



# California Fair Political Practices Commission

March 24, 1994

Peter A. Bagatelos, Esq.  
Bagatelos & Fadem  
601 California Street, Suite 1801  
San Francisco, California 94108

Re: Request For Advice  
Our File No. A-94-091

Dear Mr. Bagatelos:

This letter responds to your March 15, 1994 letter requesting advice, regarding the interpretation of provisions of the Political Reform Act (the "Act")<sup>1</sup>, on behalf of Assemblywoman Andrea Seastrand and her state committee, Friends of Assemblywoman Andrea Seastrand 33 Club.

#### QUESTION

May Assemblywoman Seastrand's state committee pay for the defense of a complaint filed with the Federal Election Commission ("FEC") alleging violations of federal election law?

#### CONCLUSION

Where the alleged violation arises directly out of the state committee's activities and the operative facts of the alleged violation constitute allowable state committee activities, the state committee campaign account may be used to pay for the defense of an FEC enforcement action.

#### STATEMENT OF FACTS

We base this advice on the facts presented in your written request. The Commission does not act as the finder of fact in the provision of advice. (In re Ogelsby (1975) 1 FPPC Ops 71.)

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<sup>1</sup> 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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Moreover, the immunity and good faith provisions of Section 83114 are conditioned on the premise that the facts contained in your written request are accurate and complete. (Section 83114; Regulation 18329.) The facts you have provided the Commission are summarized below.

Ms. Andrea Seastrand is an assemblywoman for the 33rd Assembly District. Friends of Assemblywoman Andrea Seastrand 33 Club (the "Committee") is a state committee controlled by Assemblywoman Seastrand. The Committee raises and expends funds in support of Assemblywoman Seastrand's officeholder function, including, among other things, her communications with constituents.

In the fall of 1993, the Committee expended funds for the airing of two radio advertisements prepared by Assemblywoman Seastrand for the purpose of educating her constituents on the initiative measures on the November 2, 1993 ballot.<sup>2</sup> The first of these advertisements was produced on August 30, 1993 and was broadcast between September 1, 1993 through September 30, 1993. The second advertisement was produced on October 20, 1993 and was broadcast from October 25, 1993 through November 1, 1993. The advertisements were broadcast on four separate radio stations, all of which are either located within Assemblywoman Seastrand's district or cover a substantial portion of her district within their respective signal ranges.

On September 13, 1993, Congressman Michael Huffington of the 22nd Congressional District announced that he would not seek reelection to that office. On September 14, 1993, Assemblywoman Seastrand established a federal principal campaign committee, selected a treasurer, and filed papers with the FEC and the House of Representatives announcing her intention to run as a candidate for the 22nd Congressional District seat. On January 20, 1994, Mr. Stephen Anderson filed a complaint with the FEC which alleged violations of the Federal Election Campaign Act of 1971<sup>3</sup> arising from the Committee's payment of the above mentioned radio advertisements.

The advertisements identified Assemblywoman Seastrand as the speaker, explained the important issues on the ballot, and encouraged the listener to both register to vote and vote on the upcoming initiatives. The advertisements did not contain any candidate promotion and did not refer to Assemblywoman Seastrand's federal candidacy. Although one advertisement was produced and aired in late October, Assemblywoman Seastrand maintains that the

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<sup>2</sup> The Commission does not give advice as to past conduct. (Regulation 18329(b)(8)(A).) This letter does not ratify, condone, or rule upon Assemblywoman Seastrand's, or her committee's, prior conduct.

<sup>3</sup> 2 U.S.C. §§ 431 et seq.

idea for the advertisements arose in August and are unconnected with her subsequent decision to run for federal office.

#### ANALYSIS

We begin our analysis by noting that campaign funds are not the personal property of the candidate. (Section 89510; see also 66 Ops. Cal. Atty. Gen. 331 (1983) (opinion on the disposition in a will of an officeholder's surplus campaign funds).) Rather, campaign funds are deemed to be held in trust for payment of expenses associated with election and holding office. (Id.) The Act provides that expenditures are within the lawful scope of the trust if they are reasonably related to a political, legislative or governmental purpose. (Section 89512.) Where an expenditure confers a substantial personal benefit on a candidate, the expenditure must be directly related to a political, legislative or governmental purpose. (Id.)

The payment of a candidate's attorney fees would confer a substantial personal benefit on a candidate.<sup>4</sup> Section 89514 of the Act provides that attorney's fees and other costs associated with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except:

[W]here the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee's activities or 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 to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, contest or recount.

(Emphasis added.)

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<sup>4</sup> The term "substantial personal benefit" is defined as "an expenditure of campaign funds which results in a direct personal benefit with a value of more than one hundred dollars (\$100) to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee." (Section 89511(b)(3).) In the case of a candidate's attorney fees, payment with campaign funds would relieve the candidate of the obligation and result in a direct personal benefit.

Thus, under Section 89514, the Commission has advised that campaign funds may be expended for legal advice prior to commencement of an action (Richter Advice Letter, No. I-93-355); campaign funds may be expended for defense of a conflict of interest charge (Lanning Advice Letter, No. A-92-050); and, campaign funds may be expended for the payment of fines arising from violations of state or local campaign, disclosure, or election laws. (Waters Advice Letter, No. A-92-346, and Honig Advice Letter, No. A-93-104).<sup>5</sup>

The defense of a complaint lodged with the FEC is not one of the enumerated actions in which campaign funds may be used for legal fees under Section 89514. Indeed, the absence of a reference to federal election laws, when the act specifically references state and local election laws, argues strongly that payment of legal fees for defense of FEC enforcement actions is not allowed under this statute.<sup>6</sup> However, that interpretation is rejected. The Commission recognizes that the mere allegation of FEC violations does not by itself determine whether the action is "directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee's activities or out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer."

Accordingly, whether or not attorney's fees associated with the defense of an FEC violation may be paid with campaign funds depends on the facts of each case. Where the alleged violation arises directly out of a state committee's activities, a state candidate's status as a candidate or state officeholder's official duties and the operative facts of the alleged violation constitute allowable state political or governmental activities, the state committee campaign fund may pay for the defense of the FEC enforcement action. Under the facts you have presented, we cannot say with certainty that the political advertisements in question were unrelated to Assemblywoman Seastrand's state candidacy or state officeholder duties. Accordingly, the payment of attorney's

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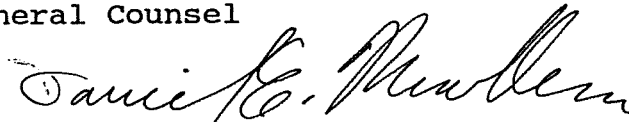
<sup>5</sup> See also Section 89513(c)(2).

<sup>6</sup> Reference is made to the maxim of statutory interpretation Expressio Unius Est Exclusio Alterius. When certain persons or things are specified in a law, an intention to exclude others may be inferred.

fees by the Committee would be an allowable use of campaign funds.<sup>7</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: Daniel E. Muallem  
Counsel, Legal Division

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<sup>7</sup> Cf. Antonovich Advice Letter, No. A-91-477. In Antonovich, the operative facts constituting the FEC violation occurred prior to the formation of the state committee and therefore could not have been directly related to the activities of the committee.