



California Fair Political Practices Commission

May 13, 1993

Honorable Herschel Rosenthal
State Senator
22nd Senatorial District
State Capitol, Room 4070
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-93-167

Dear Senator Rosenthal:

This is in response to your letter requesting assistance regarding the provisions of the Political Reform Act (the "Act")¹ which regulate the appropriate use of campaign funds. Since your advice request is general in nature, we are treating your request as one for informal assistance.

Please note that informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).) Additionally, this letter should not be read as an opinion on any specific pending legislation.

QUESTIONS

1. May campaign funds be used by a candidate or officeholder who has received threats growing out of the official's activities, duties, or status as a candidate or officeholder, to pay for the installation and monitoring of a security system in the officeholder's residence?

2. May surplus campaign funds be used by an officeholder who has received threats growing out of the officeholder's activities, duties, or status as an officeholder, to pay for the installation and monitoring of a security system in the officeholder's residence?

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. May campaign and surplus campaign funds be used to reimburse the State Legislature for the Legislature's expenditure of public funds for the installation and monitoring of a security system in the officeholder's residence?

CONCLUSIONS

1. A security system installed into the personal residence of an official would, in addition to protecting the official's person from specific articulated threat, serve a substantial function in protecting the official's personal possessions. Moreover, the installation of an extensive home security system would greatly enhance the value of an official's personal residence. Thus, the personal use of the system would be more than merely incidental. Consequently, the expenditure would not be a permissible use of campaign funds.

2. Surplus campaign funds may only be expended for uses specified in Section 89519. Such an expenditure is not specifically provided for in that section.

3. Campaign funds and surplus campaign funds may be donated to governmental agencies. Thus, if the State Legislature determines that the expenditure is an appropriate governmental use of public funds and pays for the installation and monitoring of the system, both campaign and surplus campaign funds may be used to reimburse the Legislature.

However, once the official leaves office, the legislative or governmental purpose would terminate. Therefore, unless the official removes the security system from his personal residence and returns it to the state, or purchases the equipment from the state at fair market value, the security system would be deemed a gift from the state. Similarly, payments for security monitoring after the official leaves office would not be related to a political, legislative, or governmental purpose and would not be permissible.

DISCUSSION

Campaign Funds

The use of campaign funds was formerly governed by provisions of the Elections Code as interpreted by the Attorney General's Office. Under the prior rules, expenditures were permissible so long as they had more than a "negligibly political, legislative, or governmental purpose." (See e.g., Letter from Assistant Attorney General N. Eugene Hill to Senator David Roberti, (September 6, 1985), No. 85-25.)

Effective January 1, 1990, the Act was amended by Senate Bill 1431 (Ch. 1452, Stats. 1989) to include new provisions that regulate the appropriate use of campaign funds and that establish stricter standards for the use of campaign funds.

The general rule of the new personal use law is that any expenditure of campaign funds must be, at a minimum, reasonably related to a political, legislative, or governmental purpose associated with the candidate's office. However, where an expenditure confers a substantial personal benefit on the candidate or officeholder, the expenditure must be directly related to a political, legislative, or governmental purpose.² (Section 89512.)

Where campaign funds become surplus, the personal use law further limits their expenditure. Senate Bill 1431 established alternate statutes concerning the disposal of surplus campaign funds with differing lists of permissible uses. For campaign funds raised prior to January 1, 1989, Elections Code Section 12400 controls. For campaign funds raised after January 1, 1989, Section 89519 controls. These statutes set out a limited list of permissible uses of surplus campaign funds.

You have asked about using campaign funds to purchase a security system. Section 89517 provides:

(a) Campaign funds shall not be used for payment or reimbursement for the lease of real property or for the purchase, lease, or refurbishment of any appliance or equipment, where the lessee or sublessor is, or the legal title resides, in whole or in part, in a candidate, elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds, or member of his or her immediate family.

* * *

(c) For the purposes of this section, real property, appliance, or equipment is considered to be directly related to a political, legislative, or governmental purpose as long as its use for other purposes is only incidental to its use for political, legislative, or governmental purposes.

