



California Fair Political Practices Commission

July 19, 1989

Susan Davidson
1067 Siler Place
Berkeley, CA 94705

Re: Your Request for Informal Assistance
Our File No. I-89-347

Dear Ms. Davidson:

You have requested advice regarding the interpretation of certain regulations enacted to clarify provisions of the Political Reform Act (the "Act").¹ We do not have sufficient facts to provide specific advice to your question; accordingly, we will provide only general guidance. This letter is considered informal assistance pursuant to Regulation 18329(c) (copy enclosed.)²

QUESTION

For which services must the campaign treasurer be paid from the campaign bank account established pursuant to Section 85201 for election to a future term of office?

CONCLUSION

The campaign treasurer must be paid from the campaign bank account established pursuant to Section 85201 for election to a future term of office for those services performed in connection with the future election.

FACTS

You are requesting clarification as to when a campaign treasurer must be paid from the campaign account established for a future election and whether it is ever permissible for the

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. Section 83114; Regulation 18329(c)(3).

campaign treasurer to be paid from an officeholder account. You see the role of a campaign treasurer as a continuum. Initially, his or her work is associated with a future election. If the candidate is elected, the role changes to performing duties associated with holding that office. You have suggested that the campaign treasurer be paid out of the officeholder account until three months prior to the election.

ANALYSIS

The Act now provides that a candidate for elective office must establish a single campaign bank account for election to a particular office, and all contributions to the candidate for that office must be deposited in that account. (Section 85201.) The Act further provides that all contributions deposited in the campaign bank account are deemed to be held in trust for expenses associated with the election of the candidate to that specific office or for expenses associated with holding that office. (Section 85202.)

Regulation 18525, adopted by the Commission at its May meeting, identifies which expenses are considered to be in connection with a future election and which are considered to be in connection with the current office. The purpose of the regulation is to clarify which campaign bank account should be used for particular expenditures. The regulation provides, in part, as follows:

(a) An incumbent elected officer shall make expenditures for the following campaign expenses from the appropriate campaign bank account for election to a future term of office:

* * *

(3) Payments for services and actual expenses of...the campaign treasurer...providing services directly in connection with a future election....

Regulation 18525, copy
enclosed.

Therefore, if the activities of the campaign treasurer are directly in connection with the future election, they must be paid from the campaign bank account established for that future election. If the activities of the campaign treasurer are in connection with the incumbent term of office, they do not have to be paid from the campaign bank account established for the future election.

You have specifically requested clarification regarding payment of the campaign treasurer in 1989 and whether any of the

treasurer's expenses could be paid from "restricted funds"³ in view of Regulation 18525. As previously stated, the campaign treasurer must be paid from the account for the future election if the activities are in connection with that future election. Whether activities not in connection with the future election can be paid from restricted funds is determined by Regulation 18536.2 (copy enclosed).

Regulation 18536.2 permits restricted funds to be used for specified purposes unrelated to a future campaign. The regulation lists the following as permissible uses of restricted funds:

(A) Payment of the candidate's or committee's campaign debts incurred prior to January 1, 1989, for goods consumed or services completed prior to January 1, 1989.

(B) Payment of officeholder expenses. As used in this section, "officeholder expenses" means expenses incurred directly in connection with carrying out the usual and necessary duties of holding office, including but not limited to, travel between an officeholder's residence and public office, meetings with constituents which are not campaign-related meetings, and salary payments to staff for other than campaign activities. "Officeholder expenses" does not include expenses incurred in connection with newsletters, mass mailings and other campaign activities, such as campaign speeches, campaign fundraising, actions performed by campaign staff, or political advertising.

To the extent that the campaign treasurer is being compensated in connection with activities which may be paid for with restricted funds, it would also be permissible to pay the treasurer from restricted funds. The constitutionality of the provisions enacted by Proposition 73 to limit the use of restricted funds to non-campaign purposes is currently being litigated in Service Employees International Union, AFL-CIO, et al. v. FPPC. (U.S. District Court, Eastern District of California, Case No. Civs 89-0433 LKK-JFM.)

With respect to your suggestion that the campaign treasurer be paid from an account for the current office until three months

³ "Restricted funds" is a term commonly used to refer to campaign funds received by a candidate prior to January 1, 1989 in amounts in excess of the contribution limits imposed by Proposition 73.

prior to the election, this would require amendment of Regulation 18525. In the event that a determination is made that clarification of the regulation by amendment is necessary, we will take your suggestion into consideration.

If you have any questions regarding the above, you may contact 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

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1067 Siler Place
Berkeley, CA 94705
June 3, 1989

Fair Political Practices Commission
428 J Street Suite 800
Sacramento, CA 95804-0807

Dear Mr. McLean

RE: Regulation 18525

The services of the campaign treasurer are supposed to be paid as services in connection with a future election under Item (3) subsection (a) but as I read (b) expenses associated with holding office must be made out of the account set up for that office.

It seems to me that the role of the campaign treasurer is a continuum. At the beginning, the work is associated with a future election. If the candidate is elected, the role changes to performing duties associated with holding that office (such as filing required campaign reports).

I suggest that the campaign treasurer be paid out of the office holder account until three months prior to a future election, i.e. same as the mass mailing provision.

If I am misinterpreting this provision, could I please have a clarification. Specifically, in 1989, can the treasurer be paid out of the restricted account or must the treasurer be paid from an account set up to comply with provisions of Proposition 73?

Thank you,


Susan Davidson



California Fair Political Practices Commission

June 8, 1989

Susan Davidson
1067 Siler Place
Berkeley, CA 94705

Re: Letter No. 89-347

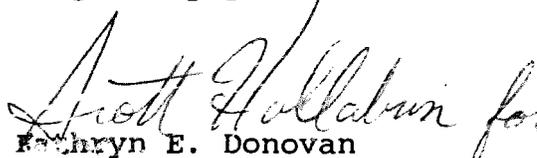
Dear Ms. Davidson:

Your letter requesting advice under the Political Reform Act was received on June 6, 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,


Kathryn E. Donovan
General Counsel

KED:plh