FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

November 20, 2013

Neal Andrews
Neal Andrews for Supervisor, District 1, VC, 2012

REDACTED

David H. Schmutte, Treasurer
Neal Andrews for Supervisor, District 1, VC, 2012

REDACTED

Warning Letter Re: FPPC Case No. 13/1124, Neal Andrews, Neal Andrews for Supervisor, District 1, VC, 2012, and David H. Schmutte, Treasurer

Dear Mr. Andrews and Mr. Schmutte:

The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act ("Act"),[1] found in Government Code section 81000, et seq. This letter is in response to a complaint received by the FPPC regarding a possible violation of the Act's prohibition on the use of surplus campaign funds by a candidate for election to a future office.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that the Neal Andrews for Supervisor, District 1, VC, 2012 committee transferred $15,439.68 of its remaining funds to Committee to Re-Elect Neal Andrews to Ventura City Council in the period of January 1, 2013, through June 30, 2013.

The Act prohibits the use of a committee's "surplus" campaign funds for a candidate's future election. (Section 89519.) While the Act generally permits candidates for local offices to transfer funds between committees, candidates who are defeated in an election (and are not

[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.

currently holding that office) must transfer their campaign funds for that election to a committee for a future election, if the candidate wishes to continue to use those funds for future election, prior to the end of the semi-annual period following the election in which the candidate was defeated. If the funds are not transferred by this time, they are considered "surplus funds" and may not be used for a future election. (Section 89519).

Subdivision (b) of section 89519 states, "Surplus campaign funds shall be used only for the following purposes . . ." after which there are six numbered paragraphs listing the ways in which such funds may be spent. Subdivisions (b)(1) through (b)(6) of section 89519 provide for the following permissible uses of surplus campaign funds:

> (1) The payment of outstanding campaign debts or elected officer's expenses.
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> (2) The repayment of contributions.
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> (3) Donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.
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> (4) Contributions to a political party committee, provided the campaign funds are not used to support or oppose candidates for elective office. However, the campaign funds may be used by a political party committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers as that term is defined in Section 82048.3.
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> (5) Contributions to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot measure.
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> (6) The payment for professional services reasonably required by the committee to assist in the performance of its administrative functions, including payment for attorney's fees for litigation which arises directly 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 brought of a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

The subdivision pertinent to this issue is subdivision (b)(5), containing language implicitly prohibiting the use of contributions to support or oppose a specific candidate for elective office in California. Commission staff has consistently advised that the language contained in section 89519(b)(5) prohibits a candidate from using surplus campaign funds left over from one

campaign to fund that same candidate's later campaign for another office in California. (*Leese* Advice Letter, No. A-90-061; *Shade* Advice Letter, No. A-90-449; *Hefter* Advice Letter, No. T-90-582; *D'Elia* Advice Letter, No. I-90-773; *Biggs* Advice Letter No. I-92-445; *Edgerton* Advice Letter, No. A-92-572; and *Spillane* Advice Letter, No. A-95-071.)

Your actions violated the Act because, after the unsuccessful bid for county supervisor in the June 5, 2012 election, you had until June 30, 2012 to transfer the money remaining in the supervisorial committee to another committee or forever lose your ability to use the funds for a future campaign. (Section 89519.) Because you have no prior violations of the Act and because the violation came to light due to your correctly reporting the transfer of the surplus funds to the new Committee to Re-Elect Neal Andrews to Ventura City Council, we are closing your case with this warning letter. You must, however, either return the surplus funds to the committee Neal Andrews for Supervisor, District 1, VC, 2012 or use them for a permissible purpose under Section 89519. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Although the FPPC is not seeking a penalty in the current matter, you are still responsible for any late filing fees assessed by your filing officer. (Section 91013.) The FPPC publishes forms and manuals to facilitate compliance with the provisions of the Act. If you need forms or a manual, or guidance regarding your obligations, please call the FPPC's Technical Assistance Division at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Please feel free to contact Adrianne Korchmaros at (916) 322-8241 with any questions you may have regarding this letter.

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Gary S. Winuk
Chief, Enforcement Division

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