



### CONCLUSION

You may donate campaign funds to nonprofit organizations provided: (1) the nonprofit organization is a bona fide charitable, educational, civic, religious or similar tax-exempt organization; (2) the expenditure is reasonably related to a political, legislative or governmental purpose; and, (3) the expenditure will not have a material financial effect on you, your immediate family, or your campaign treasurer.

In addition, if either you or your wife serve as a member of the board of directors of the Charles S. Terrell, Jr. Scholarship Fund, the scholarship fund may be considered your candidate controlled committee and contributions to the scholarship fund attributed to you as the controlling candidate.

### FACTS

You are a County Superintendent of Schools in San Bernardino County. You stated that you do not intend to be a candidate for reelection as County Superintendent in 1994. Additionally, you stated that you continue to have campaign funds in your campaign account established for your last election. You have subsequently established a nonprofit charitable and educational tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code. The organization is named the Charles S. Terrell, Jr. Scholarship Fund (the "scholarship fund"), and you serve as the foundation's president of the 5-member board of directors. Your spouse is also a member of the board of directors. You have asked whether you may transfer your campaign funds to the scholarship fund.

### ANALYSIS

#### Donations of Campaign Funds to Nonprofit Organizations

Generally, the transfer of campaign funds to a charitable organization is permissible under the Act. Section 89515 provides that candidates may donate campaign funds to a nonprofit charitable or educational organization provided: (1) the nonprofit organization is a bona fide charitable, educational, civic, religious or similar tax-exempt organization; (2) the expenditure is reasonably related to a political, legislative or governmental purpose; and, (3) the expenditure will not have a material financial effect on the candidate, his or her immediate family, or the candidate's campaign treasurer. (Statham Advice Letter, No. I-89-690; Weiss Advice Letter, No. A-91-158, copies enclosed.)

We have advised that a payment of \$250 or more provided to a candidate, the candidate's family or treasurer by the nonprofit organization constitutes a material financial effect as set forth in Section 89515. (Weiss Advice Letter, supra; Spain Advice Letter, I-90-410, copies enclosed.) Thus, if the scholarship fund

will provide payment of \$250 or more to you, your family or your campaign treasurer, you may not transfer campaign funds to the scholarship fund. We do not have sufficient information concerning the operation of the fund to determine if the fund's activity will have such an effect.

#### The Scholarship Fund as a Controlled Committee

Though it was not clear from the facts provided in your letter, you informed this office during a subsequent telephone conversation that you had been recently elected or reelected to the position of County Superintendent. Since you continue to be a candidate under the Act (Section 82007), control of the scholarship fund may result in other problems.

If the scholarship fund qualifies as a committee under the Act,<sup>3</sup> it will be considered a "controlled committee" pursuant to Section 82016. Section 82016 defines "controlled committee" as a committee which is controlled directly or indirectly by a candidate or state measure proponent or which acts jointly with a candidate, controlled committee or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if the candidate, his agent or any other committee the candidate controls has a significant influence on the actions or decisions of the committee. (Section 82016.)

Regulation 18217 (copy enclosed) provides an alternate definition of "controlled committee" applicable to candidate controlled nonprofit charitable organizations. The purpose behind the regulation is to avoid treating a nonpolitical nonprofit organization as a controlled committee merely because donations are received at the behest of candidates.

Regulation 18217(a) provides:

(a) A nonprofit organization, as defined in subdivision (f), shall be considered a controlled committee, if both of the following apply:

(1) A candidate, his or her agent, or any committee he or she controls, exercises significant influence over the actions and decisions of the organization, or acts jointly with the organization in connection with the making of expenditures.

(2) The organization qualifies as a committee under Government Code Section 82013(a), and the organization is operated for political purposes. For purposes of this

<sup>3</sup>

For the definition of "committee," see footnote 5 infra.

regulation, an organization is "operated for political purposes" if either of the following applies:

(A) The organization receives or expends funds for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or the qualification or passage of any measure.

(B) The organization makes contributions to candidates or their controlled committees.

