



# California Fair Political Practices Commission

January 15, 1991

James F. Penman  
City Attorney  
300 North D Street  
San Bernardino, CA 92418

Re: Your Request for Confirmation of  
Telephone Advice  
Our File No. I-90-753

Dear Mr. Penman:

This is in response to your request for confirmation of telephone advice I provided you on December 10, 1990, regarding transfer of campaign funds under the Political Reform Act (the "Act").<sup>1</sup> Because your request does not involve a pending governmental decision, we provide informal assistance.<sup>2</sup>

Your letter accurately reflects the advice I gave you by telephone. You asked whether the former city clerk could transfer campaign funds raised prior to January 1, 1989 to the current city clerk. In Service Employees International Union, AFL-CIO, et al. v. FPPC, (E.D. Calif. 1990) \_\_\_\_\_ F. Supp.\_\_\_\_\_, the court held that the contribution limits contained in the Act are unconstitutional,<sup>3</sup> and that Section 85304's ban on transfers of contributions among candidates was unconstitutional insofar as it was premised upon the need to prevent evasion of campaign contribution limitations based on fiscal years. Accordingly,

<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)(3), copy enclosed.)

<sup>3</sup> The order was stayed as to state legislators and state legislative candidates. Accordingly, the limits on contributions remain in effect for those persons.

transfers of campaign contributions are permissible unless there is a legally valid limit on contributions in effect. You informed me that San Bernardino has no ordinance establishing contribution limits; therefore, the previous city clerk may transfer campaign funds to the current city clerk.

Moreover, Section 85807<sup>4</sup>, which limited the use of campaign funds after an official left office, did not apply in this case because the funds were raised prior to January 1, 1989. Section 12400 of the Elections Code limits the use of surplus campaign funds raised prior to January 1, 1989. Elections Code Section 12400 states:

Upon leaving any elective office, or at the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, surplus campaign funds raised prior to January 1, 1989, under the control of the former candidate or officeholder or his or her controlled committee shall be used or held for the following purposes:

a. The repayment of personal or committee loans or other obligations if there is a reasonable relationship to a political, legislative, or governmental activity.

b. The payment of the outstanding campaign expenses.

c. Contributions to any candidate, committee, or political party, except where otherwise prohibited by law.

d. The pro rata repayment of contributors.

e. Donations to any religious, scientific, educational, social welfare, civic, or fraternal organization no part of the net earnings of which inures to the benefit of any private shareholder or individual or to any charitable or nonprofit organization which is exempt from taxation under subsection (c) of Section 501 of the Internal Revenue Code or Section 17214 or Sections 23701j, inclusive, or Section 23701l, 23701n, 23701p, or 23701s of the Revenue and Taxation Code.

f. Except where otherwise prohibited by law, held in a segregated fund for future political campaigns, not to be expended except for political

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<sup>4</sup> Section 85807 has been renumbered as Section 89519.

activity reasonably related to preparing for future candidacy for elective office.

While it appears that Section 12400 permits such transfer of campaign funds to the current city clerk, this section is interpreted and enforced by the Attorney General, not the Fair Political Practices Commission. You should check with the Attorney General regarding this provision.

I trust this letter adequately addresses your question. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin  
Acting General Counsel

*Peggy Bernardy* by *Jeevan Ahuja*  
By: Peggy Bernardy  
Counsel, Legal Division

SH:PB:aa

Enclosure