

February 3, 2015

Ms. Amber Maltbie
Nossaman LLP
621 Capitol Mall, 25th Floor
Sacramento CA 95814

Re: Your Request for Advice
Our File No. A-15-001

Dear Ms. Maltbie:

This letter responds to your request for advice regarding campaign provisions of the Political Reform Act (the "Act").¹ Our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of laws outside the Act.

QUESTIONS

1. Are points earned on a campaign credit card that is linked to a candidate or elected official's personal line of credit subject to the Act's use of funds provisions found in Sections 89510-89522? If not, are such points considered a contribution or gift to the candidate or elected official?

2. If a candidate or elected official's campaign credit card earns airline mileage credit as its primary reward system, do all of the points earned, including those earned by non-travel related purchases, qualify for the terms of Section 89513(a)(5).

CONCLUSIONS

1. All campaign expenditures are subject to the Act's use of fund provisions in Sections 89510-89522. The receipt of airline bonus miles and frequent flyer rewards from campaign expenditures is specifically addressed by the Act's use of funds provisions in Section 89513(a)(5) which states that the rewards are to be considered awarded to the traveller personally and not reportable under Section 84211 (Contents of Campaign Statement). Points for airline

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.

miles or hotel rewards earned in airline or credit card reward programs are not considered a contribution or gift to the candidate or elected official.

2. Yes, where a candidate or elected official's campaign credit card has an airline mileage reward program, all of the points earned, by travel and other purchases, qualify for the terms of Section 89513(a)(5) which provides that any mileage credit earned is personally earned by the traveller and is not reportable under the Act. However, credit card cash rewards earned from campaign expenditures are not within the scope of Section 89513(a)(5) and must be deposited in the campaign bank account.

FACTS

You are writing on behalf of your client, California State Assembly Member Rob Bonta, who represents the 18th Assembly District. Specifically, this letter seeks formal advice regarding the treatment of mileage and hotel points earned on a credit card that is designated as the candidate's campaign credit card, but opened using the candidate's personal credit.

A candidate is allowed to designate a personal credit card as the campaign credit card, so long as the card has a zero balance at the time of designation. It is common practice for credit card companies to incentivize customers to use their products by offering various reward systems, often in partnership with airline companies and hotels. For example, Southwest Airlines and Chase offer a credit card that allows the user to earn points on any purchase that can then be used towards flights on Southwest Airlines.

The Act and FPPC advice letters provide that when campaign funds are used to pay or reimburse a candidate or elected official for travel and necessary accommodations, any frequent flier credits earned while on such travel are not gifts or reportable on campaign finance disclosure reports. (Section 89513(a)(5), *Odom* Advice Letter, 1-91-280.)

Based on the above, an elected official who uses a personal credit card that is linked to an airline rewards program to pay for campaign related travel, and is subsequently reimbursed for the expense, will personally earn the frequent flier miles awarded by that travel. However, the Act and corresponding regulations do not address the treatment of reward points accrued on a campaign credit card that is opened on a candidate or elected official's personal line of credit. This letter seeks clarification on the questions above.

ANALYSIS

A candidate may establish one or more credit accounts for each campaign bank account. (Regulation 18524(c)). A single credit card, however, may not be designated for more than one campaign bank account. In addition, payment of charges that have accrued on a credit account must be made only from the appropriate campaign bank account. As discussed in the Campaign Disclosure Manual for State Candidates, a candidate may designate an existing personal credit

card with a zero balance to be his or her campaign account credit card, but personal expenses may not, thereafter, be charged to that account.

Under the Act, campaign funds deposited into a candidate or elected official's campaign account are held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Section 85310.)

Section 89512(a) provides that expenditures to seek office must be *reasonably related* to a political purpose; expenditures associated with holding office must be *reasonably related* to a legislative or governmental purpose; and expenditures of campaign funds that confer a substantial personal benefit on the candidate or someone authorized to expend campaign funds must meet the higher standard of being *directly related* to a political, legislative or governmental purpose.

Section 89513 of the Act addresses the use of campaign funds for specific activities, including for travel costs and associated airline frequent flyer programs. Section 89513 provides in pertinent part:

“This section governs the use of campaign funds for the specific expenditures set forth in this section. It is the intent of the Legislature that this section guide the interpretation of the standard imposed by Section 89512 as applied to other expenditures not specifically set forth in this section.

...

“(a)(5) Whenever campaign funds are used to pay or reimburse for travel expenses and necessary accommodations, any mileage credit that is earned or awarded pursuant to an airline bonus mileage program shall be deemed personally earned by or awarded to the individual traveler. Neither the earning or awarding of mileage credit, nor the redeeming of credit for actual travel, shall be subject to reporting pursuant to Section 84211.”

All campaign expenditures are subject to the Act's use of fund provisions in Sections 89510-89522. Campaign expenditures for travel expenses and necessary accommodations for which mileage credit or points are received under an airline mileage program are specifically covered in the use of funds provisions in Section 89513(a)(5). Logically, this provision would also cover a credit card reward program, the primary reward system of which is earning airline mileage or hotel points.

Because airline bonus miles and frequent flyer rewards programs are specifically addressed by the Act's use of funds provisions in Section 89513(a)(5) which states that the rewards are to be considered awarded to the traveller personally and not reportable under Section 84211 (Contents of Campaign Statement), points for airline miles or hotel rewards earned in airline or credit card reward programs are not considered a contribution to the candidate or

elected official. The airline or credit card reward points do not constitute a gift to the candidate or elected official under the Act, as they are a discount made by the airline or credit card company in the regular course of business to members of the public without regard to official status. Such discounts offered to the public are excluded from the definition of gift in Section 82028, as discussed in the *Heller* Advice Letter, No. A-01-029 and *Ackerman* Advice Letter, No. A-97-044.

Answering your second question, where a candidate or elected official's campaign credit card has an airline mileage reward program, all of the points earned, by travel and non-travel related purchases, would qualify for the terms of Section 89513(a)(5) which provides that any mileage credit earned is personally earned by the traveller and is not reportable under the Act. Points earned on a credit card reward program for airline mileage or hotel points program come within the scope of Section 89513.

However, cash awards received from cash back credit card reward programs do not qualify for the terms of Section 89513(a)(5). Any cash rewards received from making expenditures of campaign funds using a credit card are considered campaign funds that must be deposited in the campaign bank account. A candidate or elected officeholder may not use for personal purposes cash rewards that he or she receives from expenditures of campaign funds made using a credit card.

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

Sincerely,

John Wallace
Assistant General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl