

June, 20 2014

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Re: Your Request for Advice  
**Our File No. A-14-086**

Dear Mr. Nagdimon:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the “Act”).<sup>1</sup> 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

In closing a campaign committee it previously established, may the American Federation of State, County, and Municipal Employees, Local 2006, return campaign funds to the union’s general account for the benefit of all members of the union?

### CONCLUSION

In closing a committee, a committee established by a union may not return campaign funds to the union’s general account for the payment of general operating expenses. However, the committee may return the funds to the union if the funds are segregated and the use of the funds is restricted to expenditures that are *reasonably related* to a political, legislative, or governmental purpose such as collective bargaining and assisting members with workplace grievances.<sup>2</sup> Alternatively, the committee may return the funds to the individual union members

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<sup>1</sup> 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.

who contributed the funds to the committee or donate the funds to another nonprofit organization.

## FACTS

You are the Treasurer of a small union, the American Federation of State, County, and Municipal Employees (the “AFSCME”) Local 2006, which is comprised of medical professionals who work for the city of Los Angeles. Years before your involvement with the union, a prior Executive Board established a campaign committee, which has only made two contributions in the past six years. The committee is funded by an automatic and involuntary apportioning of regular union dues, and the committee’s account currently has a balance of approximately \$37,000. Considering the thousands of dollars in accounting fees, previous government fines, and the infrequent use of the committee, the current Executive Board has decided to close the committee.

Local 2006 is part of AFSCME’s group tax-exemption status and we have 501(c)(5) filing status with the IRS. At this time, Local 2006 wishes to return the funds in its committee account to its general account for the benefit of all members of the union, the same individuals who funded the committee with their union dues. The general account pays for legal representation, collective bargaining, and assistance with workplace grievances for our members. Aside from a small monthly stipend you receive as the treasurer (\$150/month), the union has no paid staff, no physical office, and minimal administrative expenses. The union’s leaders are all volunteers.

## ANALYSIS

The use of campaign funds by committees not controlled by a candidate, such as the committee in question, is controlled by Section 89512.5 of the Act. Generally, this section requires expenditures to be “reasonably related to a political, legislative, or governmental purpose.” (Section 89512.5(a).) However, any expenditure that confers a substantial personal benefit on any individual with the authority to approve expenditure of campaign funds held by a committee must be “directly related to a political, legislative, or governmental purpose.” (Section 89512(b).)

Previously, we have advised that “refunding” committee money to the union that began the committee for operating expenses is not “reasonably related” to a political, legislative, or governmental purpose. (*Pappy* Advice Letter, No. A-94-031.) Nonetheless, we have generally permitted non-candidate controlled committees to return contributions to contributors. For example, in the *Pirayou* Advice Letter, No. A-08-143, we advised a primarily formed ballot measure committee that it could return funds to a nonprofit organization, which was a major contributor to the committee, to support the same purpose of the failed ballot measure the

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<sup>2</sup> The use of the funds must be *directly related* to a political, legislative, or governmental purpose if the expenditure provides a personal benefit to any individual with the authority to approve the expenditure, such as the salary or travel by the union’s leaders.

committee was formed to support because returning the funds was reasonably related a political purpose, and that funds exceeding the amount contributed could also be given to the nonprofit under Section 89515.<sup>3</sup> (See also *Paquette* Advice Letter, No. I-06-208; *Bell* Advice Letter, No. A-00-010; and *Hiltachk* Advice Letter, No. I-90-053.)

Merging prior advice, we once again examined the “return” of contributions by a committee to a nonprofit Sheriff’s Association that established the committee in the *Hawkins* Advice Letter, No. A-10-150. While recognizing the general rule that returning funds for operating expenses is not reasonable related to a political, legislative, or governmental purpose (see *Pappy*, *supra*), we advised that the organization could return the funds to its general account so long as “the funds were restricted to a political or legislative use that is in harmony” with the purpose of the measure the committee was formed to support. Alternatively, the committee’s other options included “returning the funds to the actual donors (the Sheriff’s Association members) (see *Pirayou*, *supra*) or donating to a non-profit (see Section 89515).”<sup>4</sup>

You seek to return committee funds to the AFSCME’s general fund for the purposes such as legal representation, collective bargaining, and assistance with workplace grievances for your members. Applying the same rational as prior advice, the funds may not be used for general operating expenses but may be returned to the union’s general fund so long as the funds are segregated from other funds and restricted to a use reasonably related to a political, legislative, or governmental purpose. Consequently, we must now distinguish permissible uses from general operating expenses.

