



California Fair Political Practices Commission

November 17, 1992

Honorable Chris Chandler
Member, California State Assembly
1510 Poole Boulevard, Suite 201
Yuba City, CA 95993

Re: Your Request for Advice
Our File No. A-92-548

Dear Assemblyman Chandler:

You have requested assistance under the campaign provisions of the Political Reform Act ("the Act").¹

QUESTIONS

1. What is the proper method for transferring assets from your controlled committee, Friends of Chris Chandler, to a campaign committee you intend to establish for another California elective office?
2. What is the correct procedure for the sale and subsequent reporting of equipment acquired by your controlled committee such as a car phone, computer, laser printer, television, video cassette recorder, and fax machine.
3. What are the requirements for retention of documents required to be filed by you under the Act, including your statement of economic interests and other campaign reports.

CONCLUSIONS

1. You may reallocate the campaign assets of your current controlled committee to the campaign committee you intend to establish to run for future election.
2. Equipment acquired by your controlled committee must be sold at fair market value and the sale must be reported on the committee's disclosure statements.

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.

3. Campaign records must be retained by you and the committee treasurer for a period of four years following the date that the campaign statement to which they relate is filed. You are not required to retain copies of your campaign statements or statements of economic interests, but it is prudent to retain them until applicable statute of limitations periods have elapsed.

FACTS

You are presently a Member of the State Assembly, but you are leaving office effective November 30, 1992. You plan on terminating your current campaign committee and establishing a new committee for your future election to the State Senate. You do not plan to seek elective office during a special election cycle.

ANALYSIS

Reallocation of Assets

Except for campaign funds raised in connection with a special election, a candidate may, without restriction, transfer funds among his or her own campaign accounts under the injunction issued by the court in Service Employees International Union, AFL-CIO, CLC, et al. v. Fair Political Practices Commission (9th Cir. 1992) 955 F.2d 1312, cert. den. ____ U.S. _____. Thus, you may transfer your campaign funds, including assets,² among your controlled committees. (Kacic Advice Letter, No. A-89-312.)

It is not necessary for one committee to pay the other committee for assets which are transferred. The assets may simply be allocated for use in connection with a future campaign. There is no specific method required for allocation. We suggest you reflect the future allocation of the assets on the Allocation Page of the Form 490 filed in connection with your existing committee and reflect the transfer of the assets as a nonmonetary contribution on Schedule C of the Form 490 filed in connection with your future committee.

Please note that the use of surplus campaign funds is limited to a specific list of uses. (Section 89519.) Section 89519 does not permit surplus funds to be used for a future election to support or oppose California candidates for elective office, including your own candidacy. On the date that you leave office, your Assembly committee's campaign funds become surplus campaign funds. Therefore, the assets must be transferred to your future committee by November 30, 1992.

² "Campaign funds" include cash, cash equivalents, and other assets of the committee. (Section 89511(b)(1).)

Candidate Committees

You have asked in your letter about the termination of your current controlled committee, Friends of Chris Chandler, and the creation of a new campaign committee. A candidate for elective office may have only one campaign bank account and one controlled committee for each elective office. (Riddle Advice Letter, No. A-88-409.)

You will have to file a new statement of organization, Form 410, for your new campaign committee. Thus, prior to soliciting or receiving contributions, you must file a new statement of intention, Form 501, with the Commission. You must also establish a new campaign bank account and file a new campaign bank account statement, Form 502, in connection with your future campaign committee. You may then terminate your Assembly candidacy and existing campaign bank account by terminating your existing Forms 501 and 502, and by filing a Form 415.

