



California Fair Political Practices Commission

March 18, 1991

Lou Haddad
5 Deer Stalker Path
Monterey, CA 93940

Re: Your Request for Informal Assistance
Our File No: I-91-132

Dear Mr. Haddad:

This is in response to your question in connection with disposition of campaign funds under the Political Reform Act (the "Act").¹ Because your question requests general guidance, this letter is in the nature of informal assistance.²

QUESTION

May a defeated candidate transfer funds remaining in his or her campaign bank account to the campaign account of a ballot measure committee controlled by the candidate if the transfer takes place before the end of the postelection reporting period?

CONCLUSION

Prior to the end of the postelection reporting period, a candidate may transfer funds remaining in his or her candidate account to the campaign account of a ballot measure controlled by the candidate.

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

FACTS

You recently ran for public office and were defeated. Your campaign committee, the Haddad for Council Committee, had funds remaining in its campaign account subsequent to the election. Prior to the end of the reporting period following the election, you transferred the remaining funds to another committee which you control, the Montereyans for Open Government Committee, which was formed to qualify an initiative for the ballot and to support the initiative after its qualification.

You are writing to confirm that the transfer of funds between committees is proper under the Act.

ANALYSIS

The Fair Political Practices Commission is not permitted to give advice regarding past conduct. (Regulation 18329, copy enclosed.) However, we can advise you generally regarding the provisions of the Act that relate to transfers of campaign funds.

A recent Federal Court decision, Service Employees International Union, et al. v. Fair Political Practices Commission, 747 F.Supp 580 (E.D. Calif. 1990) ("SEIU"), held that the transfer ban contained in Section 85304 is unconstitutional to the extent that its purpose is to enforce fiscal year contribution limits.³ Therefore, as a general rule, candidates may now transfer funds freely among their own committees and may also transfer funds to other candidates' committees. (See Gunter Advice Letter, No. I-90-616.) However, restrictions still apply with respect to special elections and with respect to local elections subject to valid local limits. (See Sprague Advice Letter, No. I-91-029 and Riffenberg Advice Letter, No. A-90-761, copies enclosed.)

Funds remaining in a campaign account after an elected officer leaves office or at the end of the postelection reporting period following the defeat of a candidate become "surplus funds," which are subject to the restrictions of Section 89519. Section 89519 provides as follows:

Upon leaving any elected office, or at the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds raised after January 1, 1989, under the control of the former candidate or elected officer shall be considered surplus campaign funds and shall be disclosed pursuant to Chapter 4 (commencing with Section 84100) and shall be used only for the following purposes:

³ The decision in SEIU is currently on appeal.

(a) The payment of outstanding campaign debts or elected officer's expenses.

(b) The pro rata repayment of contributions.

(c) Donations to any bona fide charitable, educational, civic, religious or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.

(d) Contributions to a political party or committee so long as the funds are not used to make contributions in support of or opposition to a candidate for elective office.

(e) Contributions to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot measure.

Thus, a defeated candidate who waits until after the end of the postelection reporting period to dispose of funds remaining in his or her campaign account is limited to the provisions of Section 89519 in determining how to utilize his or her surplus funds. Defeated candidates who do not wait until after the end of the postelection reporting period to dispose of their funds are not subject to the strictures of Section 89519.

I trust the above answers your questions. If you feel you have need for further information, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

SCOTT HALLABRIN
Acting General Counsel



SUSAN L. BOBROW
Counsel, Legal Division

SH:SLB

Enclosures