



California Fair Political Practices Commission

October 20, 1989

Norrine Coyle, City Clerk & Auditor
City of Modesto
P. O. Box 642
Modesto, CA 95353

Re: Your Request for Advice
Our File No. A-89-538

Dear Ms. Coyle:

You and the following candidates have requested advice concerning the campaign provisions of the Political Reform Act:^{1/}

John L. Hollis
Board of Education
Modesto City Schools

Richard G. Patterson
Modesto City Council

Frank S. Jeans
Board of Education
Modesto City Schools

Richard A. Lang
Modesto City Council

Paul Newmann
Board of Education
Modesto City Schools

QUESTION

May the candidates be reimbursed from campaign funds for payments made from their personal funds to pay for the printing and mailing of the candidates' statements in the November 7, 1989, election ballot?

CONCLUSION

Candidates who, at the time of making the payment from personal funds, intended the payment to be a loan to support their candidacies may be repaid. However, please note that this advice

^{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.

will not preclude any enforcement action which may be taken in connection with the fact that the payments were not made in compliance with Section 85201.

FACTS

The City of Modesto is conducting an election on November 7, 1989. Prior to establishing their campaign bank accounts, the candidates listed above paid from personal funds \$375 each to the City Clerk's office as a deposit toward the cost of printing and mailing their candidates' statements in the ballot.

ANALYSIS

In the June 1988 statewide primary election, the voters approved Proposition 73, which added contribution limitations and other restrictions to the Act. In particular, Proposition 73 requires candidates to file a statement of their intention to receive contributions for the purpose of running for elective office prior to receiving any such contributions (including loans). (Section 85200.) 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.

Section 85201.^{2/}
(Emphasis added.)

^{2/} Regulation 18522 provides that candidates who use personal funds to pay a filing fee or a candidate statement fee, and who will receive no contributions and will make no other expenditures, are not required to file a statement of intention or establish a separate campaign bank account.

As you can see, the language of Section 85201(d) and (e) prohibits candidates from making direct payments from personal funds for the statement of qualifications.^{3/} However, nothing in the Act prohibits candidates who have made such payments from being repaid from campaign funds if, at the time of making the payments, the candidates intended to make loans on behalf of their own candidacies.

The Commission is sympathetic to the burdens imposed on candidates by the new requirements of Proposition 73, particularly at the local level. However, the fact that a candidate intended to make a loan when paying for the statement of qualifications, and therefore may be repaid, does not remove the fact that the original payment was not made in compliance with the requirements of the Act. Therefore, this letter should not be construed to permit candidates to make campaign expenditures from personal funds in the future.

Please note also that candidates are not limited in the amount of personal funds they may contribute or loan to their own campaign contribution account. (Section 85301(b).) In addition, Regulation 18526.1 (copy enclosed) allows elected officeholders to use personal funds and be reimbursed for certain officeholder expenses.

Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,

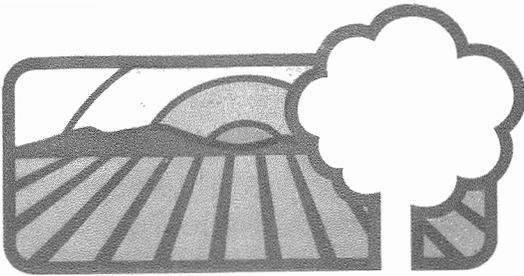
Kathryn E. Donovan
General Counsel



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

Enclosure .

^{3/} Violation of this restriction can subject the candidate to an administrative fine of up to \$2,000 per violation, or to civil or criminal penalties. (Sections 83116, 91000 and 91005.5.) In addition, the Court of Appeal has recently held that, pursuant to Section 91000, as amended by Proposition 68, violation of this restriction is punishable as a felony. (Taxpayers to Limit Campaign Spending v. FPCC, Case No. B039177, Court of Appeal, Second District, Division 3.) This ruling is not yet in effect. The Commission has petitioned the Supreme Court to review the opinion of the Court of Appeal.



CITY of MODESTO

Office of City Clerk:

(209) 577-5396

801 11th Street, P. O. Box 642, Modesto, CA 95353

[TDD (209) 526-9211 Hearing and Speech Impaired only]

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SEP 15 10 15 AM '89

SEP 1

September 8, 1989

Legal Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804-0807

We have paid the City of Modesto \$375 each as a deposit toward the costs of printing and mailing our candidates' statements for the election on November 7, 1989. Since there is a relatively short nomination period during which we must obtain signatures, prepare the candidates' statements, complete other forms and file them in the City Clerk's Office, many of us have not had an opportunity to establish our committees, banks accounts, etc. Therefore, we have had to pay the \$375 with personal checks.

According to the State Elections Code, we have until 5:00 p.m. on the day following the close of the nomination period to withdraw our statements, in which case the City Clerk returns our checks. Candidates who run unopposed might choose to withdraw their statements, and sometimes you don't know whether or not you will have an opponent until the last minute.

All of this conflicts, this year, with laws concerning campaign funds. As we understand it, Proposition 73 makes it illegal to be reimbursed for the candidates' statements fees, as candidates have been in the past.

Can you tell us some procedure to follow to allow us to legally be reimbursed for these funds that we had to advance?

Yours truly,

John L. Hollis, Board of Education Modesto City Schools.
John L. Hollis, Board of Education, Modesto City Schools

Frank S. Jeans, BOARD OF EDUCATION - MODESTO CITY SCHOOLS
Frank S. Jeans, Board of Education, Modesto City Schools

Paul Neumann, Board of EDUCATION - MODESTO CITY SCHOOLS
Paul Neumann, Board of Education, Modesto City Schools

Richard G. Patterson City Council Chair #4
Richard G. Patterson, City Council, Chair #4

Richard A. Lang - City Council Chair #5
Richard A. Lang, City Council, Chair #5

Norrine Coyle
Norrine Coyle, City Clerk & Auditor, City of Modesto



California Fair Political Practices Commission

September 19, 1989

John L. Hollis
Frank S. Jeans
Paul Neumann
Richard G. Patterson
Richard A. Lang
Norrine Coyle
City of Modesto
P.O. Box 642
Modesto, CA 95353

Re: Letter No. 89-538

Dear Messrs. & Madam:

Your letter requesting advice under the Political Reform Act was received on September 15, 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
by *plh*
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh