



# California Fair Political Practices Commission

May 31, 1989

Peter A. Bagatelos  
Bagatelos & Fadem  
The International Building  
601 California Street, Suite 1801  
San Francisco, CA 94108

Re: Your Request for Informal Assistance  
Our File No. I-89-240

Dear Mr. Bagatelos:

You have requested advice on behalf of yourself and Mr. Wes Van Winkle of Bagatelos & Fadem and on behalf of attorneys Philip R. Recht and Ronald B. Turovsky of Manatt, Phelps, Rothenberg & Phillips. The advice requested pertains to the interpretation of Sections 85201 and 85202 of the Political Reform Act (the "Act").<sup>1</sup> Because your request is more of a general inquiry, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2</sup>

## QUESTIONS

1. May an incumbent officeholder maintain a separate officeholder account?

2. May an elected official or a candidate for office maintain a general purpose committee as long as the committee makes no contributions in support of or opposition to candidates, including the candidate who controls the committee?

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c) (3).)

ANSWERS

1. An incumbent elected officer or candidate may only maintain one campaign bank account for each election and office sought. All contributions to the candidate or elected officer for a specific office and election must be deposited in the corresponding campaign bank account. He or she may not maintain a separate officeholder account.

2. An elected officer or a candidate may have more than one controlled committee. However, he or she may have only one controlled committee per election per office sought. The Commission has recognized a limited exception to permit an elected officer or candidate to control a separate ballot measure committee.

FACTS

Your firms serve as legal counsel to a number of elected officials in California. In the past, you have advised such officials to maintain separate accounts for purposes of segregating exempt and nonexempt function funds pursuant to Section 527 of the Internal Revenue Code. You want to know if it is still possible for the officials to maintain separate accounts and controlled committees in light of the newly enacted provisions of the Act.

ANALYSIS

Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for elective office must file a statement of intention to be a candidate for a specific office. (Section 85200.) The individual must then establish one campaign contribution account. (Section 85201(a).) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee must be deposited in the account. (Section 85201(b).) All contributions deposited into the account are deemed to be held in trust for expenses associated with election to the specific office or expenses associated with holding that office. (Section 85202(b).)

A "controlled committee" is a committee controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures. A candidate controls a committee if the candidate, or his or her agent, has a significant influence on the actions or decisions of the committee. (Section 82016.) A candidate is required to establish a separate controlled committee for each specific office. (Regulation 18521, copy enclosed.)

The foregoing has been construed to mean that a candidate may have only one controlled committee for each candidacy. (Riddle Advice Letter, No. A-88-409, La Follette Advice Letter, No. I-89-122, copies enclosed.) Separate controlled committees formed to collect contributions to be used to defray expenses of holding office must now be merged into a candidate's single controlled

committee. (Riddle Advice Letter, supra, at p. 7.) Therefore, an incumbent elected officeholder may not have both an officeholder account and a separate reelection account per term for the same elective office.

You also wish to know if an elected official may maintain a general purpose committee so long as the committee makes no contributions in support of or opposition to candidates, including the candidate who controls the committee. The purpose of such a committee would be to raise and expend funds for purposes not connected with candidacy or officeholder activities. You indicate that, prior to Proposition 73, general purpose committees were used for such purposes as making charitable contributions, funding non-partisan voter registration or get-out-the-vote drives and making contributions to ballot measures.

As stated above, the Act provides that all contributions for a specific office and election received by a candidate or the candidate's controlled committee must be deposited in a single account and held in trust for election to office or the expenses of holding office. (Sections 85200-85202.) The Act specifically prohibits the transfer of contributions to other candidates or their controlled committees. (Section 85304.) Section 85301 limits contributions by persons to candidates and to "all committees controlled by the candidate." (Emphasis added.) Section 85303 limits contributions by committees to candidates and to "any committee controlled by that candidate." (Emphasis added.) Viewed together, the foregoing provisions would appear to preclude a candidate from maintaining any kind of controlled committee for other than his or her election to office or expenses associated with holding office.

Prior advice letters by the Commission have made a distinction between contributions to candidates and elected officers and contributions to committees formed for purposes other than supporting candidates or elected officers. (Malfatti Advice Letter, No. I-88-431; Weiss Advice Letter, No. A-89-135; Bagatelos Advice Letter, No. I-88-475; Pringle Advice Letter, No. A-89-155; Hong Advice Letter, No. A-89-133, copies enclosed.) To date, this has been limited to permitting a candidate or elected officer to have a separate controlled committee formed to support or oppose a ballot measure. Absent consideration of this issue by the Commission, the staff is reluctant to extend this exception beyond ballot measure committees at this time.

