



# California Fair Political Practices Commission

November 20, 1989

Judy Vonada, City Clerk  
City of Hayward  
22300 Foothill Blvd.  
Hayward, CA 94541

Re: Your Request for Advice  
Our File No. A-89-606

Dear Ms. Vonada:

You have requested advice on behalf of Councilmember Michael Sweeney concerning the campaign provisions of the Political Reform Act.<sup>1</sup>

## QUESTIONS

1. May Councilmember Sweeney transfer funds from his controlled committee formed to support his candidacy for city council to his controlled committee formed to support his candidacy for mayor? The funds in question were raised before January 1, 1989.
2. Once funds are transferred from the city council committee to the mayoral committee, are there any restrictions on the use of those funds?
3. How is the transfer of funds from his city council committee to his mayoral committee reported?

## CONCLUSIONS

1. Councilmember Sweeney may transfer any funds currently held in his controlled committee formed to support his candidacy for city council to his controlled committee formed to support his candidacy for mayor. This advice applies equally to funds raised before and after January 1, 1989.
2. There will be no special restrictions placed on those funds transferred from Councilmember Sweeney's city council controlled committee to his committee for mayor. Just as funds raised directly into his mayor's campaign committee, the

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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.

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transferred funds may be used for expenses related to his election for mayor or may be transferred to another of his controlled committees.

3. The city council committee must report making the transfer of funds to the mayoral committee on Schedule E of the Form 490. The mayoral committee must report receiving the transfer of funds on Schedule G of its Form 490. The transfer must be reported for the reporting period in which the transfer occurs.

#### FACTS

City Councilmember Michael Sweeney has funds remaining in his controlled committee's bank account. This committee was formed to support his candidacy for city council. The funds held in this bank account were received prior to January 1, 1989.

Councilmember Sweeney has declared his candidacy for mayor for city's April 1990 election, and has established a controlled committee and bank account for this purpose.

#### ANALYSIS

Section 85304 as added to the Act's provisions by the passage of Proposition 73 in the June 1988 primary election, prohibits candidates from making transfers of funds between their own controlled committees. However, in a preliminary injunction issued by the United States District Court, Eastern District of California, the court enjoined the Commission from enforcing this Section. (Service Employees International Union, AFL-CIO, CLC, et al. vs. Fair Political Practices Commission, No. CIVS 89-0433 LKK-JFM, May 15, 1989.)<sup>2</sup> Therefore, a transfer between Councilmember Sweeney's controlled committee for city council and his controlled committee for mayor is currently permitted. Trial on this issue is scheduled for January 30, 1990.

The Act does not place any special restrictions on campaign funds that have been transferred between a candidate's own controlled committees. However, please note that Section 85304 prohibits candidates and elected officeholders from transferring funds to other candidates and officeholders and to committees for the purpose of supporting or opposing candidates or officeholders.

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<sup>2</sup> Recently, the court modified the preliminary injunction as it applies to transfers between a candidate's own special election committees and his or her other controlled committees. This modification does not appear to affect our response to your question.

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Proposition 73 also added Section 85306 to the Act. This section prohibits the use of campaign funds raised prior to January 1, 1989, to support or oppose a candidacy for elective office. The court in the Service Employees International Union case, supra, has declared Section 85306 unconstitutional and unenforceable.

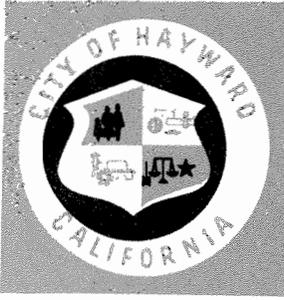
All expenditures made and contributions received during a reporting period must be reported on a committee's campaign statement. (Section 84211.) Expenditures made, excluding the making of loans and expenses accrued during the period but not paid, are reported on Schedule E of the Form 490. Transfers of funds received by a candidate's controlled committee from another committee controlled by the same candidate are reported as increases to cash on Schedule G of Form 490.

If you have additional questions, please contact me at (916) 322-5662.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Kevin S. Braaten-Moen  
Political Reform Consultant



**CITY OF HAYWARD . OFFICE OF THE CITY CLERK**

October 17, 1989

Technical Assistance and Analysis Division  
California Fair Political Practices Commission  
428 J Street, Suite #800  
Box 807  
Sacramento, CA 95804-0807

Oct 19 1 43 PM '89  
FPPC

RE: Campaign Funds collected prior to January 1989

I would appreciate clarification of the recent court rulings and newly adopted regulations regarding the use of remaining campaign funds.

A current councilmember's committee has remaining funds in its bank account. This committee is a controlled committee and was originally formed to support the councilmember's candidacy for city council. The remaining funds in this committee's account were collected prior to January 1989.

The councilmember has declared his candidacy for Mayor, April 1990 election and has established a controlled committee and bank account for this purpose.

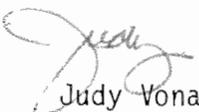
May the councilmember/candidate transfer remaining funds from the controlled committee account established for his election as a councilmember to the controlled committee account established for his candidacy as Mayor?

Are there any additional restrictions on the expenditure of these remaining funds once they are transferred into the account designated for the candidacy for Mayor in the April 1990 election?

What is the procedure for reporting the transfer of funds from one controlled committee account to another?

I would appreciate a response as soon as possible. I also appreciate your assistance.

Sincerely,

  
Judy Vonada  
City Clerk



# California Fair Political Practices Commission

October 23, 1989

Judy Vonada  
City Clerk  
22300 Foothill Boulevard  
Hayward, CA 94541

Re: Letter No. 89-606

Dear Ms. Vonada:

Your letter requesting advice under the Political Reform Act was received on October 19, 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