Disposition of Campaign Assets

You have also asked the correct procedure for the sale and reporting of campaign assets. In general, the fair market value of an asset is the value that it would command in the open market, such as the sales price of a new item. (In re Hopkins (1977) 3 FPPC Ops. 107; Section 82025.5.) The Act does not set forth how the fair market value of an asset is to be determined. One method would be to consider the price of comparable items to determine the value of the asset. (In re Cory (1975) 1 FPPC Ops. 153.) Thus, if the asset is a computer which is one year in age, we suggest that you contact used computer dealers to gain an estimate of the value of the computer.³

Campaign assets acquired by the candidate for his or her personal use at no cost, or a cost below its fair market value, would constitute an unlawful appropriation of the asset for personal use to the extent the payment was less than the fair market value. (Milman Advice Letter, I-92-440.) However, if you want to purchase a campaign asset, so long as you pay fair market value for the asset, the sale of the asset to you will not violate the personal use provisions of the Act.⁴

³ Taking bids on an asset may result in the highest bid equaling the fair market value of the asset, but this would not necessarily be the case. Absent a reasonable method to ensure that the bidding procedure will result in a payment of the fair market value for the asset, taking bids would not be a reasonable approximation of fair market value.

⁴ Of course, the payment to the committee in exchange for the asset will become campaign funds and will be similarly subject to the personal use restrictions in the Act.

Where the asset is conveyed at below fair market value to a third party, the candidate will be making a gift of the asset to the third party, to the extent that the fair market value is not received. Section 89513(f) prohibits gifts of campaign funds unless the making of the gift is directly related to a political, legislative or governmental purpose. Furthermore, where the asset is conveyed to another candidate or committee at no cost or a cost that is less than fair market value, a contribution to that candidate or committee will result. Such a contribution is permissible, but must be reported properly by both your committee and the committee which receives it. However, where a third party or candidate or committee pays fair market value for the asset, no gift or contribution results. (Sections 82015 and 82028; Moniz Advice Letter, No. A-88-028.) The sale of committee assets should be disclosed as an increase to cash on Schedule I of the committee's Form 490. A candidate or committee purchasing the assets must disclose the payments as expenditures on Schedule E.

Retention of Materials

The Act does not require a filer⁵ to retain his or her campaign statements or statements of economic interests. However, it would be prudent to retain these documents for four years after their filing deadline.⁶

Furthermore, Section 84104 describes the duties of a filer with respect to the maintenance of campaign statements. It provides:

It shall be the duty of each candidate, treasurer and elected officer to maintain such detailed accounts, records, bills and receipts that are necessary to prepare campaign statements and to comply with the provisions of this chapter. The detailed accounts, records, bills and receipts that are maintained shall be retained by the filer for a period specified by the commission; provided, however, that the commission shall not require retention of records for a period longer than the statute of limitations specified in Section 91011 or two years after the adoption of an audit report pursuant to Chapter 10 (commencing with Section 90000) of this title, whichever is less.

⁵ "Filer" means the person filing or required to file any statement or report under this title. (Section 82026.)

⁶ A civil action or other enforcement action for any violation of the Act may be brought within four years after the date on which the violation occurred. (Sections 91000 and 91011(b).)

Regulation 18401 (copy enclosed) further provides in pertinent part:

(a) Maintenance of Documents

It shall be the duty of each candidate, treasurer and elected officer to maintain such detailed accounts, records, bills, and receipts as shall be necessary to prepare campaign statements and to comply with the provisions of Government Code, Title 9, Chapter 4 (Sections 84100, et seq.).

* * *

(b) Retention of Documents

(1) It shall be the duty of each filer, as defined in Government Code Section 82026, to retain the accounts, records, bills and receipts, and other original source documentation required to be maintained pursuant to subdivision (a) of this regulation.

(2) The accounts, records, bills and receipts, and original source documentation shall be retained by the filer for a period of four years following the date that the campaign statement to which they relate is filed. However, in the case of an elected state officer serving a four-year term, the records for campaign statements filed during the first year following his or her election must be kept for five years following the date such statements are filed.

Emphasis added.

Thus, campaign records must be retained by you for a period of four years following the date that the campaign statement to which they relate is filed.

I hope this information is helpful to you. Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,

Scott Hallabrin
Acting General Counsel


Luisa Menchaca
Counsel, Legal Division