



# California Fair Political Practices Commission

August 10, 1989

R. Thomas Harris  
City Attorney  
City of Stockton  
Stockton, CA 95202

Re: Your Request for Informal Assistance  
Our File No. I-89-326

Dear Mr. Harris:

You have requested advice on behalf of Ms. Lorelee McGaughey concerning application of the provisions of the Political Reform Act ("the Act")<sup>1</sup> to her duties as a Stockton City Councilmember. Because of the general nature of your questions, we are treating your letter as a request for informal assistance pursuant to Regulation 18329(c).<sup>2</sup> In addition, our advice is limited only to provisions of the Act.

## QUESTIONS

1. May campaign contributions received prior to January 1, 1989 be returned to the original donors?
2. May a councilmember use pre-1989 campaign contributions to produce and distribute a constituent newsletter about city issues?
3. May a councilmember use pre-1989 campaign contributions to employ an aide to answer constituent inquiries on subjects of city business?
4. May a councilmember use pre-1989 campaign contributions to produce and mail an announcement (on the councilmember's own

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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. (Section 83114; Regulation 18329(c)(3).)

letterhead stationery) of a meeting with a local homeowners' association?

5. May a councilmember use pre-1989 campaign contributions (1) to purchase city letterhead stationery bearing her name and (2) to produce and mail an announcement of a meeting with a local homeowners' association?

6. Regarding the announcement mentioned in the preceding questions, do either of the answers change if the announcement is distributed door-to-door by volunteers rather than by mail?

7. May a councilmember use pre-1989 campaign contributions to pay for a fundraiser/luncheon hosted by a local Democratic Party organization?

8. May a councilmember use pre-1989 campaign contributions to form an anti-crime committee (e.g., "Councilmember X v. Crime" committee) for the purpose of distributing written materials city-wide?

#### CONCLUSIONS

1. The return of campaign contributions is governed by the personal use law, found in Elections Code Section 12404. Please contact the Attorney General's office for specific advice on this matter. A copy of a letter by the Attorney General's office on this subject is enclosed.

2. With regard to your remaining questions, under the preliminary injunction in SEIU v. FPPC, funds raised prior to 1989 are "restricted" for campaign purposes only to the extent they were raised in excess of the Proposition 73 contribution limits. A councilmember may not use such "restricted funds" to produce and distribute a constituent newsletter about city issues.

3. A councilmember may use "restricted funds" to employ an aide to answer constituent inquiries, if information is sent in response to an unsolicited specific request.

4. A councilmember may not use "restricted funds" to produce and mail an announcement (on the councilmember's own letterhead stationery) of a meeting with a local homeowners' association.

5. A councilmember may not use "restricted funds" to produce and mail an announcement (on city letterhead stationery) of a meeting with a local homeowners' association.

6. The answers to numbers 4 and 5 above do not change if the announcement is distributed door-to-door by volunteers.

7. Regulation 18536.2 does not prohibit a councilmember from using "restricted funds" to pay for attendance at a fundraiser/luncheon hosted by a local Democratic party organization if the

expenditure can be classified as an "officeholder expense" and the political party will not use the funds raised to make contributions or independent expenditures to support or oppose candidates.

8. A councilmember may not use "restricted funds" to form a separate anti-crime committee for the purpose of distributing written materials city-wide.

#### ANALYSIS

A number of the Proposition 73 amendments to the Act were the subject of a recent federal court action. In Service Employees International Union, AFL-CIO, et al. v. California Fair Political Practices Commission, United States District Court, Eastern District of California, Case No. CIVS-89-0433, LKK-JFM (hereinafter referred to as "SEIU"), the court granted plaintiffs' motion for a preliminary injunction to enjoin enforcement of Sections 85306, 85200-85202, 85304 and 85301. A hearing on the merits of Section 85306 is scheduled for August 11, 1989. Therefore, this is interim advice, pending that hearing.

#### Use of Pre-1989 Campaign Contributions

Some of your questions pertain to the use of contributions received prior to January 1, 1989. Section 85306 provides that "any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office." Pursuant to Section 85306, money raised prior to January 1, 1989 is considered "restricted" and may not be used for campaign purposes. However, the court issued a preliminary injunction which ruled that Section 85306 is invalid to the extent that it prohibits the spending of contributions raised within the limits of Proposition 73, prior to January 1, 1989. The preliminary injunction allows both candidates and political committees to carry over contributions received before January 1, 1989 for campaign purposes as long as the funds are within the applicable Proposition 73 limits.

If contributions are carried over, they must be deposited into a campaign bank account established in accordance with Sections 85200 and 85201. Contributions which are in excess of the Proposition 73 limits are "restricted funds" which may not be used by candidates or their controlled committees to conduct their election campaigns.

Use of "restricted funds" must comply with Regulation 18536.2 (copy enclosed), which implements Section 85306 and deals with the use of "restricted" campaign funds for any lawful purpose other than to support or oppose a candidacy for elective office.

Since Regulation 18536.2 implements Section 85306, our advice may change following the hearing on Section 85306 on August 11, 1989. Although the Commission is currently advising pursuant to

the preliminary injunction, please note that this is interim advice pending the court's final determination. The Commission will consider an amendment to Regulation 18536.2 in September, which may result in permitting most expenditures.

