

January 30, 2013

Michael Monasky
9035 Plaza Park Drive
Elk Grove, CA 95624

Re: Your Request for Informal Assistance
Our File No. I-13-008

Dear Mr. Monasky:

This letter responds to your request for advice regarding the use-of-campaign-funds provisions of the Political Reform Act (the "Act").¹

You are a private citizen interested in providing your viewpoints to the City of Elk Grove, particularly on the issue of the city's consideration of whether and how to fill a vacancy on the city council. You seek our advice on the permissibility of the mayor and city councilmembers using their own campaign funds to assist the city in paying for the cost of a special election to fill the council vacancy.

Since your question concerns the duties of persons you are not authorized to represent, we cannot provide formal advice. (Regulation 18329(b)(8)(B).)² However, we will provide informal assistance in the form of a general explanation of the applicable provisions of the Act. (See Regulation 18329(c)(4)(C).)

QUESTION

May an elected officer of a local government agency use his or her campaign funds to pay for that agency's cost to hold a special election even if the officer is not a candidate in that election?

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 (the "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.

² Formal written advice provides a complete defense in any enforcement proceeding initiated by the Commission and evidence of good faith conduct in any other civil or criminal proceeding. (Section 83114(b).)

CONCLUSION AND ANALYSIS

The Act generally permits a candidate or elected officer to spend his or her campaign funds on any matter that is related to a political, legislative or governmental purpose.³ If the expenditure confers a direct personal benefit of over \$200 on the candidate or officer or on any individual authorized to make the expenditure, the expenditure must be directly related to a political, legislative or governmental purpose. (Sections 89512 and 89511(b)(3).) If the expenditure does not confer this personal benefit, it need only be reasonably related to a political, legislative or governmental purpose. (Section 89512.) Therefore, to the extent an expenditure of this type would defray the local agency's costs in holding a special election, it would appear to be directly related to a governmental purpose and a permissible expenditure of campaign funds under the Act.

In some instances, a candidate's or elected officer's expenditure of campaign funds may constitute a campaign contribution to another candidate, or an independent expenditure supporting or opposing another candidate. (See Sections 82013, 82105 and 82031.) In those instances, other provisions of the Act may impose additional duties and restrictions relating to the expenditure. For instance, if the expenditure is a campaign contribution, state or local law could limit the amount of the expenditure/contribution. (See, e.g., Sections 85301 and 85305 (relating to candidates for elective state office) and Section 85703 (permitting local jurisdictions to impose limits on contributions to local candidates)). Also, Section 85501 prohibits state and local candidates from using their campaign funds to make independent expenditures supporting or opposing another candidate. However, when a candidate pays campaign funds directly to a government agency for the purpose of defraying the agency's cost of holding an election, absent unusual circumstances, we would not view the payment as being either a contribution to, or independent expenditure supporting or opposing, any particular candidate in that election.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

Sh:jgl

³ Some local jurisdictions may also place additional restrictions on the use of campaign funds by local candidates and elected officers. We do not provide advice on the application of laws such as these that are outside the Act, except to the extent they may conflict with the Act.

LEGAL DIVISION ASSIGNMENT SHEET

Tracking Number:	13008
-------------------------	-------

ITEM DESCRIPTION			
Advice Letter No.	13-008	Requestor	Monasky, Michael
Regulation Project No.			
Other (describe)			

Received By FPPC On:	01/14/13	Due Date:	02/25/13
Assigned To:	Scott	Date To Assignee:	01/25/13

REVIEWERS	Date To Review	1st Approval & Date (Including Regulation Notices)	Date To Review	Final Approval & Date (Incl. Regulation Adoption Memos)
Proofed				
Senior	1/28/13	1/28/13 HPW		
TAD Chief (SEI, Campaign, Conflict of Interest Code letters)				
Assistant GC				
General Counsel		ZPM 1-28-13		
Executive Director (discretion of GC)				
Chair (discretion of GC)				