



California Fair Political Practices Commission

July 30, 1990

Joyce B. Ladar
507 Polk St. Suite 310
San Francisco, CA 94102-3384

Re: Your Request for Informal Advice
Our File No. A 90-417

Dear Ms. Ladar:

You are seeking advice on behalf of the "No on P, Yes on V" committee ("the committee") regarding the use of campaign funds to pay legal fees under the Political Reform Act (the "Act").¹

QUESTION

May a ballot measure committee use campaign funds to pay attorney fees?

CONCLUSION

Campaign funds may be used to pay attorney fees for the committee's defense against litigation arising directly out of an action brought for violations of campaign or disclosure laws, and for the preparation of required campaign disclosure forms.

FACTS

When the San Francisco District Attorney's office and the Fair Political Practices Commission began investigations into whether the committee had complied with disclosure requirements, the committee's treasurer, Kevin Starr, retained you on behalf of the committee.

You completed and filed the required forms and counseled the committee's officers throughout the investigations and grand jury proceedings. You conferred with the deputy district attorney and his investigator as well as an attorney in the Fair Political Practices Commission enforcement division. Although no charges

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.

were filed against your clients, four other persons are facing criminal charges.

From the billing statements you enclosed with your letter, it appears that some payments have already been made for your services, and \$3,316.33 remains due. You did not state who was the source of the payments previously made.

ANALYSIS

The Commission does not provide advice as to past conduct, Regulation 18329(c)(4)(A), and accordingly this letter will not address the payments that have already been made.

As to future payments, Sections 85800 et seq. govern the use of campaign funds held by ballot measure committees. Section 85800(a) provides that Chapter 5, Article 8 of the Act applies to ballot measure committees. The general standard applied to the expenditure of campaign funds is that the expenditures must be related to a political, legislative, or governmental purpose. (Section 85801).

Campaign funds may be used to pay for professional services reasonably required by a committee to assist it in the performance of its administrative functions. (Section 85802(b)(1).) The preparation and filing of disclosure forms is an administrative function, and therefore appears to be appropriately paid for with campaign funds.

Section 85802.5 provides that campaign funds may be used to pay attorney's fees under limited circumstances:

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 rises 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 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. (Emphasis added.)

Section 85802.5 specifically refers to candidates and elected officers, but does not mention committees. However, as previously indicated, Section 85800 states that the entire article on use of campaign funds applies to ballot measure committees as well as candidates, elected officers, and other committees. No other section specifically covers use of committee campaign funds to pay attorney fees. Even if 85802.5 were not extended to cover ballot

measure committees, it may be used as a guide for interpreting whether expenditures for attorney's fees by ballot measure committees are reasonably or directly related to a political, legislative, or governmental purpose (Section 85802).

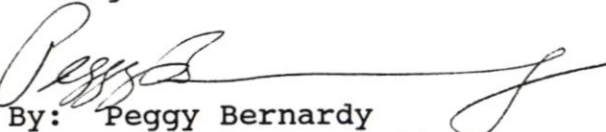
Whether Section 85802.5 governs use of committee funds for payment of attorney's fees, or whether that section is used merely as a guide, we conclude that the funds may be used to pay attorney fees under the facts presented. Section 85202.5 permits expenditures for attorney's fees when incurred due to litigation arising directly out of a committee's activities, duties or status, including defense of an action brought for a violation of campaign or disclosure laws. Your work involved matters arising directly out of the committee's activities and duties, with respect to the election, and more importantly, its duties and responsibilities under the Act. Two prosecutorial agencies had initiated investigations; the case was brought before the grand jury; criminal charges were filed against other persons. Under these circumstances, we conclude that the work you did for your clients appears to be sufficiently related to a political purpose to permit the expenditure of campaign funds.

The Commission is currently reviewing the applicability of Section 85800 to each of the use-of-campaign-fund sections (Sections 85800 et seq.). Accordingly, the advice given in this letter is subject to change and should not be relied upon for future questions, but only for the specific situation described in your letter.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this letter please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Peggy Bernardy
Counsel, Legal Division

SH:PB:plh