Question 1

The personal use law, found in Elections Code Section 12404, governs the disposition of surplus campaign funds. Since this is not under the jurisdiction of the Political Reform Act, we cannot render advice concerning the return of campaign contributions. The Attorney General's office may be contacted for advice on this matter.

Question 2

This question concerns the use of "restricted" campaign funds for mailing a newsletter. Officeholder expenses are those incurred directly in connection with carrying out the usual and necessary duties of holding office. Such expenses are not campaign-related and do not include mailings of more than 200 substantially similar pieces of mail in a calendar month. (Regulation 18536.2 and Regulation 18525, copy enclosed.)

The activity in question is a mass mailing, and therefore restricted funds may not be used.

Question 3

Under Regulation 18901 (copy enclosed), a newsletter or other mass mailing is not prohibited by Section 89001 if it contains only information or material sent in response to an unsolicited specific request. Unsolicited specific request means a communication which is not requested or induced by the officeholder or any person acting at his or her behest. (Regulation 18901(h).) Members of the public who come to a councilmember's office or to a meeting and who pick up materials for themselves will be deemed to have made an unsolicited specific request for those materials.

Therefore, a councilmember may use "restricted funds" to employ an aide to answer constituent inquiries if information is sent in response to an unsolicited specific request.

Question 4

Officeholder expenses do not include expenses incurred in connection with mass mailings, or in connection with other campaign activities (as defined in Regulation 18525.) If this announcement is a mass mailing, "restricted funds" may not be used pursuant to Regulation 18536.2.

Question 5

The analysis in Question 4 above also pertains to this question. If this announcement is a mass mailing, "restricted funds" may not be used pursuant to Regulation 18536.2.

Question 6

The answers to Questions 4 and 5 above do not change if the announcement is distributed door-to-door by volunteers.

Question 7

In the near future, the Commission intends to examine the manner in which Proposition 73 applies to political parties. Until a determination is reached on this matter, pre-1989 campaign contributions may be used to pay for attendance at a political party fundraiser only if the expenditure can be classified as an "officeholder expense" and the political party will not use the funds raised to make contributions or independent expenditures to support or oppose candidates. (Regulation 18536.2.)

Question 8

Proposition 73 allows an elected officer to have only one controlled committee for campaign and officeholder expenses for any particular office sought. (Sections 85200-85202.) Thus, a councilmember may not form a separate anti-crime committee of the type you have described. (Riddle Advice Letter, No. A-88-409, copy enclosed.)

I trust this analysis provides you with the necessary guidance. If you have any further questions regarding this matter, please contact me at (916) 322-5901. Again, I emphasize that the August 11, 1989 ruling in the SEIU case may change this advice completely and I urge you to contact me after that date for further information. You may also want to contact our office and be placed on the mailing list for the FPPC Bulletin, which is a monthly update of the status of litigation and legal advice.

Sincerely,

Kathryn E. Donovan  
General Counsel

By:  Jill R. Stecher  
Counsel, Legal Division

KED:JRS:plh

Enclosures

**R. THOMAS HARRIS.**  
CITY ATTORNEY

**JOHN T. MORAN**  
ASSISTANT CITY ATTORNEY

CITY OF STOCKTON

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May 23, 1989

California Fair Political  
Practices Commission  
Post Office Box 807  
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RE: USE OF CAMPAIGN FUNDS

Stockton City Councilmember Loralee McGaughey has asked a number of questions regarding the use of campaign funds and how and whether such use may be affected by Propositions 68 and 73. In light of the current state of flux on this subject, your legal opinion as to these questions would be appreciated:

1. Can campaign contributions received prior to August 1988 be returned to the original donors?
2. Can a councilmember use pre-August 1988 campaign contributions at this time to produce and distribute a "newsletter" regarding City matters to her constituents? (The newsletter would, of course, bear the councilmember's name and be signed by her.)
3. Can pre-August 1988 campaign contributions be used at this time to employ an aide to assist a councilmember in answering constituent inquiries on subjects of City business?
4. Can the above-described funds be used to pay for the costs of announcing a meeting with a local homeowners association to discuss maintenance of a small pool/park owned by the homeowners association if the announcement is transmitted (a)

*"Stockton... Somewhere Special!"*

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on the councilmember's own letterhead stationery or (b) on City letterhead stationery bearing an imprint of the councilmember's name?

5. Regarding the announcement mentioned in the preceding question, do any of the answers change if the announcement is simply distributed door to door by volunteers rather than by mail?
6. Can a councilmember use the above-described funds to pay for the councilmember's own attendance at a luncheon hosted by the Democratic Party organization for fund raising purposes?
7. Can the above-described funds be used by a councilmember to form an anti-crime committee (e.g., "Councilmember X v. Crime" committee) for the purpose of distributing written materials city-wide containing messages such as "Lock Your Doors," "Support Neighborhood Watch Groups," etc?

Thank you for your attention to these inquiries.



R. THOMAS HARRIS  
CITY ATTORNEY

RTH:gc

cc: Councilmember Lorelee McGaughey



# California Fair Political Practices Commission

June 1, 1989

R. Thomas Harris  
Office of the City Attorney  
City Hall  
Stockton, CA 95202

Re: Letter No. 89-326

Dear Mr. Harris:

Your letter requesting advice under the Political Reform Act was received on May 26, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher 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,

  
Kathryn E. Donovan  
General Counsel

KED:plh