



California
Fair Political
Practices Commission

SUPERSEDED

by: SEIU

June 28, 1989

Honorable Warren Harwood
Councilmember, Ninth District
6056 Falcon Avenue
Long Beach, CA 90805

Re: Your Request for Advice
Our File No. A-89-330
and File No. A-89-349

Dear Councilmember Harwood:

This is in response to your requests for advice concerning the decision in Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission, United States District Court, Eastern District of California, Case No. CIVS-89-0433, LKK-JFM (hereafter, "SEIU") and the newly enacted provisions of the Political Reform Act (the "Act").^{1/} Since both your advice requests deal with substantially the same issue, we have consolidated them into this single response.

QUESTIONS

1. May campaign funds collected prior to January 1, 1989 be used to support or oppose a candidate for elective office in 1989 or thereafter under the preliminary injunction ordered in the SEIU case?

2. How will money transferred into a campaign account pursuant to the preliminary injunction be treated should the court determine that Section 85306 is constitutionally valid?

CONCLUSIONS

1. Funds raised prior to January 1, 1989 which are in compliance with the contribution limits of the Act may be used to support candidates in future elections. Funds raised prior to January 1, 1989 that are in excess of the contribution limits of

^{1/} 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.

the Act may only be used for lawful purposes other than to support or oppose candidates for elective office.

2. It is unclear at this time what the court will decide concerning the constitutionality of Section 85306. However, should the court find that the statute is valid, the prohibition on the use of the funds collected prior to January 1, 1989 to support or oppose candidacies for elective office will be once again effective. This prohibition probably would apply even where the funds have been carried over and deposited in campaign accounts. The prohibition would not apply to carried over moneys that have been spent during the duration of the preliminary injunction.

DISCUSSION

The Preliminary Injunction

Section 85306 provides:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

Section 85306 was operative on January 1, 1989. (Section 85104.) Thus, Section 85306 would prohibit candidates from using campaign contributions received prior to January 1, 1989 to support or oppose any candidate for elective office after that date. The Act permitted these funds to be used only for lawful purposes other than supporting or opposing candidates for elective office.

On May 15, 1989, in the SEIU case, the United States District Court for the Eastern District of California granted plaintiff's motion for a preliminary injunction to enjoin enforcement of certain aspects of Sections 85200-85202, 85301, 85304 and 85306. According to the SEIU injunction, funds raised prior to January 1, 1989 which are in compliance with the contribution limits of the Act may be used by candidates in future elections.^{2/} However, funds raised prior to January 1, 1989 that are in excess of the contribution limits of the Act may only be used for lawful

^{2/} The Proposition 73 amendments to the Act provide that contributions to candidates for elective office must comply with the contribution limits set forth in Sections 85301, 85303 and 85305. Contributions from a person to a candidate are limited to \$1,000 each fiscal year. (Section 85301.) Contributions from a political committee to a candidate are limited to \$2,500 each fiscal year, and contributions from a broad based political committee or political party to a candidate are limited to \$5,000 per fiscal year. (Section 85303.)

purposes other than to support or oppose a candidate for elective office.

Therefore, funds that you currently hold that were collected prior to January 1, 1989 and are in compliance with the contribution limits of the Act may be used to support your candidacy for any elective office subsequent to January 1, 1989. Funds raised prior to January 1, 1989 that are in excess of the contribution limits of the Act may only be used for lawful purposes other than to support or oppose candidates for elective office, including your candidacy.

As used in Section 85306, "lawful purpose" means any purpose permitted under than "personal use" statute, as set forth in Chapter 5 (commencing with Section 12400) of Division 9 of the Elections Code and Regulation 18536.2^{3/} (copy enclosed) of the Act, which further defines lawful uses pursuant to Section 85306. This office does not administer or enforce provisions of the Elections Code. Should you have any questions concerning personal use of the funds, please contact the Attorney General's Office.

Funds Carried Over Pursuant to the Injunction

Section 85201 provides that all contributions or loans made to a candidate, or to the candidate's controlled committee shall be deposited in a single campaign bank account. The Commission has interpreted this to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each election. (Regulation 18521; Riddle Advice Letter, No. A-88-409, copies enclosed.) However, the Act does permit a candidate to establish campaign committees and campaign bank accounts for more than one elective office. Consequently, a candidate may file a candidate intention statement for any office he or she intends to seek and establish campaign committees and campaign bank accounts for each candidate intention statement he or she files.