In examining previous expenditures by committees established by unions, we have found expenditures permissible to the extent that the expenditures fulfill the union’s purpose in attempting “to obtain the best wages, hours and benefits” for the union’s members and have advised the following:

“Applying the Act’s standards to your proposed expenditures, we find ... that payment for the travel, lodging, and meals for one or two individuals to attend the employer/employee relations seminar is a permissible use of PAC funds because attending the seminar is directly related to a political, legislative or governmental purpose of the committee. ... Similarly, the use of [PAC] funds for payment of tuition/registration for the seminar is permissible under the Act,

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<sup>3</sup> Section 89515 addresses the use of campaign funds for charitable purposes and permits the use of campaign funds, by a non-candidate controlled committee, for donations to “charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations” so long as “no substantial part of the proceeds will have a material financial effect” on the campaign treasurer, individual or individuals with authority to approve the expenditure of funds by the committee, or immediate family members and the donation “bears a reasonable relation to a political, legislative, or governmental purpose.”

<sup>4</sup> Neither the *Pappy* nor *Hawkins* Advice Letters permitted a committee to return funds to an organization that established the committee under Section 89515 despite the fact that the organizations were nonprofits. Accordingly, we find that in itself Section 89515 does not permit the return of funds to a nonprofit organization that has established the committee.

because it also meets the lower standard of being reasonably related.” (*Carpenter* Advice Letter, No. A-04-023; also see *Brown* Advice Letter, No. I-90-412, educational seminars for union members, who were also governmental employees, to enhance their ability to perform governmental duties for the state were reasonably related to a political, legislative, or governmental purpose.)

Similarly, in the *Kaufman* Advice Letter, No. A-96-175, we determined:

“Activities such as participation in political events and rallies, coordinating political action aimed at influencing contract negotiations or budget decisions, voter registration activities, providing political education to both union and nonunion members, tracking legislation, initiatives and administrative decisions, lobbying state and local officials, recruiting campaign volunteers, voter registration activities, get-out-the-vote activities, phone banks to influence elections or governmental activities, and administrative costs and tasks for all of these activities appear to be directly related to political, legislative or governmental purposes. Committee funds may be used to pay the costs of these activities, including staff salaries.”

However, other union activities “such as attending union membership and work site meetings, membership recruitment, union rallies, attending meetings of state and local affiliates, writing articles, participating in a radio show, and representing the union at community events, forums and meetings” had to be analyzed on a case-by-case basis to determine whether or not any specific action was reasonably related to a political, legislative or governmental purpose. (See *Kaufman*, *supra*.)

You have specifically inquired about using the funds for legal representation, collective bargaining, and workplace grievances. Before addressing these uses, we emphasize that the funds may not be used for operating expenses including, but not limited to, general staff salary, the rental or maintenance of a union office, and other typical administrative expenses. Nonetheless, for collective bargaining and assistance with workplace grievances, we find that these activities fulfill the union’s purpose in attempting “to obtain the best wages, hours and benefits” for the union’s members and are directly related to a political, legislative, or governmental purpose. Accordingly, the use of funds for these specific purposes is permitted as analyzed in the *Carpenter* and *Kaufman* advice letters.

More generally, using funds for outside legal representation is permissible only if it is reasonably related to a political, legislative, or governmental purpose, and this determination can only be made on a case-by-case basis after examining the underlying purpose of the representation. For example, while the use of funds for legal representation regarding an issue under collective bargaining is permissible under our analysis above, the use of funds for legal representation regarding an administrative matter such as a property dispute involving a union’s office is not permitted. If you need further assistance determining whether legal representation

or any other activity is reasonably related to a political, legislative, or governmental purpose, you should seek additional advice specifically describing the activity and purpose.

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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