

December 17, 2014

David J. Terrazas  
Elect David Terrazas for  
Santa Cruz City Council 2014  
849 Almar Street, Suite C-113  
Santa Cruz, CA 95060

Re: Your Request for Advice  
**Our File No. A-14-209**

Dear Mr. Terrazas:

This letter responds to your request for advice regarding the “personal use” provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), this advice is based solely on the facts presented.

### **QUESTION**

May you use campaign funds to pay fees and court costs for the purpose of determining who established a Facebook page entitled “anyone but Terrazas for city council” that contained private information about your professional employment?

### **CONCLUSION**

Because there is a direct relationship between the purpose of the expenditure and the office you sought, the expenditures for attorney’s fees and related expenses associated with this action are a permissible uses of campaign funds.

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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

On June 20, 2013 an anonymous party created a Facebook page entitled “anyone but Terrazas for city council.” A link to the page was posted in opinion articles that you had written and articles regarding your campaign for reelection to City council.

The page was created on the closing date for a position you applied for at your current employer and you believe that only someone with personal knowledge of your confidential employment information could have created it. The page also included past employment history and made various allegations concerning you.

Over the course of the campaign, you have consulted with an attorney to investigate available legal rights to obtain the identity of the individual responsible for disseminating confidential personal information related to your professional employment. You believe that the postings were an attempt to undermine your campaign and discredit you and your professional reputation. On June 22, 2014 an email was sent to your campaign website at electdavidterrazas.com with a link to the site. The anonymous email included an IP address. You learned the IP address was a dynamic IP address which required a filing with the court to discover the identity of the owner of the anonymous email. All fees related to legal advice and court costs amounted to less than \$1,000.

## ANALYSIS

In general, laws relating to the personal use of campaign funds were designed to prevent candidates, elected officials, and others who control the expenditure of campaign funds from benefiting privately from their campaign activities. The general rule is that an expenditure of campaign funds must be reasonably related to a political, legislative or governmental purpose. However, where an expenditure of campaign funds confers a substantial personal benefit on any individual or individuals with authority to approve the expenditure of campaign funds held by the committee, the expenditure must be directly related to a political, legislative, or governmental purpose. (Section 89512.5.)

In addition, Section 89513(b) states that campaign funds may not be used to reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose. “Expenditures by a committee to pay for professional services reasonably required by the committee to assist it in the performance of its administrative functions are directly related to a political, legislative, or governmental purpose.” (Section 89513(b)(2).)

***Personal Use and Attorney’s Fees.*** Section 89514 applies specifically to payment of attorney’s fees:

“Expenditures of campaign funds for attorney’s fees and other costs in connection with administrative, civil, or criminal litigation are not directly related

to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee's activities or out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action arising from an election contest or recount."

An expenditure is directly related to a candidate's "activities, duties, or status" if there is a direct relationship between the purpose of the expenditure and the office sought by the public official. (*In re Montoya* (1989) 12 FPPC Ops. 7.)

Thus, under Section 89514, the Commission has advised that campaign funds may be expended for legal advice prior to commencement of an action (*Richter* Advice Letter, No. I-93-355); for defense of a conflict-of-interest charge (*Lanning* Advice Letter, No. A-92-050); and used in defense of a complaint lodged with the Federal Elections Commission even though it is not one of the actions enumerated in the statute for which campaign funds may be used. (*Bagatelos* Advice Letter, No. A-94-091.)

However, campaign funds may not be used to defend against charges that do not arise directly out of the candidate's duties, activities, or status as a candidate. For example, we have advised that a council member who was accused of falsifying a city government health insurance document could not use campaign contributions for his legal defense because the action was not related to his status as a public official, but would relate to any employee with health insurance. (*Breifelder* Advice Letter, No. A-95-058.)

According to your facts, on June 20, 2013 an anonymous party created a Facebook page entitled "anyone but Terrazas for city council." You stated that the postings were an attempt to undermine your campaign and discredit you and your professional reputation. Over the course of the campaign you have consulted with an attorney to investigate available legal rights to obtain the identity of the individual responsible for using confidential personal information related to your professional employment and using it on the website critical of your city council campaign.

We find there is a direct relation between the purpose of the expenditure and your status as a candidate. Therefore, the expenditures for attorney's fees and related expenses associated with this action are permissible uses of campaign funds.

We note that Santa Cruz has a local campaign finance reform ordinance. Consequently, you should check with your city to determine how the campaign funds for this permissible use can be expended.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Counsel, Legal Division

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