



# California Fair Political Practices Commission

January 7, 1992

Anthony Mastrantonio, Treasurer  
Santana for Supervisor  
405 Humbolt Way  
Livermore, CA 94550

Re: Your Request for Informal Assistance  
Our File No. I-91-561

Dear Mr. Mastrantonio:

This is in response to your letter requesting assistance as campaign treasurer for the late Charles Santana and the Santana for Supervisor Committee, regarding your responsibilities under the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Since you have requested assistance with respect to general rules set forth in the Act, we are treating your request as one for informal assistance.<sup>2</sup>

## QUESTIONS

As treasurer for the late Charles Santana of District 2, Alameda County, you have asked the following questions:

1. What may be done with the remaining \$30,000 in the campaign bank account?
2. Are the campaign funds part of the deceased candidate's estate?
3. Who decides how the funds are dispersed?

<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).)

4. What are your obligations as treasurer of the committee concerning the expenditure of the funds and what would be your liability after you resigned as treasurer?

#### CONCLUSIONS

1. Surplus campaign funds may only be expended for:

(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.

2. Campaign funds are not the personal property of the candidate and do not become part of his estate.

3. The Act does not mandate how the disbursement decisions of the campaign committee are made.

4. The treasurer of a committee must verify that to the best of his or her knowledge the committee campaign statements are true and complete and must use all reasonable diligence in the preparation of such statements. Once a treasurer resigns, however, the treasurer will not be responsible for future expenditures of the committee.

#### DISCUSSION

1. Surplus Campaign Funds

Effective January 1, 1990, the Act was amended to include new provisions which regulate the appropriate use of campaign funds. (Section 89510, et seq., the "personal use" law.) The use of

campaign funds was formerly governed by provisions of the Elections Code as interpreted by the Attorney General's Office.<sup>3</sup>

The general rule of the new personal use law is that any expenditure of campaign funds must, at a minimum, be reasonably related to a political, legislative, or governmental purpose associated with the candidate's office. (Section 89512.) However, where an expenditure confers a substantial personal benefit on the candidate, the expenditure must be directly related to a political, legislative, or governmental purpose.<sup>4</sup> (Section 89512.)

When campaign funds become surplus funds, the personal use law further limits their expenditure.<sup>5</sup> "Surplus funds" is defined in Section 89519 as campaign funds under the control of the former candidate or elected officer (1) upon leaving any elected office, or (2) at the end of the post-election reporting period following the defeat of a candidate for elective office. Under your facts, the candidate died with campaign funds left in the account.<sup>6</sup>

Surplus funds may only be expended for the following:

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

(b) The pro-rata repayment of contributions.

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<sup>3</sup> The Elections Code continues to govern the use of some campaign funds not applicable here. (See, e.g., Election Code Sections 12400 and 29795.)

<sup>4</sup> A "substantial personal benefit" is defined as a direct personal benefit to the candidate of \$100 or more. (Section 89511(b)(2).)

<sup>5</sup> For campaign funds raised prior to January 1, 1989, which are not commingled with campaign funds listed after that date, Elections Code Section 12400 controls their disposition once they become surplus.

<sup>6</sup> A literal reading of the statute could suggest that your situation is not governed by the "surplus funds" statute since the funds are no longer under the "control" of the former candidate. However, Section 89519 provides direction for the expenditure of campaign funds when a committee is no longer functioning to promote the election of the controlling candidate. Therefore, Section 89519 controls the permissible uses of campaign funds held by the "Santana for Supervisor" committee now that the controlling candidate is no longer seeking office.

(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.

2. Are Campaign Funds Personal Property of the Candidate?

The personal use provisions of the Act were enacted in 1990. The primary purpose behind the provisions was "to ensure that candidates, elected officers and the people clearly recognize acceptable and unacceptable uses of campaign funds." (Senate Elections Committee Analysis of SB 1431.) Thus, pursuant to the personal use provisions and other provisions of the Act,<sup>7</sup> campaign funds have never been regarded as the personal property of the candidate.

