



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 22, 2022

Linda Parks
Supervisor
County of Ventura
625 West Hillcrest Drive
Thousand Oaks, CA 91360

Re: Your Request for Advice
Our File No. A-22-007

Dear Ms. Parks:

This letter responds to your request for advice regarding the campaign fund expenditure provisions of the Political Reform Act (the “Act”).¹

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Under the Act’s campaign expenditure provisions, may you use campaign funds to pursue legal action to compel disclosure of the anonymous sender of a lewd item and messages mailed to your home which related to the attempted recall campaign against your office?

CONCLUSION

Yes. This legal action arises directly out of your activities, duties and status as a Ventura County Board of Supervisor member and the attempted recall of your elected office. Therefore, the expenditure is directly related to a political or governmental purpose pursuant to Section 89514 to the extent the action does not seek monetary damages that would result in a substantial personal benefit to you.

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 18109 through 18998 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 AS PRESENTED BY REQUESTER

A notice of intention to circulate a recall petition against you, in your office as a Ventura County ("County") Board of Supervisor member, was filed on February 12, 2021, and approved on March 4, 2021, for circulation. This recall effort began after you and three other supervisors voted on January 12, 2021, for the County to initiate litigation against 10 local businesses for repeated violations of state and County closure orders enacted due to the COVID-19 pandemic. You filed a response to the notice of intention, stating that this was an unwarranted recall by "extremists" who defied state Health Orders to keep people from getting sick and dying from COVID-19 and who have engaged in rallies that slowed traffic on Highway 101, and ambushed grocery store shoppers and staff with mask-less protests. The recall effort failed to gather the required number of signatures and ended in September 2021.

On June 9, 2021, while signatures were being gathered for the recall petition, you received a package at your personal residence, from an anonymous person sent through a company. The package contained a life-size chocolate penis in a box that says, "Congratulations! YOU DESERVE IT" on the outside, and other vulgar messages on the inside of the box. The box also included the message, "Honorable Linda Parks, enjoy early retirement. Thank you, Casa Conejo residents" taped to the underside of the box. A separate card in the box stated, "Confused? See if the sender left you a message" and provided the website and name of the company sending the package and messages.

You learned that company that sent the package is a limited liability company in San Diego. The business has refused to disclose the sender to you. You believe that the anonymous sender chose a novelty item that crosses the line from free speech to threatening a female public official with implied sexual violence. You state that it is without question a dangerous time to be female and a public servant and you note recent harassment events of female public officials covered by the news media.

You ask whether the expenditure of campaign funds to pursue legal action against the business to obtain the sender's name is permissible under the Act and believe the legal action serves a political and governmental purpose for a number of reasons. The package and message referenced the campaign to recall you from your elective office and occurred during the recall attempt. You believe this was sent to you because you are a female elected official. You are concerned that the publicity around this event may chill others from running for public office. You think it is important that the identity of the sender be known for purposes of transparency, for example if the sender is a major donor in local campaigns, as it may affect the person's influence in political campaigns. You are also currently receiving anonymous harassing text messages regarding a particular development project and think this action may have been intended to intimidate and dissuade you in performing your duties regarding decisions about the project.

Finally, you are concerned that anonymous senders could send this kind of pornographic novelty to other unwitting victims, and they too would be harmed. The use of campaign funds to attempt to have the court order the release of the name of the individual who contracted to send it may lessen the ability for future senders to remain anonymous and so disincentivize individuals who hide behind anonymity to take harmful actions, thus serving a governmental purpose as well.

ANALYSIS

Under the Act, all contributions deposited into a candidate's campaign account are deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding that office. (Section 89510(b).) An expenditure to seek office is within the lawful execution of that trust if it is reasonably related to a political purpose, and an expenditure associated with holding office is within that trust if it is reasonably related to a legislative, or governmental purpose. (Section 89512(a).) Expenditures which confer a substantial personal benefit² are held to a higher standard, and must be directly related to a political, legislative, or governmental purpose. (Ibid.)

The Act sets forth several statutes that address specific types of campaign expenditures, the standard that applies, and instances in which the standard may be met. (See Chapter 9.5 Ethics, Article 4. Campaign Funds, Sections 89513 through 89522.) Commonly referred to as the Act's "personal use" provisions, these laws were enacted for the fundamental purpose "to ensure that candidates, elected officers and the people clearly recognize acceptable and unacceptable uses of campaign funds." (Senate Elections Committee, Analysis of Senate Bill 1431, June 7, 1989.) Generally, the Act's provisions restricting the "personal use" of campaign funds are designed to prevent candidates, elected officials, and others who control the expenditures of campaign funds from benefiting privately from their campaign activities.