Therefore, because this issue presents significant policy questions, it will be presented to the Commission for consideration at meeting in the near future. We will inform you if the Commission directs us to change our advice. In the meantime, we have provided a conservative and cautious interpretation of the Act.

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If you have any further questions, please call me at (916)  
322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

A handwritten signature in cursive script, appearing to read "Margaret W. Ellison".

By: Margaret W. Ellison  
Counsel, Legal Division

KED/MWE:aa

Enclosures

LAW OFFICES OF  
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April 20, 1989

Kathy Donovan, Esq.  
Division Chief, Legal Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804

Re: Maintaining Multiple Controlled Committee Accounts  
Under Proposition 73

Dear Ms. Donovan:

This firm serves as legal counsel to a number of elected officials at the state and local levels of government in California. The firm of Manatt, Phelps, Rothenberg & Phillips also serves as legal counsel to a number of elected officials in California. The undersigned attorneys, representing each of these firms, are writing for the purpose of requesting advice pertaining to the interpretation of the California Fair Political Practices Commission of Government Code Sections 85201 and 85202, which were adopted as part of Proposition 73. A more detailed discussion follows.

As you are aware, California political candidates and incumbent officeholders raise funds for a variety of purposes which may or may not be related to a candidacy for political office. For example, a single incumbent officeholder may raise funds for a future candidacy, for the purpose of defraying the costs of holding a particular office, for contributions to candidates at the federal level, for charitable contributions, or for a variety of other purposes. In the past, our two law firms have regularly advised political candidates and officeholders to establish separate political committees and bank accounts for such purposes and to maintain strict segregation of funds among the various committees and accounts. The purpose of our advice in this regard has been not only to ease administration of the various funds, but also to comply with a number of legal and tax requirements. These requirements will be discussed in more detail below.

However, new Government Code Section 85201, adopted as part of Proposition 73, requires candidates for political office to

"establish one campaign contribution account at an office of a financial institution located in the state" (Government Code Section 85201(a)). All contributions received by the candidate must be deposited in this account (Government Code Section 85201(c)), and all campaign expenditures must be made from the account (Government Code Section 85201(e)). New Government Code Section 85202(b) then provides that "all contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate to the specific office for which the candidate has stated, pursuant to Section 85200, that he or she intends to seek, or expenses associated with holding that office."

This firm has been informed, in telephone conversations with Bruce Robeck and Carla Wardlow, of the technical assistance division, and with you, that the Fair Political Practices Commission staff interprets these sections as requiring political candidates and officeholders to maintain a single bank account in which all campaign funds and funds intended to be used for the purpose of defraying the costs of holding office are to be commingled. In addition, we understand that the staff views these sections as prohibiting political candidates and officeholders from maintaining more than one controlled account or committee per campaign. As attorneys practicing primarily in the field of campaign and election law, we do not share the staff's interpretation of these sections. Instead, we find nothing in Proposition 73 that would prohibit political officeholders from maintaining officeholder accounts or general purpose accounts, as long as funds in such accounts are not used for the purpose of supporting or opposing a candidate for elective office. Moreover, we believe that the staff's interpretation will have profound tax consequences never intended by the authors of Proposition 73.

As you are aware, a committee formed for the purpose of supporting or opposing a candidate for elective office is generally exempt from federal income taxation pursuant to Internal Revenue Code Section 527. However, only the organization's "exempt function income" is deemed exempt from federal income taxation, and then, "only to the extent such income is segregated for use only for exempt functions" of the committee (Income Tax Reg. Section 1.527-3(a)(1)(iii)). Segregating exempt function funds is accomplished by establishing a separate bank account from which only expenditures for exempt functions are made (See, e.g., Income Tax Reg. Section 1.527-2(b)(1)).

Payment of the office expenses of an incumbent officeholder is not an exempt function (Income Tax Reg. Section 1.527-2(a)(3)(ii) and (iii)). See, also, Revenue Ruling 87-119. Instead, funds utilized for the purpose of defraying

the expenses of holding office are treated as the personal income of the elected official. Such income must be included on the official's personal income tax return as income from a separate trade or business, and expenditures made for officeholder activities are deductible from that income as ordinary and necessary business expenses (House Committee Report 99-841, 99th Cong. 2d. Session (1986), at P.II-33, fn.4; CCH Standard Federal Tax Reports, vol.5, par. 3299A, fn. 08, "Committee Reports on P.L. 100-647").

