

August 19, 2014

Ms. Kathryn Donovan  
Senior Counsel  
Pillsbury Winthrop Shaw Pittman LLP  
2600 Capitol Avenue, Suite 300  
Sacramento, CA 95816-5930

Re: Your Request for Advice  
**Our File No. A-14-150**

Dear Ms. Donovan:

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

### **QUESTION**

In connection with his run for Governor in 2010, Steve Poizner has recently been notified by a campaign consultant that \$18,000 in media buy rebates have accrued in the consultant's escrow account for Poizner for Governor 2010. Given that Mr. Poizner's campaign committee, Steve Poizner for Governor 2010, terminated more than two years ago with no outstanding debts, may Mr. Poizner obtain a refund check and endorse it over to a nonprofit 501(c)(3) organization, the Fidelity Investments Charitable Gift Fund, instead of reopening his 2010 committee to accept the refund?

### **CONCLUSION**

Yes. Under these facts, Mr. Poizner may endorse to a nonprofit 501(c)(3) organization a refund check obtained almost four years after the election. To provide disclosure of the transaction, his final campaign report should be amended to show receipt of the refund check due to receipt of media buy rebates, and the payment of the full refund to the Fidelity Investments Charitable Gift Fund.

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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.

## FACTS

You are writing on behalf of your client, Steve Poizner, who was a candidate for Governor in 2010. Mr. Poizner's campaign committee, Steve Poizner for Governor 2010, terminated more than two years ago, effective March 13, 2012, with no outstanding debts. Mr. Poizner recently received notice from the campaign consultant who represented his campaign that approximately \$18,000 in media buy rebates have accrued in the consultant's escrow account for Poizner for Governor 2010. Mr. Poizner would like to obtain a refund check and endorse it over to a 501(c)(3) charitable organization, the Fidelity Investments Charitable Gift Fund (Taxpayer ID 11-0303001).

You have reviewed Regulation 18404.1 and understand that, ordinarily when a state candidate's terminated committee receives a refund, the committee must request permission from the Commission's Executive Director to reopen in order to accept the refund. (Regulation 18404.1(i).) If permission to reopen the committee is granted, the committee must take steps to amend its statement of organization, file campaign reports indicating the receipt and disbursement of the refund amount, and file another amendment to its statement of organization to terminate the committee.

In Mr. Poizner's case, the committee's former treasurer is now retired. Accordingly, the committee also would need to hire a new treasurer to complete all of these requirements, if Mr. Poizner is granted permission to reopen the committee. These steps are costly and would take time to complete. You are requesting instead that under the facts provided, Mr. Poizner may take a simplified approach and endorse the refund check over to the 501(c)(3) organization without reopening his committee. Mr. Poizner would amend his final campaign report to indicate receipt of the refund check as a "Miscellaneous Increase to Cash" due to receipt of media buy rebates, and the payment of the full refund to the Fidelity Investments Charitable Gift Fund. In this manner, Mr. Poizner would be able to save on costs and time, while still fully informing the public of the receipt of the refund and its donation to charity.

## ANALYSIS

Candidates terminate their campaign committee pursuant to Section 84214 which provides as follows:

"Committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the Commission which insure that a committee or candidate will have no activity which must be disclosed pursuant to this chapter subsequent to the termination . . . ." (Section 84214.)

Regulation 18404(b) further provides that a recipient committee may terminate only if 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.”

Regulation 18404.1(g), concerning reopening of terminated committees was amended in 2011 to allow state and local candidate controlled committees that have terminated to accept refunds from governmental entities (such as overpayments of ballot pamphlet fees), and unexpected refunds from vendors totaling \$10,000 or less, and transfer the funds to another controlled committee, without having to reopen the terminated committee. Under Regulation 18404.1(g), a committee that has terminated may submit a request to the Executive Director of the Fair Political Practices Commission to *reopen* for any of the following reasons:

“(g) Reopening of Terminated Committees. A committee subject to the requirements of this regulation may submit a request to the Executive Director of the Fair Political Practices Commission to reopen for any of the following reasons:

(1) To receive a refund or similar payment received after termination of the committee, except as provided in subdivision (g)(1)(A)-(C);

(A) A state or local candidate controlled committee that has terminated may accept a refund from a governmental entity without reopening. A state or local committee that has terminated may accept a refund from a vendor or other person without reopening if the committee did not know of its entitlement to the refund prior to termination and the refund or refunds total no more than \$10,000.

(B) A refund allowed by subdivision (g)(1)(A) may only be transferred to a committee that would have been lawfully allowed to receive funds from the terminated committee prior to termination. A committee receiving a refund under subdivision (g)(1)(A) is not required to place the refund in its bank account if transferring the refund to another committee.

(C) A refund allowed by subdivision (g)(1)(A) must be reported as follows: The terminated committee must file a campaign statement for the period in which any refund was received by the committee and report the refund as a miscellaneous increase to cash on the campaign statement and as an expenditure when the funds are used. . . .

(2) To pay a fine as permitted under Section 89513(c);

(3) To pay expenses incurred in connection with an audit or investigation of the committee under this title;

(4) To pay litigation expenses as permitted under Sections 89513 and 89514, other than expenses subject to Section 85304 and Regulation 18530.4; or

(5) For any other good cause shown that would further the disclosure requirements or contribution limits of this title.”

The usual procedure if a state candidate’s terminated committee receives an unexpected refund from a vendor of over \$10,000 is to submit a request to the Executive Director pursuant to Regulation 18404.1, to reopen the committee to receive the refund. Here, however, Mr. Poizner

does not wish to accept the refund for his 2010 committee and transfer it to another committee he controls. He wishes to obtain the refund and endorse the check over to a nonprofit 501(c)(3) organization. In this circumstance, it is permissible for Mr. Poizner to obtain the refund from media buy rebates from his consultant and endorse the check over to the Fidelity Investments Charitable Gift Fund, rather than petitioning to reopen the Poizner for Governor 2010 Committee, finding a new treasurer, reopening the committee, depositing the refund check there, and then sending the funds to the nonprofit organization.

A copy of the refund check and any correspondence relating to the refund must be maintained with the committee's campaign records. For reporting, the Poizner for Governor 2010 committee's final campaign report should be amended to reflect the receipt of the refund for media rebates as a "miscellaneous increase to cash" on Schedule I, and to show the payment of the refund to the nonprofit fund.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Hyla P. Wagner  
Senior Counsel, Legal Division

HPW:jgl

## LEGAL DIVISION ASSIGNMENT SHEET

<b>Tracking Number:</b>	14156
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ITEM DESCRIPTION			
<b>Advice Letter No.</b>	14-150	<b>Requestor</b>	Kathryn Donovan
<b>Regulation Project No.</b>			
<b>Other (describe)</b>			

<b>Received By FPPC On:</b>	08/08/14	<b>Due Date:</b>	09/09/14
<b>Assigned To:</b>	Hyla	<b>Date To Assignee:</b>	08/08/14
<b>Date sent to AG/DA (if 1090)</b>		<b>Date AG/DA respond, if any</b>	

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