



California Fair Political Practices Commission

August 26, 1992

Bernice Biggs
708 Second Avenue
San Francisco, CA 94118

Re: Your Request for Informal Assistance
Our File No. I-92-445

Dear Ms. Biggs:

This is in response to your letter requesting advice regarding the disposition of surplus campaign funds under Elections Code Section 12400. Your request has been referred to the Fair Political Practices Commission from the California Attorney General's Office.

Since Elections Code Section 12400 is not within the Political Reform Act (the "Act"),¹ we are treating your request as one for informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.)

QUESTIONS

May surplus campaign funds be used for the following:

1. To make contributions to other candidates.

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. To attend political events.

CONCLUSIONS

1. Elections Code Section 12400 permits the transfer of campaign funds to other candidates except where the recipient candidate is on the ballot for election in a special election for any local or state office, or in a jurisdiction with valid local contribution limits.

2. Pursuant to Elections Code Section 12400, surplus campaign funds may be transferred to a future election account. Campaign funds in a future election account may be expended for political purposes, including attendance at political events.

FACTS

You were a candidate for the Community College Board in San Francisco in 1988 and lost the election. Currently you still have \$900 left in the campaign account. You have asked whether your campaign funds may be used for the following:

1. To make contributions to other candidates.
2. To attend political events.

DISCUSSION

Effective January 1, 1990, the Act was amended by Senate Bill 1431 to include new provisions that regulate the appropriate use of campaign funds. (Section 85800, 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.

However, where campaign funds become surplus campaign funds, Senate Bill 1431 established two alternate statutes controlling the disposal of surplus campaign funds with differing lists of permissible uses. For campaign funds raised after January 1, 1989, Section 89519 controls.²

For campaign funds raised prior to January 1, 1989, Elections Code Section 12400 provides:

² Regulation 18587 provides that campaign funds raised on or before January 1, 1989, which have been commingled with campaign funds raised after January 1, 1989, are presumed to have been raised after January 1, 1989. (Regulation 18587(d).) Regulation 18587 was adopted by the Commission on November 7, 1990, and is currently in the rulemaking process.

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 23701a to 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 activity reasonably related to preparing for future candidacy for elective office.

Contributions to Candidates

Elections Code Section 12400(c) provides that contributions³ to other candidates is permissible with surplus campaign funds

³ Section 82015 defines "contribution" to include any payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. This definition also includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events.

unless otherwise prohibited by law. Proposition 73, which was adopted by the people of California in June of 1988, imposed restrictions on the use of campaign funds to make contributions to other candidates. (See, Section 85304 and Section 89510(b).)

On September 25, 1990, the United States District Court issued an order in Service Employees International Union, AFL-CIO, CLC, et al. v. Fair Political Practices Commission⁴ which invalidated the fiscal year contribution limitations of the Act. In addition, the court invalidated the transfer ban of Section 85304 insofar as it was premised upon the need to prevent evasion of fiscal year campaign contribution limitations.

However, the transfer ban continues to prohibit the transfer of campaign funds where the prohibition serves to uphold constitutionally valid contribution limits. Consequently, the transfer ban continues to prohibit a candidate from transferring campaign funds to: (1) any candidate on the ballot for election in a special election for any local or state office; and, (2) any candidate in a jurisdiction with valid local contribution limits. (Riffenburg Advice Letter, No. A-90-761.)

In light of Section 85304, Elections Code Section 12400 must be interpreted to permit the transfer of campaign funds to other candidates only subject to the restrictions set forth above.

Political Activity

You have also asked whether the surplus campaign funds may be used for your attendance at political events. Where the attendance at a political event constitutes a contribution to a candidate or committee, Elections Code Section 12400(c) would permit the payment.

However, no provision of Elections Code Section 12400 expressly deals with political expenditures from surplus funds which would not constitute a contribution to a candidate or committee. In fact, the language of Elections Code Section 12400(a) and (b) suggests that while payment of outstanding campaign debts is permissible, new campaign expenditures would not be permitted with surplus funds.

Elections Code Section 12400(f) does, however, permit surplus campaign funds to be held in a segregated fund for future political campaigns.

However, the Act, as amended by Proposition 73, requires that all contributions or loans made to a candidate, or to the candidate's controlled committee, for a specific election must be deposited in the campaign bank account established for that election. (Section 85201(c).) The Commission has interpreted

⁴ (9th Cir. 1992) 955 F.2d 1312, cert.den. ____ U.S. ____.

this to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each office sought. (Riddle Advice Letter, No. A-88-409.)

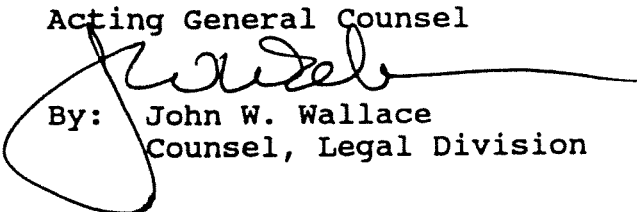
Thus, you may establish a campaign bank account and a controlled committee for a future election, and transfer the surplus campaign funds into this future election account pursuant to Elections Code Section 12400.⁵ These funds may then be used for any expenditure consistent with Section 89510, et seq.

Please note, however, that Section 85305, which establishes special election contribution limits, is still valid. Thus, if the future election is for an office sought in a special election, special restrictions apply. (See, Regulation 18535.)

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁶

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

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⁵ Please note that under Section 89519, which is not applicable here, campaign funds may not be transferred to future election accounts.

⁶ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.