



California Fair Political Practices Commission

September 17, 1992

Wallace W. Edgerton
805 Coronado Avenue
Long Beach, CA 90804

Re: Your Request for Advice
Our File No. A-92-572

Dear Mr. Edgerton:

This letter is in response to your request for advice regarding the use of surplus campaign funds under the provisions of the Political Reform Act (the "Act").¹

QUESTION

May you transfer "surplus" campaign funds to another campaign committee to seek elective office?

CONCLUSION

Unless the funds have been commingled, you may transfer campaign funds raised prior to January 1, 1989, to another campaign committee to seek elective office. Funds raised after January 1, 1989, however, have become "surplus" funds and may not be transferred to another committee to seek elective office.

FACTS

You have been an elected councilmember for the City of Long Beach for a period of seventeen years. You were defeated in the last elections and your term as an elected official ended on July 20, 1992. You currently have campaign funds raised prior to

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.

January 1, 1989, in one account. The remaining campaign funds, raised after January 1, 1989, are maintained in a separate account.² You wish to transfer any campaign funds available in your campaign committee to another committee to seek future elective office.

ANALYSIS

The use of campaign funds was formerly governed by provisions of the Elections Code as interpreted by the Attorney General's Office. However, 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.)

Senate Bill 1431 established two alternate statutes controlling the disposal of "surplus" campaign funds. For campaign funds raised prior to January 1, 1989, Elections Code Section 12400 controls. However, for campaign funds raised after January 1, 1992, Government Code Section 89519 controls.³

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 These facts include information you provided to me during the course of our telephone conversations on August 7 and August 11, 1992.

³ 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.

Emphasis added.

You have advised us that you have two separate campaign accounts, one with funds raised prior to January 1, 1991, and one with funds raised after January 1, 1991. For purposes of our analysis, we presume that these funds have not been commingled. Thus, Elections Code Section 12400 applies to those funds raised prior to January 1, 1991.

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. (Sections 85304 and 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.)

Additionally, 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 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 transfer funds raised prior to January 1, 1991, to a new campaign account to seek future elective office.⁴ However, the contribution limitations imposed by Proposition 73 are still applicable to contributions to special elections. Accordingly, if you seek office in a special election, you may transfer funds into the special election account if all of the following apply:

1. The contributions transferred, when aggregated with all other contributions from, and transfers attributable to, the same contributor do not exceed the amount the contributor could have contributed to the special election committee for the special election, and, where required, the special runoff election pursuant to Section 85305;

2. All contributions transferred to the special election committee are attributed to specific contributors to the transferring committee for the actual amount contributed; and

3. The contributions transferred to the special election committee do not include contributions received from any other candidate. (Regulation 18535(b).)

In addition, transfers to a special election account are subject to the recordkeeping and other requirements of Regulation 18535, which we are enclosing for your convenience.

Conversely, funds raised after January 1, 1992, are governed by Section 89519 and Regulation 18587. These funds may not be used to seek future office. However, you may use these funds for the following purposes:

The payment of outstanding campaign debts;

The pro rata repayment of contributions;

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 you, any member of your immediate family, or your campaign treasurer;

⁴ Please note that valid local ordinances may apply to such transfers.

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;

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; and

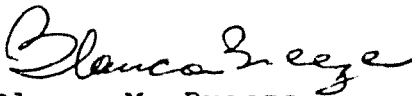
The payment for professional services reasonably required by the committee to assist in the performance of its administrative functions.

Section 89519.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.⁵

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

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⁵ 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.