

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

June 28, 1995

Patricia A. Fabio  
721 So. Brea Canyon Road, #7  
Diamond Bar, CA 91789

Re: Your Request for Advice  
Our File No. A-95-186

Dear Ms. Fabio:

You have requested advice on behalf of Assemblyman Gary G. Miller concerning the campaign provisions of the Political Reform Act ("the Act").<sup>1/</sup>

QUESTIONS

1. May campaign funds of "Miller for Assembly" (committee "A") controlled by Gary G. Miller be transferred to Committee to Elect Gary Miller (committee "B"), also controlled by Mr. Miller, to repay a loan he made committee "B"?
2. How should the transfers be reported on the committees' campaign disclosure statements?
3. How should the repayment of the loan be reported on the campaign disclosure statement of committee "B"?
4. After the loan is repaid, Mr. Miller would like to terminate committee "B". What are the correct termination procedures?

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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 Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

ANSWERS

1. Campaign funds from Mr. Miller's controlled committee "A" may be transferred to his controlled committee "B" in order to repay the personal loan.
2. The committee making the transfer (committee "A") should report the transaction on Schedule E of its campaign disclosure statement (Form 490), and the committee receiving the transfer (committee "B") should report the transaction as a miscellaneous increase to cash on Schedule I. Please note that the funds must be deposited into the bank account of committee "B" before the loan repayment is made.
3. In addition to reporting the transfer on Schedule I, committee "B" will also report the loan repayment on Schedule B, Part II. This may result in a negative figure on Column A, Line 2 of the Summary Page.
4. A committee which meets the criteria described in the following analysis may terminate its disclosure obligations by filing a Statement of Termination (Form 415). In addition, once the bank account is closed, a Campaign Bank Account termination statement (Form 502) must be filed, as well as a Candidate Intention Statement (Form 501) to terminate Mr. Miller's status as a candidate for that office.

FACTS

Gary G. Miller has an existing committee "Committee to Elect Gary Miller" (committee "B") formed for a city council election to which he personally loaned \$15,275. He was elected to that office. He has since formed another committee "Miller for Assembly" (committee "A") to which he personally loaned \$300,000. He was elected to that office as well. He would now like to issue a check for \$15,275 out of committee "A" to be used solely to repay his personal loan to committee "B" and then terminate committee "B." Based on a phone conversation with Cathy Miller, Treasurer, neither committee was formed for a special election.

ANALYSIS

There is nothing in the Act which would prohibit Mr. Miller from using funds from committee "A" to pay debts incurred by committee "B". In Service Employees International Union, et al. v. Fair Political Practices Commission (1992) 955 F.2d 1312, cert. den. 112 S.Ct. 3056, the court ruled that Section 85304 of the Act is unconstitutional to the extent it prohibits a candidate from transferring funds between his own campaign committees. On this basis, Mr. Miller is permitted to transfer campaign funds between his committees. In addition, although any funds held by or transferred to committee "B" are considered "surplus" funds under the Act because Mr. Miller has left the city council position, Section 89519(a)(1) permits the payment of outstanding campaign debts with surplus funds.

However, because the campaign bank account requirements imposed by Section 85201 require that all campaign expenditures be made from the account designated for a particular office or election, the funds must be transferred from committee "A" to committee "B" prior to repaying the loan.

With respect to your inquiry regarding termination, Mr. Miller may terminate committee "B" as stated above, if all of the following criteria are met:

(a) The committee has ceased to receive contributions and make expenditures;

(b) The committee does not anticipate receiving contributions, repayments of outstanding loans made to others, or any other receipts in the future and does not anticipate making expenditures in the future;

(c) The committee has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

(d) The committee has no surplus funds; and

(e) The committee has filed all of its required campaign statements disclosing all reportable transactions.

Regulation 18404.

If you have additional questions concerning this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Trish Mayer  
Political Reform Consultant  
Technical Assistance Division