

November 26, 2012

Dennis White
Controller / Treasurer
Riverside County Democratic Central Committee - AD
871 Alder Street
Corona, CA 92879-3002

Re: Your Request for Advice
Our File No. A-12-160

Dear Mr. White:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).) In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

How should funds recovered in the interpleader action related to the Durkee investigation be reported considering that the committee has been terminated with the approval of the Commission and the recovered funds have been deposited into the account for a new committee established to replace the terminated committee?

CONCLUSION

Because the committee has previously been granted a termination by the Commission, funds recovered in the interpleader action and deposited into the account for the committee established to replace the terminated committee should be reported by the replacement committee as a miscellaneous increase in cash with a short description that the funds were received upon the final disposition of the interpleader action. The previously terminated committee has no additional reporting requirements.

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.

FACTS

You are the former Treasurer/Controller of the Riverside County Democratic Central Committee (ID No. 742024) (the “RCDCC”) and the current Treasurer/Controller of the Riverside County Democratic Central Committee –AD (ID No. 1342861) (the “RCDCC-AD”). The RCDCC requested and was granted a committee termination by the Commission after the committee’s funds were deposited with the Los Angeles County Superior Court by the First California Bank in a interpleader action (Case No. SC 114232) filed in response to the investigation by the Federal Bureau of Investigation of the misappropriation of campaign funds by the committee’s former treasurer, Kinde Durkee.

Recently, the Los Angeles County Superior Court ordered the release of the funds deposited with the court in the interpleader action. Under the court’s order, the RCDCC received \$3,788.88, the balance of the committee’s funds last reported by Durkee & Associates on August 31, 2011. The recovered funds have been deposited into the bank account for the RCDCC-AD.

ANALYSIS

Because the general committee termination rules provided in Regulation 18404(b)² proved unfeasible for some committees affected by the Durkee investigation, the Commission permitted the termination of committees affected by the investigation upon a writing request, disclosing the amount of funds believed to be misappropriated, and attesting that each of the following conditions had, or would be, met:

- The candidate or principal officer did not know of any deposits and had not authorized payments from the committee’s bank account subsequent to the closing date of the committee’s last filed campaign statement.
- The balance of the committee’s funds inaccessible because of the interpleader action including funds believed to have been misappropriated was less than the likely costs of recovering the funds.

² Under Regulation 18404(b), a recipient committee may terminate its status as a committee only if the committee treasurer completes the termination section of a Statement of Organization (Commission Form 410) declaring, under penalty of perjury, that the committee:

“(1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

“(2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

“(3) Has no surplus funds; and

“(4) Has filed all required campaign statements disclosing all reportable transactions.”

- The committee had ceased to receive contributions or make expenditures.
- The committee, in the case of a candidate controlled committee, had no surplus funds.
- Funds recovered would be immediately paid to the Secretary of State for deposit in the State General Fund, paid to the general fund of the local jurisdiction in which the committee is based, deposited by a candidate controlled committee into the account of the committee reopened upon the approval of the Commission's Executive Director or as permitted under Regulation 18404.1(g)(1)(A)-(C), or deposited by a non-candidate controlled committee into the account of a committee established by the same sponsor or person for the same purpose. (See Commission Fact Sheet, *Reporting and Termination Advice for Committees Subject to Campaign Fraud in 2011*.)

Perhaps most significantly, the Commission emphasized in permitting termination under the preceding conditions that the costs of maintaining a committee were not warranted if the costs to recover the funds would likely exceed the balance. (*Rios* Advice Letter, No. I-11-198.) Similarly, we find no compelling reasons to require a committee terminated under these conditions to incur the costs of reopening the committee merely to report that the recovered funds were paid or transferred in a manner that has already been disclosed in writing.

Accordingly, a committee affected by the Durkee investigation and terminated upon the approval of the Commission is not required to further report the recovery of funds from the interpleader action. However, if funds are paid to the State General Fund or the general fund of the local jurisdiction in which the committee is based, the committee should maintain a receipt of the payment for auditing purposes. (See Regulation 18401.) If a committee has elected to deposit the funds into the account of another committee as specifically permitted under the Commission's previous advice, the committee receiving the funds should report the funds as a miscellaneous increase to cash with a short description that the funds were received upon the final disposition of the interpleader action. (See *Houston* Advice Letter, No. I-11-176.)

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

BGL:jgl