June 17, 2005

Colleen C. McAndrews
Bell, McAndrews & Hiltachk, LLP
1441 Fourth Street
Santa Monica, CA 9041

Re: Your Request for Advice
Our File No. A-04-223

Dear Ms. McAndrews:

This letter is in response to your request on behalf of Californians for Schwarzenegger for advice regarding the campaign provisions of the Political Reform Act (the "Act").[1]

QUESTIONS

You are the treasurer of Californians for Schwarzenegger, a committee formed to promote the election of Governor Schwarzenegger during the recall election of 2003. Once the Committee has concluded that all election-related debt has been eliminated, may the committee:

1. Refund unused contributions to donors?

2. Use a "last in - first out" method to identify such donors? Or, for simplicity, use a method of refunding "last in – first out" donors whose contributions were $5,000 and over (or any other threshold sum) to avoid refunding small and unitemized amounts received through internet fundraising?

3. Ask a donor to redesignate his or her contribution to the Governor's 2006 reelection committee, the California Recovery Team (the Governor's controlled ballot measure committee), or charitable non-profit organizations (501(c)(3)'s)?

[1] Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

CONCLUSION

Any contribution may be returned to a contributor as provided in section 85319. The law, however, makes no provision for "redesignating" contributions under the Act.

FACTS

You are the treasurer of Californians for Schwarzenegger, a candidate-controlled committee which was primarily formed for the purpose of promoting the election of Governor Schwarzenegger in the special election held on October 7, 2003.

On election day, the committee had many unpaid and unbilled expenses outstanding. The committee also had an obligation to repay a large personal loan made by the Governor, and had knowledge of certain contingent liabilities of unknown amounts relating directly to the election (i.e., current and anticipated litigation in which monetary liability was alleged).

As a consequence of these known and unknown debts, the committee raised contributions subject to the limits applicable for the recall election, in the weeks that followed the election. The total amount raised was well below the total amount of known election-related debt. In January 2004, a Sacramento trial court issued a preliminary injunction concerning the ability of the Governor to repay the personal loan that remained unpaid. The committee then ceased fundraising on or about January 14, 2004. Shortly thereafter, the Governor decided not to appeal the preliminary injunction and to forgive the loan.

Now, all the known debt has been paid. One of the contingent liabilities has recently been eliminated (without any payment) and the legal bills associated with that matter paid. One other contingent/potential liability remains, although you now believe that it likely to be eliminated soon without payment.

ANALYSIS

Section 85316, commonly known as the post-election fundraising restriction, prohibits candidates from accepting contributions after an election unless the committee has net debt from the election:

> "A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election."

After the recall election of 2003, Californians for Schwarzenegger had debt and continued to raise funds to repay that debt. As a result of the litigation you describe in your letter, a portion of the debt encumbering the committee was forgiven. Therefore,

contributions raised to repay that debt exceeded the debt. While your letter assumes that the post-election fundraising restrictions of section 85316 and regulation 18531.6, subdivision (d)(3)(B), would govern the return of contributions in this situation, under your facts the contributions were not in excess of net debt that existed at the time of the election. As a result, the provisions of section 85316 and regulation 18531.6 do not prevent the return of these contributions in the manner you suggest. Rather, the question of returning the contributions would be governed by the provisions of section 85319, which states:

> "A candidate for state elective office may return all or part of any contribution to the donor who made the contribution at any time, whether or not other contributions are returned, except a contribution that the candidate made for state elective office to his or her own controlled committee."

Section 85319, as can be seen, mandates no particular system for identifying contributors whose contributions will be returned, nor does the statute even require the entire contribution be returned to any given contributor. As a result, any of the methods you describe in your request are acceptable under section 85319.

Nothing in the Act allows a committee to "redesignate" a contribution. Nothing in the Act prohibits, however, you from asking the contributor to make a new contribution to either of the committees you identify or to a charitable non-profit organization.

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

Sincerely,

Luisa Menchaca
General Counsel

By: C. Scott Tocher
Senior Counsel, Legal Division

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