Where a candidate is a voting member of a organization's leadership, we have said that the candidate is presumed to be the controlling candidate since the candidate exercises significant influence on the actions or decisions of the organization. (Ferguson Advice Letter, No. A-86-044, copy enclosed.) You stated that you are the president of the board of directors of the scholarship fund. As such, we presume you have significant control over the scholarship fund.<sup>4</sup>

Moreover, a payment received by a candidate is generally considered to be a contribution unless it is clear from surrounding circumstances that it was received for personal purposes unrelated to his or her candidacy or status as an officeholder. (Section 82015; Regulation 18215, copy enclosed.) In addition, expenditures made by the nonprofit organization which feature the candidate may be construed to be contributions to the candidate. Thus, Regulation 18217(a)(2) may also apply to your facts.

When sufficient contributions are received or made by the organization, the organization might qualify as a committee.<sup>5</sup> (Thompson Advice Letter, supra.) If you remain president of the

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<sup>4</sup> This presumption of control by the candidate applies, as well, to his agent. We have interpreted "agent" to include the spouse of an elected official where the spouse is participating in activities which could benefit the elected official's political position or image. (Thompson Advice Letter, No. A-88-487, copy enclosed.)

<sup>5</sup> A "committee" is defined as any person or combination of persons who directly or indirectly does any of the following: (a) receives contributions totaling \$1,000 or more in a calendar year; (b) makes independent expenditures totaling \$1,000 or more in a calendar year; or (c) makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees. (Section 82013.)

scholarship fund, and the fund becomes a committee, the fund will be treated as your controlled committee.<sup>6</sup>

Regulation 18217 also provides an exception for candidates who wish to establish a nonprofit organization without the organization becoming an additional controlled committee. Regulation 18217 provides:

(b) For purposes of subdivision (a)(1), a nonprofit organization which is tax-exempt under Section 501 of the Internal Revenue Code, and which is not an organization described in Section 527 of the Internal Revenue Code, is presumed not to be significantly influenced by a candidate, his or her agent, or any committee he or she controls, if the organization complies with all of the factors set forth below:

(1) The candidate is not substantially involved in the day-to-day operations of the organization, and the organization is controlled by a board of directors with 3 or more members, two-thirds of whom are not:

(A) Candidates;

(B) Agents, campaign staff, employees, or persons otherwise under the control of a candidate; or

(C) Brothers, sisters, parents, children, spouses, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law or fathers-in-law of a board member who is a candidate.

(2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (b)(2) the term "name of the candidate" means the candidate's first and last name or some other unambiguous reference to the candidate.

(c) For purposes of subdivision (a)(2), a nonprofit organization which is tax-exempt under

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<sup>6</sup> Please note that 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 section to require that a candidate may have only one campaign bank account and one controlled committee for each campaign. (Regulation 18521, copy enclosed.)

Section 501 of the Internal Revenue Code, and which is not an organization described in Section 527 of the Internal Revenue Code, is presumed not to be operated for political purposes if the organization complies with all of the factors set forth below:

(1) The organization does not make contributions to candidates.

(2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (c)(2) the term "name of the candidate" means the candidate's first and last name or some other unambiguous reference to the candidate.

(3) The organization does not spend funds in excess of the amount permitted under Section 501(h) of the Internal Revenue Code to influence or attempt to influence legislative action.

(4) The organization does not spend funds to influence or attempt to influence the qualification or passage of any measure in an amount sufficient to qualify the organization as a committee under Section 82013 of the Government Code.

(5) This subdivision (c) shall not be construed to prevent the organization from forming a separate and independent political committee which is not controlled by any person described in subdivision (b)(1)(A)-(C).

Regulation 18217(b) and (c).

Currently, the foundation does not fall within the exception.

I trust this letter has clarified application of the provisions of the Act to your situation. If you desire further assistance regarding this matter, or advice with respect to specific decisions, please feel free to contact me at (916) 322-5901.

Sincerely,

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Acting General Counsel



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