Moreover, in 66 Ops.Cal.Atty.Gen. 331 (1983), the Attorney General determined that campaign funds are not the personal property of the candidate which becomes part of his estate. The Attorney General stated:

Although as a general proposition, any individual may will property he or she owns (Probate Code, §§ 20, 21), in our view it cannot be said that an officeholder "owns" the campaign funds held by the committee. The contributions or gifts were made to the committee, albeit for his or her benefit or use.

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<sup>7</sup> For example, Section 84307 provides that no contribution shall be "commingled with the personal funds of the recipient or any other person."

Additionally, the law is silent with respect to whether an officeholder may designate in his or her will the manner in which surplus campaign funds should be distributed. In this regard, we further note that the law does not appear to give the officeholder absolute control of the funds in the hands of his or her committee during the officeholder's lifetime. To permit a candidate a designation by will would provide such absolute control.

Finally, there is no legal necessity to permit an officeholder to make the section 12404 designations by will. The committee will survive the officeholder and will still be a position to carry out the provisions of that section. Therefore, there is no need to "read into" the law such power in order to effectuate the law or its general purpose.<sup>[8]</sup>

Thus, the use of the surplus campaign funds is still limited to the uses set forth in Section 89519 and is not a part of the deceased candidate's estate.

### 3. Committee Decisionmaking

The Act does not mandate how the decisions of the committee are made. The Act does require that a committee have a treasurer to ensure that there will be a person responsible for the expenditure of funds for purposes of enforcing the disclosure provisions of the Act. (Mendelsohn Advice Letter, No. A-76-03-36, copy enclosed.)

### 4. Treasurer's Responsibility

Section 84100 requires that every committee have a treasurer and that no expenditure be made by or on behalf of a committee without the authorization of the treasurer. Moreover, no contribution or expenditure can be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer.

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<sup>8</sup> The opinion also discusses contributions held by the officeholder. Section 85201(c), added by Proposition 73, provides: All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account. Thus, the discussion in the opinion pertaining to contributions held by the officeholder has been superseded by statute.

Regulation 18427 further provides:

(a) Treasurers. The treasurer of a committee must verify that to the best of his or her knowledge the committee campaign statements are true and complete and must use all reasonable diligence in the preparation of such statements. To comply with these duties the treasurer shall:

(1) Establish a system of record keeping sufficient to ensure that receipts and expenditures are recorded promptly and accurately, and sufficient to comply with regulations established by the Commission related to record keeping;

(2) Either maintain the records personally or monitor such record keeping by others;

(3) Take steps to ensure that all requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds are complied with;

(4) Either prepare campaign statements personally or review with care the campaign statements and underlying records prepared by others;

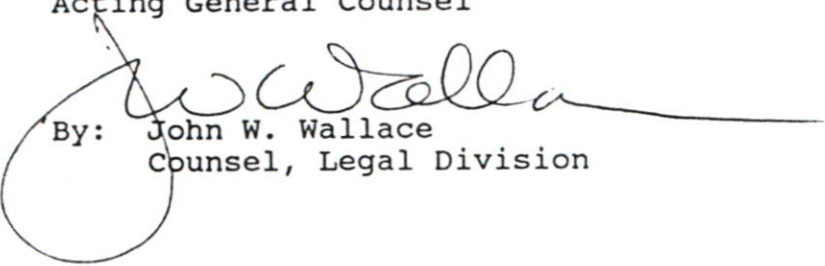
(5) Correct any inaccuracies or omissions in campaign statements of which the treasurer knows, and cause to be checked, and, if necessary, corrected, any information in campaign statements which a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer is aware or should be aware by reason of his or her duties under this regulation and the Act.

As treasurer, you are subject to Regulation 18427 during your tenure. Once you resign, however, you will not be responsible for future expenditures of the committee.

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

  
By: John W. Wallace  
Counsel, Legal Division

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