

July 20, 2012

Hon. Mervyn M. Dymally, Ph.D.
5533 S. Sherbourne Drive
Los Angeles, CA 90056-1316

Re: Your Request for Advice
Our File No. A-12-111

Dear Mr. Dymally:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act")¹ and is based on the facts provided. The Fair Political Practices Commission does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

As an unsuccessful candidate in the primary election for California State Senate who is required to return contributions for the general election under Section 85318, may your campaign committee donate contributions for the general fund to a bona fide 501(c)(3) nonprofit organization if the contributor does not accept his or her refund?

CONCLUSION

No. If a contributor to the general fund election fails to accept his or her refund under Section 85318, your committee shall pay the funds to the General Fund of the state.

FACTS

Four years ago, you were unsuccessful in the primary election for California State Senate. As permitted by the Act, your committee had already accepted contributions attributable to the general election. After the primary election, your committee refunded contributions for the general election, less related costs, to the contributors. While the majority of the refunds were accepted, 11 of the contributors have failed to negotiate their refund checks.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

ANALYSIS

Section 85318 provides the following (in pertinent part):

“A candidate for elective state office may raise contributions for a general election prior to the primary election ... for the same elective state office if the candidate sets aside these contributions and uses these contributions for the general election.... If the candidate for elective state office is defeated in the primary election..., the general election ... funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election ... contributions.”

While Section 85318 mandates a “pro rata” return of contributions accepted for a general election upon the defeat of a candidate in a primary election, the section does not provide a clear rule in those circumstances in which a contributor does not accept his or her share of the refundable campaign funds. Accordingly, we are left with determining the permissible uses for these funds considering the statutory intent of Section 85318 and the statutory framework of the Act.²

Under the Act, an election is defined as “any primary, general, special or recall election held in this state.” (Section 82022.) Contributions to candidates for elective state office are limited by Sections 85301-85308 of the Act. For purposes of contribution limits, a primary election and a general election are considered different elections. (Section 82022.)

Section 85318 permits raising general election campaign funds during the primary election. However, the candidate may use these funds during the primary election only for expenditures associated with the raising and administration of general election contributions. Upon the defeat of the candidate, Section 85318 requires the candidate to return the funds (less any expenses associated with raising and administration of general election contributions) to contributors towards the general election on a pro rata basis. While strict, the requirements of Section 85318 serve the purpose of preventing candidates defeated in a primary election from circumventing the Act’s contribution limits by using general election funds raised during the primary election, which would otherwise exceed the primary election’s applicable contribution limits, for purposes unrelated to the general election.

Ultimately, the failure of a contributor to negotiate a refund check can be generally attributed either to inaccurate contact information or an attempt by the contributor to provide a committee with funds in a manner inconsistent with Section 85318.

² We note that there are no precise rules for determining the sufficiency of a committee’s effort to return funds under Section 85318, but a committee is required to make a reasonable and good-faith effort. You have provided no information regarding the committee’s attempts to refund the general fund contribution. Accordingly, we offer no opinion regarding the sufficiency of the committee’s efforts to return the funds.

To the extent that the failure to negotiate a refund check is caused by inaccurate contact information, the closest comparable section of the Act is Section 85700(a). This provision requires candidates and committees to return any contribution of \$100 or more, no later than 60 days of the receipt of the contribution, if the candidate or committee does not have the name, address, occupation, or employer of the contributor on file. Should a contributor fail to negotiate a check returned under Section 85700(a) within 90 days, Regulation 18570 requires that the contribution be paid within an additional 30 days to the Secretary of State for deposit in the General Fund. If the failure to negotiate a refund check as required under Section 85313 is a result of inaccurate contact information, paying the funds to the General Fund of the state is the only option consistent with Regulation 18570.

In the event that the contributor has refused the refund check in an attempt to provide the committee with funds in a manner inconsistent with Section 85318, Section 85701 is more analogous to these facts. This Section requires candidates or committees that receive laundered funds to pay the funds to the General Fund of the state. Like the use of laundered funds, allowing a candidate to use general election funds during the primary election or upon his or her defeat in the primary election, except as permitted in Section 85313, would be inconsistent with the purposes of the Act and circumvent the Act's applicable contribution limits. Accordingly, as we have previously advised, "the option most consistent with the Act, if the contributor refuses to accept the refund of the funds as required by Section 85318, is to pay the funds to the General Fund of the state." (*Raymer Advice Letter*, No. A-08-137.)

In conclusion, the use of general election campaign funds is strictly limited to those purposes enumerated in Section 85318 during the primary election and, if the candidate is defeated in the primary election, after the primary election. Because any other use would be inconsistent with the Act and potentially circumvent applicable contribution limits, any general election campaign funds not accepted by the contributors must be paid to the General Fund of the state, as required by other analogous provisions of the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division

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