Professional Services & Legal Services: Directly Related Standard

Section 89513, governing campaign expenditures for particular activities states: "[c]ampaign funds shall 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 89513(b)(1).) Section 89514, governing the use of campaign funds for attorney's fees, states:

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.³

² Section 89511(b)(3) defines "substantial personal benefit" as an expenditure of campaign funds which results in a "direct personal benefit" with a value of more than \$200 to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.

Regulation 18960 defines a "direct personal benefit" as when a candidate: 1) realizes an increase in his or her income or assets, or a decrease in his or her expenses or liabilities, of more than \$200 from the expenditure; or 2) actually makes personal use of an asset obtained as a result of the expenditure.

Section 89514, as relevant to this matter, provides that where the litigation arises directly out of a candidate or elected officer's activities, duties, or status as a candidate or elected officer, such as in an action to enjoin defamation, the expenditures of campaign funds for attorney's fees and costs are directly related to a political, legislative, or governmental purpose and thus meet the standard. Section 89511 defines "attorney's fees and other costs" for purposes of Section 89514, as limited to "[a]ttorney's fees and costs related to the defense of the candidate or officer." (Section 89511(b)(5)(a)(i).) It is reasonable to interpret "attorney's fees and other costs related to the defense of the candidate or officer" to include situations where the litigation is initiated by the candidate or officer as permitted under Section 89514, so long as it does not involve monetary damages that would result in a substantial personal benefit to the candidate or officer.⁴

The Commission previously advised that campaign funds could be expended for attorney's fees and costs in order obtain the identity of the person responsible for anonymously creating an "anyone but Terrazas for city council" Facebook page, as the posts sought to discredit the candidate's professional reputation and undermine his campaign for office. (*Terrazas Advice Letter*, A-14-209.) The Commission found a direct relation between the purpose of the expenditure and the candidate's "status as a candidate." (*Ibid.*) And, the Commission has advised that an elected officer may use campaign funds for attorney's fees and costs related to his representation in litigation against the City under the Public Records Act and interpreted "defense of the elected officer" to include this action. (*Tinkov Advice Letter*, No. A-17-242.)

Similarly, this litigation matter arises directly out of your activities, duties and status as an elected officer, and the recall effort of your elected position. The mailed anonymous lewd package and accompanying messages related to the recall effort and your status as a member of the County Board of Supervisors. You seek legal action to obtain the identity of the anonymous sender. You are not seeking monetary damages. This legal action is directly related to a political or governmental purpose as it arises out of your activities, duties and status as an elected officer and the recall effort of your elected position status. Therefore, the attorney fees and costs in connection with this litigation are directly related to a political and governmental purpose pursuant to Section 89514 and the expenditure is within the lawful execution of the trust imposed by Section 89512.

³ Section 89514 was enacted into law by Stats. 1990, Ch. 84. It was amended by Stats. 1991, Ch. 546 to add the language regarding a committee's activities.

⁴ Section 89511's "attorney's fees and other costs" definition was added by Assembly Bill 1692 of 2014, c. 884, a bill which prohibited the use of campaign funds and legal defense funds to pay for fines, penalties, judgments, or settlements arising from an improper personal use of campaign funds, and which codified the FPPC's regulatory definition of "attorney's fees" for the purposes of other provisions of the Act that allow surplus campaign funds and nonlegal defense campaign funds to be used for attorney's fees. (Senate Committee on Elections and Const. Amendments, Analysis of AB 1692, June 23, 2014, p. 2.) Prior to the passage of this bill, advice letters specifically stated that campaign funds may not be used for seeking monetary damages because the recovery of damages would result in a substantial personal benefit and this personal benefit is not directly related to a political, legislative, or governmental purpose. (*Uhler Advice Letter*, No. A-14-026, *Richter Advice Letter*, No. I-93-355, citing Attorney General Opinion Letters, Donaldson Letter, March 25, 1983, and Maldonado Letter, April 4, 1983; see also *Lively Advice Letter*, No. A-91-241, and *Williams Advice Letter*, No. A-91-500.)

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

LKH:dkv