oppose the recall. Those contributions are not subject to the contribution limitations and do not require the filing of Forms 501 and 502. However, the funds must be deposited in an account separate from any other campaign account(s) and may not be used for other election campaign or officeholder expenses. A separate committee must also be established for the recall account by filing a Statement of Organization (Form 410) within 10 days of receiving \$1,000. (Pringle Advice Letter, No. A-89-155, copy enclosed.)

With regard to "restricted funds," Regulation 18536.2 (copy enclosed) states that the prohibition in Section 85306 against using funds received prior to January 1, 1989, "to support or oppose a candidacy for elective office" includes "any contribution or expenditure to support or oppose the recall of an elected officer."^{2/} (Regulation 18536.2(b)(3).) The regulation goes on to state that Section 85306 does not apply to:

Contributions or expenditures to support or oppose any candidate for federal office, any candidate for elected office in a state other than California, or any ballot measure other than a measure to recall an elected officer.

Regulation 18536.2(c)(1).

The intent of Regulation 18536.2 is to prohibit candidates, officeholders and committees from making contributions or expenditures from restricted funds to support or oppose the recall of other elected officeholders. The regulation does not prohibit an officeholder from using his or her own campaign funds to defend against a recall effort. Therefore, such expenditures made by an officeholder who is the subject of a recall will be considered expenditures to oppose a ballot measure and the officeholder's

^{2/} At its May meeting, the Commission will be presented with a proposal to amend this portion of Regulation 18536.2.

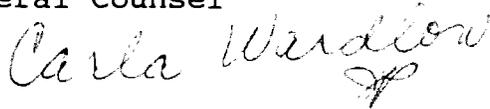
Frances Hong
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restricted funds may be used in connection with the recall. She may not deposit new contributions in the "restricted" account. Forms 501 and 502 are not required for restricted funds.

Please do not hesitate to call me at (916) 322-5662 if you have additional questions.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Carla Wardlow". The signature is written in dark ink and includes a small flourish at the end.

By: Carla Wardlow
Political Reform Consultant

Enclosure



FPPC

FEB 27 9 19 AM '89

CITY OF STOCKTON

OFFICE
OF THE CITY CLERK
STOCKTON, CA 95202
944-8459

February 23, 1989

Carla Wardlow
Political Reform Consultant
Technical Assistance and Analysis Division
P.O. Box 807
Sacramento, CA 95804

CAMPAIGN BANK ACCOUNT

Thank you for your explanation of the recent court order regarding the use of campaign funds and the use of the same bank account for a recall election and the next regular election.

Before I pass this information on to the affected councilmember, I must be certain that my understanding of your explanation is correct.

Would you please respond, in writing, to my question regarding campaign bank accounts and what would necessitate filing a new Form 502.

Your assistance is greatly appreciated.

FRANCES HONG
CITY CLERK

FH:nck



FPPC

FEB 27 9 19 AM '89

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STOCKTON, CA 95202
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Before I pass this information on to the affected councilmember, I must be certain that my understanding of your explanation is correct.

Would you please respond, in writing, to my question regarding campaign bank accounts and what would necessitate filing a new Form 502.

Your assistance is greatly appreciated.

FRANCES HONG
CITY CLERK

FH:nck



California Fair Political Practices Commission

March 2, 1989

Frances Hong
Office of the City Clerk
Stockton, CA 95202

Re: Letter No. 89-133

Dear Ms. Hong:

Your letter requesting advice under the Political Reform Act was received on February 27, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

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 the 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,

Jeanne Pritchard
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh