STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 9, 2015

Law Offices of Max D. Kanin
9350 Wilshire Boulevard, Suite 212
Beverly Hills, CA 90212

Re: Your Request for Advice
Our File No. A-15-148

Dear Mr. Kanin:

This letter responds to your request for advice on behalf of Assemblywoman Patty Lopez regarding the legal defense funds provisions of the Political Reform Act (the "Act").[1] Please note that this letter is based on the facts presented. The Fair Political Practices Commission ("Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

May Assemblywoman Patty Lopez use funds from her "Lopez Legal Defense Fund" account to pay for legal fees and costs regarding allegations in complaints filed with the Commission, including travel costs to meet with investigators, where the costs were incurred prior to opening the account and prior to the Commission's 14-day notice as to how it intended to act on the complaints?

CONCLUSION

Yes. At the time of the travel, she reasonably concluded that the Commission had commenced an investigation in an administrative proceeding. The legal fees and costs were directly related to a political, legislative, or governmental purpose.

FACTS

In November 2014, Assemblymember Lopez was elected to office to represent the 39th Assembly District. Carolina Perez served as the treasurer of her campaign committee. On April 6, 2015, three constituents in the district filed sworn complaints with the Commission alleging that Assemblymember Lopez had violated various provisions of the Act during her campaign by, in part, using campaign funds for her personal use, failing to report certain contributions and

[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.

expenditures, including those made in coordination with a political party, and failing to report certain economic interests on her Statement of Economic Interests. On May 20, 2015, after her legal counsel submitted a written response to the complaints, the Commission advised her that it intended to investigate two of the complaints and take no further action on the third complaint.

Between April 6, 2015 and May 20, 2015 Assemblymember Lopez incurred legal fees and costs to defend against the complaints. During this period, she opened the legal defense funds account. Prior to opening the account and prior to the Commission's notice, Assemblymember Lopez, Ms. Perez, and their attorney travelled from southern California to Sacramento to meet with Commission investigators to address the allegations.

ANALYSIS

Section 85304 provides that a candidate for elective state office or an elected state officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. The funds may only be used to defray "attorney fees and other related legal costs."[2]

When did Assemblymember Lopez become eligible to use legal defense funds to defend the complaints?

Regulation 18530.4(g)(3)(A) provides that in a proceeding brought by a government agency, legal defense funds may be raised in connection with the proceeding when a candidate or official "reasonably concludes that the agency has commenced an investigation." Under Regulation 18630(f)(3), the Commission must, within three business days of receiving a sworn complaint, notify and provide a copy of the complaint to the subject of the complaint. We believe that the most sensible interpretation of Regulation 18530.4 is that the candidate or official may reasonably conclude that the Commission has commenced an investigation once he or she receives the notice and complaint.

This finding is buttressed by prior advice where we considered whether campaign funds could be used for legal expenses. In the *Kawagoe* Advice Letter, No. A-02-109, we concluded that the official was permitted to use campaign funds "in contemplation of litigation" based on an FBI investigation, saying "there are policy reasons for allowing an elected officer to obtain legal advice even prior to the commencement of formal proceedings against the officer, in order for the elected officer to perform his governmental duties more effectively." In the *Brown* Advice Letter, No. I-91-048, we found that campaign funds could be used to pay an attorney "in contemplation of

[2] While not relevant to your inquiry, Subdivision (d)(1), enacted in 2014, further defines the permissible uses of legal defense funds. "For purposes of this section and Section 85304.5, 'attorney's fees and other related legal costs' includes only the following: (A) Attorney's fees and other legal costs related to the defense of the candidate or officer. (B) Administrative costs directly related to compliance with the requirements of this title. (2) 'Attorney's fees and other related legal costs' does not include expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or, except as expressly authorized by subdivision (c) of Section 89513, a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer." A conforming amendment was made to Regulation 18530.4 on May 2, 2015.

litigation" based on a complaint lodged against the official for alleged conflict-of-interest violations.

Accordingly, we find that Assemblymember Lopez may use legal defense funds for expenses incurred from the time she was notified that the complaints had been filed.

May legal defense funds be used to pay for the travel expenses to Sacramento?

Although legal defense funds are raised, deposited, and reported under rules that differ somewhat from corresponding provisions governing campaign funds generally, monies raised and spent by a candidate under section 85304 *are* campaign funds, and as such are subject to the "personal use" limitations on expenditures of campaign funds.

Section 89513(a)(1) provides that "campaign funds shall not be used to pay or reimburse the candidate or elected officer, or any individuals with authority to approve the expenditure of campaign funds held by a committee, or employees or staff of the committee, or the elected officer's governmental agency, for travel expenses and necessary accommodations except when these expenditures are directly related to a political, legislative, or governmental purpose." Therefore, for Councilmember Lopez's and Ms. Perez's travel expenses to be paid from legal defense funds, the travel must be directly related to a "political, legislative, or governmental purpose."

Similarly, with respect to Assemblymember Lopez's attorney, Section 89513(b) provides that campaign funds may not be used to pay for or reimburse the cost of professional services unless the services are directly related to a "political, legislative, or governmental purpose."

Section 89514 specifies when "attorney's fees and other costs in connection with administrative, civil, or criminal litigation" are directly related to a political, legislative, or governmental purpose: " . . . 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."

Thus, Section 89514 states, in effect, that expenditures for attorney's fees and costs in defense of an action arising out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer**,** are directly related to a political, legislative, or governmental purpose *because* such action arises out of the committee's activities, including, as in this case, defense of an action brought for a violation of state or local campaign, disclosure, or election laws. Because the allegations against Assemblymember Lopez arise out of violations of state disclosure and election laws, she may use campaign funds, including legal defense funds, to pay her attorney's fees and costs.

The only remaining question is whether travel expenses incurred for her attorney qualify as "attorney's fees and costs" within the meaning of Section 89514. While the Act and regulations do

not directly address such costs, we find that an attorney's travel costs that are reasonably related to the defense of a client are costs incurred in connection with an administrative, civil, or criminal investigation. Therefore, Assemblymember Lopez may use legal defense funds to pay for her attorney's travel to meet with the Commission's investigators.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl