



California Fair Political Practices Commission

June 27, 1989

Donald L. Rogers, C.P.A.
Rogers, Anderson, Malody & Scott
Vanir Tower, Ste. 300
290 North D Street
San Bernardino, CA 92401

Re: Your Request for Informal
Assistance
Our File No. I-89-277

Dear Mr. Rogers:

You have requested an analysis of and authority for a statement contained in the April 1989 edition of the FPPC Bulletin that candidate-controlled committees may not make reimbursements to candidates and campaign staff members under the provisions of the Political Reform Act^{1/} as amended by Proposition 73 in the June 1988 primary election.^{2/}

The Commission has primary responsibility for the impartial, effective administration and implementation of the Act. (Section 83111.) The Commission may adopt rules and regulations to carry out the purposes and provisions of the Act (Section 83112), and is responsible for issuing legal opinions and advice concerning the provisions of the Act (Section 83114).

In addition to contribution limitations, Proposition 73 imposed new restrictions on candidates with regard to the solicitation, receipt and expenditure of campaign funds. Specifically, Section 85200 requires any individual who intends to be a candidate for elective office to file a candidate intention form stating his or her intention to run for a specific office

^{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.

^{2/}Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

prior to soliciting or receiving any contribution for the purpose of seeking that office. In addition, Section 85201 requires:

(a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial institution located in the state.

(b) Upon the establishment of an account, the name of the financial institution, the specific location, and the account number shall be filed with the commission within 24 hours.

(c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account.

(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

(e) All campaign expenditures shall be made from the account.

(Emphasis added.)

As originally passed by the voters in June 1974, the Act contains the following definition of the term "expenditure":

"Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

Section 82025.

(Emphasis added.)

Therefore, a strict reading of Section 85201(e) would not allow candidate-controlled committees to reimburse out-of-pocket expenditures because, according to Section 82025, an expenditure for goods or services is made by the committee at the time the candidate or campaign worker using personal funds receives the goods or services, not at the time the committee makes the reimbursement.

With regard to out-of-pocket expenditures made out of the candidate's personal funds, the requirement in Section 85201(d) that all personal funds of the candidate be deposited into the campaign account prior to expenditure imposes additional restrictions on the reimbursement of expenditures by candidates.

Donald L. Rogers

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However, the Commission has adopted two regulations to assist candidate-controlled committees in complying with Section 85201. First, Regulation 18524 (copy enclosed) allows candidates to establish one or more charge or credit card accounts for campaign expenditures. The regulation also allows candidates to establish a \$100 petty cash fund for each campaign bank account.

Second, Regulation 18526 allows for reimbursement of certain expenditures made by committee employees, volunteers, agents and independent contractors. This regulation was adopted on an emergency basis and went into effect on April 18, 1989. A permanent regulation was adopted at the Commission's June 5 meeting. Copies of both versions are enclosed.

In addition, at its August 1, 1989 meeting, the Commission will consider adoption of proposed Regulation 18526.1 (copy enclosed), which will allow for reimbursement of a candidate's personal funds used for officeholder expenses.^{3/}

Please call me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla Wardlow

By: Carla Wardlow
Assistant Chief, Technical
Assistance & Analysis Division

Enclosures

^{3/}This proposed regulation was previously noticed for adoption at the Commission meeting on July 12, 1989. However, due to the press of other business, it will not be considered until August 1, 1989.

ROGERS, ANDERSON, MALODY & SCOTT

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JULIE A. DASHIELL, C.P.A.

May 3, 1989

Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

Re: Interpretation of Proposition 73

In your April 1989 FPPC Bulletin on Page 10 (Question 3) you state that "reimbursements are not allowed by a candidate-controlled committee" to campaign staff members.

I am now seeking your assistance in explaining your position to various candidates which our firm represents.

The requirement that all campaign expenditures be made from the campaign bank account does not seem inconsistent with the reimbursement for candidates for out-of-pocket costs if made within the reporting period. It is clearly impractical for all minor expenditures to be paid by a campaign account check. Therefore, if you have an opinion from the Attorney General or any other authority for your position, please provide us with a copy as soon as possible. Your timely response will be appreciated.

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DLR:db

89-277

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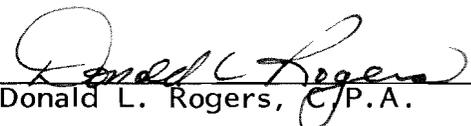
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California Fair Political Practices Commission

May 9, 1989

Donald L. Rogers, C.P.A.
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Vanir Tower, Suite 300
290 North "D" Street
San Bernardino, CA 92401

Re: Letter No. 89-277

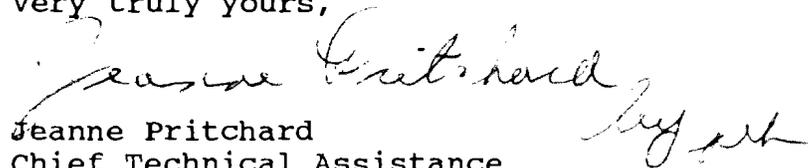
Dear Mr. Rogers:

Your letter requesting advice under the Political Reform Act was received on May 8, 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
Chief Technical Assistance
and Analysis Division

JP:plh



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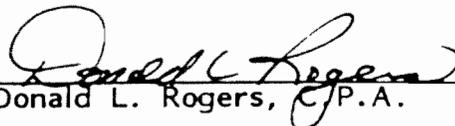
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