Section 85201(e) provides that all campaign expenditures must be made from the appropriate campaign bank account. Section 85304 prohibits a candidate for elective office or a committee controlled by that candidate from transferring contributions to any other candidate for elective office. Thus, pursuant to the Proposition 73 amendments to the Act, while a candidate may have numerous campaign bank accounts for elective offices, the candidate must make all expenditures associated with the specific election from the appropriate campaign bank account established

^{3/} The emergency amendment of Regulation 18536.2 was rejected by the Office of Administrative Law on May 22, 1989. The Commission has appealed the decision to the Governor and expects a determination on July 7, 1989. The Commission has decided to advise pursuant to the emergency regulation in the interim.

for that election, and may not transfer contributions among his or her various campaign bank accounts.

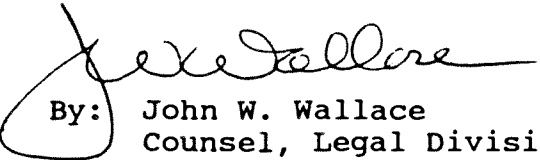
In the SEIU decision, the United States District Court for the Eastern District of California also granted plaintiff's motion for a preliminary injunction to stop enforcement of certain aspects of Sections 85304. Thus, under the SEIU injunction, a candidate may transfer campaign contributions among his or her various campaign bank accounts. However, transfers to other candidates remain prohibited, and campaign expenditures must still be made from the appropriate campaign account. (Section 85201(e).)

Therefore, in light of the court injunctions, we are advising that a candidate that intends to use pre-1989 contributions to pay campaign expenses should first transfer these funds into the appropriate campaign bank account for which the expenditures are to be made. Please be aware, however, that the court has not made a determination on the merits of the SEIU case. Consequently, this advice is subject to change. Further, it is unclear at this time how carried over funds remaining in a campaign account will be treated if the court decides that the Section 85306 is constitutional. It is clear, however, that conduct during the duration of the preliminary injunction that is in compliance with the injunction will not be treated as a violation of the Act.

If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

FPPC
MAY 30 1989

Warren Harwood
Councilman, Ninth District
6056 Falcon Avenue
Long Beach, CA 90805

May 24, 1989

Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Dear Sirs:

Please advise me as to the proper uses of campaign funds collected between July 1, 1989 and January 1, 1989. It is my understanding that those funds are ineligible for campaign expenses. Please inform me as to the alternative uses of these funds.

Thank you.

Sincerely,



Warren Harwood
Councilman
City of Long Beach

FPPC

JUN 6 1989

RECEIVED

Warren Harwood
Councilman, Ninth District
6056 Falcon Avenue
Long Beach, CA 90805

June 2, 1989

Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Dear Sirs:

It is my understanding that Judge Carlton's recent ruling regarding the use of campaign funds collected prior to 1989 allows those funds to be used for one's own candidacy so long as they are transferred into the applicable account and are within the limitations of Proposition 73. It is also my understanding that if these funds are transferred into the campaign account prior to further rulings on the matter, the funds may be spent on that campaign notwithstanding any subsequent ruling that would disallow the use of those funds for upcoming campaigns.

Please respond in writing to confirm or deny the above assertions.

Also, please inform me as to the options available with respect to the use of funds collected prior to 1989 that do not conform to the Proposition 73 limitations.

Thank you.

Sincerely,



Warren Harwood
Councilman
City of Long Beach

89-349

FPPC

JUN 6 1989

RECEIVED

Warren Harwood
Councilman, Ninth District
6056 Falcon Avenue
Long Beach, CA 90805

June 2, 1989

Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807


Dear Sirs:

It is my understanding that Judge Carlton's recent ruling regarding the use of campaign funds collected prior to 1989 allows those funds to be used for one's own candidacy so long as they are transferred into the applicable account and are within the limitations of Proposition 73. It is also my understanding that if these funds are transferred into the campaign account prior to further rulings on the matter, the funds may be spent on that campaign notwithstanding any subsequent ruling that would disallow the use of those funds for upcoming campaigns.

Please respond in writing to confirm or deny the above assertions.

Also, please inform me as to the options available with respect to the use of funds collected prior to 1989 that do not conform to the Proposition 73 limitations.

Thank you.

Sincerely,

Warren Harwood
Councilman
City of Long Beach



California Fair Political Practices Commission

June 8, 1989

Honorable Warren Harwood
Councilmember, Ninth District
6056 Falcon Avenue
Long Beach, CA 90805

Re: Letter No. 89-349


Dear Mr. Harwood:

Your letter requesting advice under the Political Reform Act was received on June 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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