



California Fair Political Practices Commission

August 21, 1992

Larry Braden
P.O. Box 5871
Orange, CA 92613-5871

Re: Your Request for Informal Assistance
Our File No. I-92-551

Dear Mr. Braden:

This is in response to your request for advice regarding the disposition of surplus campaign funds under Elections Code Section 12400. As we discussed on August 12, 1992, 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.)

QUESTION

You are the campaign treasurer for an unsuccessful candidate for mayor in your jurisdiction and are also a treasurer for a current candidate for the community college board of trustees. You have asked whether the surplus campaign funds of the mayor may be transferred to the community college board 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.

CONCLUSION

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.

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:

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.

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).)

(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.

You clarified in our telephone conversation of August 12, 1992, that all the campaign funds in the mayoral candidate's account were raised prior to January 1, 1989. Thus, Elections Code Section 12400 is the applicable law.

Elections Code Section 12400(c) provides that contributions to other candidates is permissible with surplus campaign funds 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 Commission (9th Cir. 1992) 955 F.2d 1312, cert.den. ____ U.S. ____, 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.

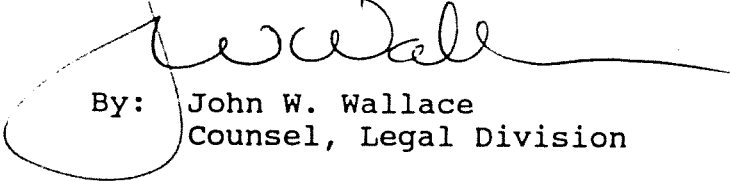
However, the transfer ban continues to prohibit the transfer of campaign funds where the prohibition serves to uphold constitutionally valid contribution limits. Consequently, the transfer ban continues to prohibit a candidate from transferring campaign funds to: (1) any candidate on the ballot for election 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 permits the transfer of the mayoral candidate's surplus campaign funds to the community college board candidate so long as the recipient candidate is not on the ballot for election in a special election for any local or state office, or in a jurisdiction with valid local contribution limits.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.³

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

SH:JWW:aa

cc: Ted Prim
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³ 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.