



# California Fair Political Practices Commission

June 21, 1989

James T. Franey, Treasurer  
Committee to Elect Phil Franey  
38 Montrose Street  
Bakersfield, CA 93305

Re: Your Request for Advice  
Our File No. A-89-318

Dear Mr. Franey:

This is in response to your request for advice regarding application of the provisions of the Political Reform Act (the "Act")<sup>1</sup> to the campaign committee to elect Phil Franey.

#### QUESTION

May campaign contributions received after January 1, 1989, be used to liquidate a debt incurred in connection with a candidate's election to his current term of office?

#### CONCLUSION

Campaign contributions received after January 1, 1989, may be used to liquidate a debt incurred in connection with a candidate's election to his current term of office.

#### FACTS

You are the treasurer for the Committee to Elect Phil Franey. Mr. Franey was elected Kern County Treasurer and Tax Collector on January 1, 1987, and currently holds this office. During the campaign, your committee borrowed the sum of \$8,000 from the candidate and current officeholder. The outstanding balance due on the note on December 31, 1988, was \$7,100. The balance in the committee's bank account on the same date was \$1,074.70. This amount was paid to the candidate and officeholder in partial satisfaction of the debt.

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000 et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

ANALYSIS

An elected officeholder may establish a campaign bank account for the purpose of receiving funds to defray the costs of the election campaign for his current term of office and the costs of holding that term of office. (Section 85201; Regulation 18520 and 18521, copies enclosed.)

Prior to the solicitation, receipt or deposit of any contribution, the elected official must file a statement of intention to be a candidate for a specific office. (Section 85200; Regulation 18520, Form 501 (copy enclosed).) Section 85200 was added to the Political Reform Act by Proposition 73 and provides:

Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective office shall file with the commission a statement signed under penalty of perjury of intention to be a candidate for a specific office.

The officeholder must also have a controlled committee designated exclusively for the purpose of raising funds for expenses associated with the candidate's election and current term in office. (Regulation 18521.) This committee must establish a bank account in a financial institution located in the State of California. Form 502, Campaign Bank Account Statement (copy enclosed), must be filed within 24 hours of establishing the campaign bank account pursuant to Section 85201, which provides:

(a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial institution located in the state.

(b) Upon the establishment of an account, the name of the financial institution, the specific location, and the account number shall be filed with the commission within 24 hours.

(c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account.

(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

(e) Any campaign expenditures shall be made from the account.

(Section 85201.)


Funds in this bank account are held in trust for the specific office identified in the candidate's statement of intention to be a candidate for office. (Section 85202(b).)<sup>2</sup>

Contributions to the candidate or to committees controlled by the candidate may not exceed the limits imposed by Government Code Sections 85301, 85303 and 85305. (Regulation 18520(c).)

I trust this letter responds to your request for advice. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Blanca M. Breeze  
Counsel, Legal Division

KED:BMB:plh

Enclosures

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<sup>2</sup> On May 15, 1989, United States District Court Judge Lawrence Karlton preliminarily enjoined the Commission from enforcing Section 85202 to the extent that it prohibits transfers of funds between a candidate's campaign committees. (Service Employees International Union v. FPPC, United States District Court, Eastern District of California, Case No. CIVS 89-0433 LKK-JFM.) Please consult the Commission if you desire to know the latest developments in this case.

May 19, 1989

FPPC

MAY 23 1989

TO : Fair Political Practices Commission.

RECEIVED

FROM *JTA*: Committee To Elect Phil Franey.

SUBJECT: Liquidation of Old Debts.

The case in point deals with the liquidation of a duly executed demand note whereby the Candidate, Philip D. Franey, loaned the controlled Committee To Elect Phil Franey \$8,000.00 on May 28, 1986. The balance due on the note at December 31, 1988 was \$7,100.00. The balance in the Committee's bank account at the close of the year 1988 was \$1,074.70 and was paid to the officeholder, Philip D. Franey.

Our question is this:

If after following the procedures outlined in your "Interim Information Manual, pages 23 & 24, regarding Forms 501 and 502 (noting "Prior Debts"), do you see any reason why current (1989) contributions received can not be used to liquidate the current note balance due Philip D. Franey?

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James T. Franey, Treasurer  
38 Montrose Street  
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# California Fair Political Practices Commission

May 24, 1989

James T. Franey, Treasurer  
Committee to Elect Phil Franey  
38 Montrose Street  
Bakersfield, CA 93305

Re: Letter No. 89-318


Dear Mr. Franey:

Your letter requesting advice under the Political Reform Act was received on May 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

  
Kathryn E. Donovan  
General Counsel

KED:plh