



# California Fair Political Practices Commission

September 17, 1990

Mary Ann Saucedo  
City Clerk  
1600 W. Beverly Boulevard  
Montebello, CA 90640

Re: Your Request for Informal Assistance  
Our File No. I-90-438

Dear Ms. Saucedo:

This letter is in response to your request for confirmation of the telephone advice provided to you on June 18, 1990, which I confirmed during our telephone conversation of July 18, 1990, and which we are hereby confirming in writing.

You seek our advice regarding the limitations on transfers of contributions imposed by the Political Reform Act (the "Act").<sup>1</sup> Your question is general in nature and you have not named a specific official on whose behalf you are seeking advice. Accordingly, we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329(c) (copy enclosed).<sup>2</sup>

## QUESTION

Under the provisions of the Act, may a candidate accept contributions for a specific candidacy and, at a later date, transfer these funds to a different candidacy account?

## CONCLUSION

Under the provisions of the Act, a candidate may not solicit and accept contributions for a specific candidacy and, at a later

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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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

date, transfer these funds for use in a different candidacy. However, a court order has prohibited enforcement of this prohibition. Under that order, a candidate may solicit and accept contributions for a specific candidacy and, at a later date, transfer these funds for use in a different candidacy.

#### FACTS

You are the city clerk for the City of Montebello. On June 18, 1990, you telephoned this office for advice. You asked whether a candidate could accept contributions for a specific candidacy and then, should the individual decide to run for a different office, transfer the funds from one account to a different campaign fund. You were advised that a candidate could, in fact, transfer funds from one account to another account so long as the candidate filed forms 501 and 502 for each candidacy. You now request confirmation of this advice which you believe is in conflict with Section 85202.

#### ANALYSIS

As amended by Proposition 73, the Act currently contains certain restrictions upon how a candidate may expend campaign contributions. Section 85202(b) states that contributions are "deemed to be held in trust" for expenses associated with the election of the candidate to the office he or she seeks or expenses associated with holding that office. Section 85304 prohibits a candidate from transferring contributions received while running for one office to run for another office. However, in Service Employees International Union, et al. v. Fair Political Practices Commission (U. S. District Court, Eastern District of California, Case No. CIVS 89-0433 LKK-JPM) ("SEIU") the court has issued a preliminary injunction prohibiting enforcement of Section 85304 to the extent this provision prevents a candidate from transferring contributions among his or her separate committees for elective office.

The injunction handed down in SEIU is a preliminary injunction. The Commission is awaiting a final ruling from the court which may or may not deem the challenged sections of Proposition 73, including the transfer provisions, unconstitutional. Until the court makes its final ruling, however, our advice is that a transfer of funds from one campaign account to a different account for purposes of running for a different office is permissible. (See Maron Advice Letter, No. I-90-202, copy enclosed.) Therefore, upon filing a statement of candidacy for a new office (Form 501) and opening a new bank account (Form 502) a candidate may transfer funds from one committee into another committee formed for purposes of seeking a different office.

Although transfers are permissible as discussed above, other provisions of Proposition 73 remain in effect, including the


contribution limitations. Therefore, transfers are only permissible to the extent that the contribution limits are not exceeded. For example, a person who has contributed \$1,000 to the candidate in one fiscal year may not make another contribution to the same candidate in the same fiscal year. (Section 85301.) Thus, a candidate who wishes to transfer funds to a new committee formed for purposes of running for a different office may not accept contributions to his or her new committee in the same fiscal year from persons who have contributed the maximum permissible amounts.

Additionally, transfers are only permissible to the extent the funds are not "surplus funds." Section 85807, which deals with distribution of surplus campaign funds remaining at the conclusion of the post-election reporting period following the defeat of a candidate, prohibits the transfer of those surplus funds to a committee which supports or opposes a candidate for elective office. Thus, upon the defeat of a candidate, when the funds become "surplus funds," transfers are not permissible.

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

Sincerely,

Scott Hallabrin  
Acting General Counsel

By:   
Blanca M. Breeze  
Counsel, Legal Division

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Enclosures