Emphasis added.

Thus, Section 89517 only permits campaign funds to be used for the purchase of equipment if: (1) the legal title of the equipment is in the name of the committee, and (2) any other use of the equipment is only incidental to its use for political, legislative, or governmental purposes. (Regulation 18951.)

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

Regulation 18951 clarifies that the use of appliances and equipment for personal purposes is incidental if the use occurs in conjunction with its use for political, legislative, or governmental purposes and constitutes only 5 percent or less of the total use of the item in any one calendar month with a value of less than \$100.

Since it appears a security system installed into the personal residence of an official would serve, in a large part, to protect the official's personal possessions, the personal use of the system would be more than merely incidental. Moreover, the installation of an extensive home security system can greatly enhance the value of an official's personal residence. Thus, the official would be receiving a personal benefit. Since the incidental personal use and the governmental use cannot be separated out, the expenditure is not permissible.

Surplus Campaign Funds

As stated above, surplus campaign funds are subject to further limitation on their use. Surplus campaign 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.

(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.

(f) The payment for professional services reasonably required by the committee to assist in the performance of its administrative functions, including payment for attorney's fees for litigation which arises directly out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action

to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure or election laws, and an action arising from an election contest or recount.

Section 89519.

Payments to install a security system or pay for the monitoring of the system is not a permissible use under the statute. Moreover, as discussed above, payments to install a security system or pay for the monitoring of the system would not be considered directly related to a political, legislative, or governmental purpose.

Reimbursement

In our telephone conversation of April 28, 1993, you also asked whether campaign funds could be used to reimburse the State Legislature if the State Legislature determines that the expenditure is an appropriate governmental use of public funds.

Section 89515 and Section 89519 permit the use of campaign and surplus campaign funds to make donations to nonprofit organizations if: (1) the recipient organization is a bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organization; and, (2) no substantial part of the proceeds of the donation will have a material financial effect on the candidate, elected officer, campaign treasurer, or any member of his or her immediate family; and (3) where the donation or loan bears a reasonable relation to a political, legislative, or governmental purpose.³

We have also advised that surplus campaign funds may be provided to governmental agencies, such as fire departments and schools, consistent with Section 89519(c), under the circumstances set forth above. (See generally, Jasper Advice Letter, No. A-90-511.) Thus, a donation to the Legislature in order to compensate for the Legislature's use of public funds for a legitimate governmental purpose would be permissible.

Please note, however, other laws outside the Political Reform Act may restrict the use of public funds for this purpose. (See e.g., Penal Code Section 424.) Where the expenditure is not a legitimate governmental expenditure, campaign funds may not be used to reimburse the agency for the expenditure.

Additionally, please note that once the official leaves office, the legislative or governmental purpose would cease. Therefore, unless the official removes the security system from

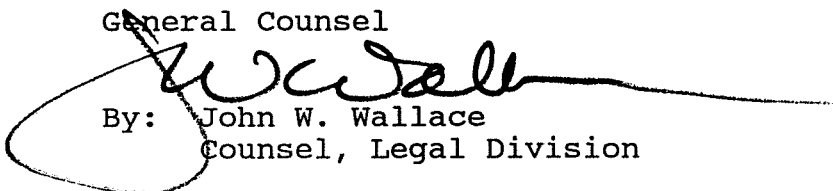
³ Please note that Section 89519, applicable to surplus campaign funds does not require that the donation bear a reasonable relation to a political, legislative, or governmental purpose.

his personal residence and returns it to the state, or purchases the equipment from the state at fair market value, the security system would be deemed a gift from the state.⁴ Similarly, payments for security monitoring after the official leaves office would not be related to a political, legislative, or governmental purpose and would not be permissible.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Jeff Marschner
General Counsel


By: John W. Wallace
Counsel, Legal Division

⁴ As noted earlier, other laws, such as Penal Code Section 424 which deals with the misuse of public moneys, may also prohibit the use of public funds to make a gift. However, this section is outside the jurisdiction of the Commission. Thus, nothing in this letter should be construed to be an authorization for any specific expenditures made by a state or local government agency.