Because the FPPC staff's interpretation of Government Code Sections 85201 and 85202 requires the commingling of funds to be used for campaign and officeholder expenses, it will no longer be possible for candidates to segregate exempt function income from non-exempt function income. Although the Internal Revenue Service has not yet ruled officially on the effect of this interpretation, we requested Mr. Leon Kaplan of the Internal Revenue Service's Exempt Organization Division in Washington, D.C. to provide telephone advice regarding this issue. Mr. Kaplan researched the question and confirmed that the commingling of officeholder funds in the same bank account with campaign funds would result in the loss of the tax exemption available under Section 527, unless the amount of the officeholder funds in the account was insubstantial or de minimus. Loss of the exemption would expose campaign funds to federal taxation. Mr. Kaplan indicated that it was not clear whether a committee would be taxed as a separate entity, or whether tax liability would attach to the elected official for the whole of these sums. He suggested that we request a formal Revenue Ruling for binding advice in this regard.

We do not believe that the authors of Proposition 73 intended to deprive every elected official in the state of the tax exemption formerly extended to their campaign committees. We do not believe that they intended to prohibit elected officials from maintaining separate officeholder accounts, but that they simply intended to permit officeholders to utilize campaign account funds for officeholder activities if they so desired.

Furthermore, we find nothing in Proposition 73 which in any way purports to limit the non-campaign activities of any candidate or officeholder. Article Two of Proposition 73, entitled "Candidacy," deals solely with the establishment of a single "campaign contribution account" by "an individual who intends to be a candidate for elective office." Nothing in this article, or in the remainder of Proposition 73, purports to prohibit candidates from raising funds to defray officeholder expenses, raising funds or making contributions for charitable purposes, or engaging in any of a number of other perfectly lawful activities. As long as a candidate for political office

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establishes a single campaign account, places all campaign contributions in this bank account, makes all campaign expenditures from the bank account, and uses these funds only for campaign or officeholder expenses, the requirements of Article Two of Proposition 73 have been met.

You may also be aware that political candidates and elected officials have for many years maintained "general purpose committees." While many of these committees were established for the purpose of making contributions to other candidates for elective office in California, a purpose now prohibited by Proposition 73, there are nevertheless a number of other legitimate activities for which such accounts may be used. For example, an officeholder who serves on the committee of the national party of which he or she is a member may defray the costs of travel, lodging and accommodations and other activities connected with this work. Funds might also be raised for the purpose of making charitable contributions, funding non-partisan voter registration or get-out-the-vote drives, making contributions to ballot measures, or engaging in a number of other perfectly lawful activities which have nothing to do with campaigning for office and are therefore beyond the scope of Proposition 73. As in the case of officeholder funds, general purpose funds must be segregated from campaign funds in order to protect the exempt status of the campaign funds. Nevertheless, under the staff's current "only-one-committee" interpretation, maintaining a general purpose committee is prohibited. We see nothing in Proposition 73 which either expressly or implicitly prevents the creation or operation of such committees and request confirmation of this fact.

In conclusion, we request your response to the following questions:

(1) May an incumbent officeholder maintain a separate officeholder account? Assume that funds for the account are raised separately and that the account is technically a separate "committee" within the meaning of Government Code Section 82013 and files separate disclosure reports. The purposes of the account are to defray the expenses of holding office, and to maintain exempt function campaign funds in a segregated form as required by Income Tax Regulation Section 1.527-3.

(2) May an elected official or a candidate for office maintain a general purpose committee as long as the committee makes no contributions in support of or opposition to candidates, including the candidate who controls the committee? Again, assume that the committee is a separate "committee" within the meaning of Government Code Section 82013, and that it files separate disclosure reports. The purpose of this

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committee is to raise and expend funds for purposes not connected with candidacy or officeholder activities, and to maintain exempt function campaign funds in a segregated form as required by Income Tax Regulation Section 1.527-3.

Although we believe the Commission may, if it wishes, resolve this issue by regulation, we also recognize the possibility that corrective legislation may be required. For this reason, and in view of the importance and urgency of this matter, we are sending a copy of this letter to Assemblyman Ross Johnson, author of Proposition 73, who we understand is authoring corrective legislation relating to Proposition 73.

Please contact any of the four undersigned attorneys if you require any additional information.

Sincerely,



Peter A. Bagatelos  
Bagatelos & Fadem



Wes Van Winkle  
Of Counsel  
Bagatelos & Fadem

Philip R. Recht  
Manatt, Phelps, Rothenberg & Phillips

Ronald B. Turovsky  
Manatt, Phelps, Rothenberg & Phillips

WVW/scd

cc: Assemblyman Ross Johnson  
California Political Attorneys Association



# California Fair Political Practices Commission

April 27, 1989

Peter A. Bagatelos  
Bagatelos & Fadem  
The International Building  
601 California Street, Suite 1801  
San Francisco, CA 94108

Re: Letter No. 89-240

Dear Mr. Bagatelos:

Your letter requesting advice under the Political Reform Act was received on April 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh