



California Fair Political Practices Commission

October 20, 1989

Patrick D. McGuire
1618 Glendon Avenue
Los Angeles, CA 90024

Re: Your Request for Advice
Our File No. A-89-534

Dear Mr. McGuire:

You have requested advice concerning the campaign provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May a candidate continue soliciting funds between October 1, 1989 and December 31, 1989, even though the candidate may not accept funds during that period?
2. May a candidate omit the identification number and the name of his or her controlled committee on the outside envelope of a mass mailing, so long as the candidate is identified as the sender on the outside of the envelope?
3. May a candidate use an unlimited amount of his or her personal funds to pay campaign expenses?
4. Are in-kind contributions received from contributors required to be counted for purposes of the contribution limitations?

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.

CONCLUSIONS

1. Your first question concerns Section 85309 of Proposition 68, which prohibits candidates for the state Legislature from accepting contributions during a year when they are not listed on the ballot. Because this provision is the subject of pending litigation and is currently not in effect, the Commission cannot provide you with specific formal advice at this time concerning the solicitation of such funds. However, I hope the general information provided in the analysis below will be of assistance.

2. A candidate must provide either his or her own name and address or the name and address of his or her controlled committee on the outside envelope of a mass mailing. A committee's identification number is not required to be printed on a mass mailing.

3. Candidates may make contributions to their own campaigns without limits. However, all personal funds of the candidate to be used for campaign expenses must be deposited in the campaign bank account before being spent.

4. In-kind contributions received from contributors are subject to the contribution limitations.

FACTS

You stated during a recent telephone conversation that you plan to be a candidate for the State Assembly on the June 1990 ballot.

ANALYSIS

1. The Court of Appeals has ruled that certain provisions of Proposition 68, including Section 85309, should go into effect.² (Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, Case No. B039177.) The Court of Appeal's ruling would have been enforceable on October 3, 1989, except for the petition for review filed by the Commission with the Supreme Court. The Supreme Court has until November 13, 1989, to grant or deny our petition or it can extend the deadline until December 13, 1989.

If the Supreme Court denies review, the Court of Appeal's ruling takes effect, and the Commission will begin enforcing the

² Propositions 68 and 73, two campaign reform initiatives, were passed by the voters in the June 1988 Primary Election. Because Proposition 73 received a larger number of votes, its provisions prevail where provisions of the two measures conflict. The Commission had determined that Section 85309, as well as most other provisions of Proposition 68, could not go into effect. (In re Bell, 11 FPPC Opinions 1.)

applicable provisions of Proposition 68 the next day. If the Supreme Court grants review, the provisions in question will have no effect until the Supreme Court issues an opinion saying they are in effect. The Supreme Court could decide to grant or deny review anytime before its November 13 deadline, so we cannot give you a firm date on which Section 85309 may go into effect.

With regard to its possible application, Section 85309 states:

No legislative candidate or legislator or any controlled committee of such a candidate or legislator shall accept any contribution in any year other than the year in which the legislative candidate or legislator is listed on the ballot as a candidate for legislative office.

Because Section 85309 states only that contributions may not be accepted during a non-election year, it appears that solicitations may not be prohibited. However, the Commission will not provide formal advice concerning this matter until the Taxpayers litigation has been resolved. In addition, you should be aware that an "enforceable promise," as defined in Regulation 18216 (copy enclosed), is a contribution and you would not be able to accept an enforceable promise during a non-election year even though you would not receive the ensuing funds until an election year.

Your letter also indicates that Section 85309 may prohibit legislative candidates from holding campaign funds during a year in which they are not appearing on the ballot for legislative office. There is nothing in the Act or the pending provisions of Proposition 68 which would prohibit you from holding previously raised funds during a year in which you will not appear on the ballot as a legislative candidate.

2. Section 84305 states:

a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of such mailing in no less than 6-point type. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State.

b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail.

c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by the subdivision (a).

A mass mailing is defined as over 200 substantially similar pieces of mail sent in a calendar month. (Section 82041.5, Regulation 18435.)

When a mass mailing is sent by a candidate's controlled committee, either the candidate's name and address, or the committee's name and address, may be used. The committee's identification number is not required to be printed on the envelope or on any materials enclosed in a mass mailing. You may wish to include the identification number for the convenience of the contributors when soliciting contributions.

In addition, Regulation 18523.1 (copy enclosed) requires written solicitations for contributions to identify the particular controlled committee by name, the specific office and the particular election for which contributions are sought, and to instruct contributors to designate their contributions for that particular controlled committee. See also enclosed Regulation 18532 regarding solicitation of contributions.

3. Candidates are not limited in the amount of contributions they may make on behalf of their own candidacy. (Section 85301(b).) However, they may not use personal funds to pay campaign expenses unless the money has first been deposited in the campaign bank account established pursuant to Section 85201. (Section 85201(d).)

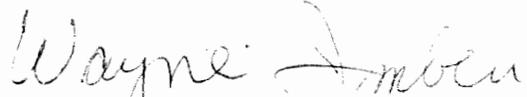
4. Expending money for services, equipment or supplies for a candidate's campaign would constitute an in-kind "contribution" to the candidate. (Sections 82015, 82044.) Such in-kind contributions are subject to the contribution limitations.

A copy of your letter is enclosed for your convenience.

If I can be of any further assistance do not hesitate to contact me at (916) 322-5662.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Wayne P. Imberi
Political Reform Consultant

PATRICK D. MCGUIRE

August 26, 1989

Mr. Wayne Imbry
Fair Political Practices Commission
Political Reform Division
1230 "J" Street
Sacramento, CA 95807

Dear Mr. Imbry:

First of all thank you for your prompt assistance concerning the various questions I posed concerning Propositions 73 and 68. I wanted to reiterate what I understood to be your explanations so that my actions would be in accord with your directives:

Solicitations for funds may continue between October 1, 1989, and December 31, 1989, but no funds may be accepted or held by the candidate or his committee; any funds received must be returned.

Personal letterhead and identified envelopes may be used for solicitations as long as the FPPC # and name of the committee is listed in any solicitation letter and/or return form; FPPC # and exact name of committee need not be listed on exterior of envelope in addition to pre-printed candidate's name and address (as per envelope containing this letter).

Candidate may use as much of his/her personal money as candidate wishes for such expenses as postage or paper (but may not be reimbursed by campaign committee); anyone spending money for services, equipment or supplies for the candidate's campaign efforts must credit such expenses against the maximum allowable contribution.

I thank you for reviewing this information; unless I hear from you or the FPPC, I will proceed along the above-outlined guidelines.

Sincerely,



Patrick D. McGuire
(213) 477-8102



California Fair Political Practices Commission

September 15, 1989

Patrick D. McGuire
1618 Glendon Avenue
Los Angeles, CA 90024

Re: Letter No. 89-534

Dear Mr. McGuire:

Your letter requesting advice under the Political Reform Act was received on September 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
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh



FPPC
SEP 12 1989
RECEIVED

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

September 8, 1989

Carla Wardlow
Assistant Division Chief
Technical Assistance and Analysis Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

CANDIDATE'S USE OF STATE SEAL

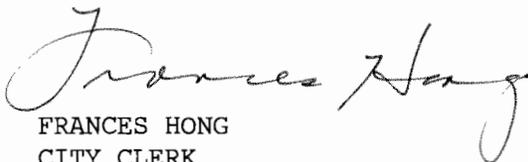
Attached is a business card Mr. Harvey Bills is using in his political campaign. Our City seal and the State seal were used without gaining permission from the respective jurisdictions. Mr. Bills was unaware that the use of these seals in his campaign might not be lawful.

I cautioned Mr. Bills about using the seals without permission and asked him to withhold further distribution of his card until a determination was made on the use of the seals.

Would you refer this to the proper department and request they advise me if it is permissible for Mr. Bills to use the State seal?

An early response would be appreciated.

Thanks for your help, Carla.


FRANCES HONG
CITY CLERK

FH:nck

att/

7-89-535



FPPC
SEP 12 1989
RE

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

September 8, 1989

Carla Wardlow
Assistant Division Chief
Technical Assistance and Analysis Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

CANDIDATE'S USE OF STATE SEAL

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Thanks for your help, Carla.

Frances Hong
FRANCES HONG
CITY CLERK

FH:nck

att/

*Called 9/18. Told
Nora Keating, Deputy
City Clerk, to refer
question to city attorney
and/or Atty General.
Carla Wardlow*



**STOCKTON CITY
COUNCIL
CANDIDATE
1989**



HARVEY N. BILLS
1113 Wrangler Circle
95210

District One
Councilman
(209) 474-6460

FPPC
SEP 12 1989

RECEIVED



**STOCKTON CITY
COUNCIL
CANDIDATE
1989**



HARVEY N. BILLS
1113 Wrangler Circle
95210

District One
Councilman
(209) 474-6460

FRD
SEP 12 1989
RE