

SUPERSEDED



IN PART

by: 96-103

RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

November 17, 1995

Pauline Larwood
3709 Harmony Drive
Bakersfield, CA 93306

Re: Your Request for Advice
Our File No. A-95-313

Dear Ms. Larwood:

You have requested advice concerning the campaign provisions of the Political Reform Act ("the Act").^{1/} Pursuant to our telephone conversation on September 26, 1995, we are responding only to the questions posed in your letter dated September 27, 1995.

QUESTIONS

1. May campaign funds from your Assembly committee be contributed to the Sheryl Barbich for Assembly '96 campaign?
2. May campaign funds be returned to contributors?

ANSWERS

1. Campaign funds from your Assembly campaign committee may be contributed to the Sheryl Barbich for Assembly '96 campaign.
2. Campaign funds may be returned to contributors so long as the return is reasonably related to a political purpose.

^{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.

Pauline Larwood
Our File No. A-95-313
Page Two

FACTS

You were a member of the Kern County Board of Supervisors. Prior to leaving office, you transferred the balance of your campaign funds to a campaign fund established for a 1996 Assembly campaign. You have decided not to run for the Assembly in 1996 and plan to make a contribution to the Sheryl Barbich for Assembly '96 campaign, which is not a special election. In addition, you want to return campaign funds to certain contributors to your Assembly campaign. You were advised by a private attorney that your campaign funds became "surplus funds."

ANALYSIS

At present, the Political Reform Act does not prohibit candidates from transferring campaign funds which are not "surplus" funds, to other candidates, unless the recipient is running in a special election or is subject to valid contribution limitations.^{2/}

Campaign funds become "surplus" on the date an officeholder leaves office or at the end of the post-election reporting period following the election in which the officeholder or candidate was defeated, whichever is later. (Section 89519.)^{3/} Campaign funds of a non-incumbent candidate who decides not to run for a particular office do not become "surplus" because the candidate has not left or been defeated for elected office. (Hertzberg Advice Letters, Nos. I-94-082 and A-94-109.) Therefore, you are not prohibited from making contributions to the Sheryl Barbich for Assembly '96 campaign.^{4/}

^{2/} The inter-candidate transfer ban has been enjoined by the federal courts. (Service Employees International Union, et al. v. Fair Political Practices Commission (1992) 955 F.2d 1312, cert. den. 112 S.Ct. 3056.) The California Supreme Court may reinstate it in the near future. (Quentin L. Kopp and Ross Johnson v. Fair Political Practices Commission, California Supreme Court, Case No. S038571.)

^{3/} Officeholders who leave office may transfer funds to an account set up for a future election to a different office as long as the transfer is made prior to leaving office.

^{4/} As noted in your letter dated September 27, 1995, in doing so, you would not be an intermediary within meaning of Section 84302 and Regulation 18432.5.

Pauline Larwood
Our File No. A-95-313
Page Three

With regard to returning contributions, we look to Sections 89510 and 89512 of the Act, since no specific rules govern the return of contributions from campaign funds that are not considered surplus funds. Section 89510(b) states:

All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate to the specific office...that he or she intends to seek....

Section 89512 states the general rule of the personal use law:

An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose....

(Emphasis added.)

Where an expenditure confers a substantial personal benefit^{5/} on a candidate, the expenditure must be directly related to a political, legislative, or governmental purpose. For this reason, Section 89513(f)(1) prohibits the use of campaign funds to make personal gifts unless the gift is directly related to a political, legislative, or governmental purpose. However, this provision goes on to state that "[t]he refund of a campaign contribution does not constitute the making of a gift."

Based on a reading of Sections 89510, 89512, and 89513, it is clear that campaign funds may be returned to contributors to your Assembly committee so long as the return is reasonably related to a political purpose. (Peri Advice Letter, No. A-93-183, Hertzberg, supra, copies enclosed.) This would be the case if you return contributions to each contributor who asks for a return of his or her contribution to your Assembly campaign because you have decided not to pursue your candidacy at this time.

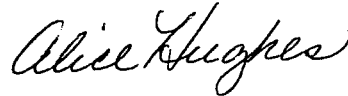
^{5/} A substantial personal benefit is defined as a direct personal benefit to the candidate or officeholder of \$100 or more. (Section 89511(b)(3).)

Pauline Larwood
Our File No. A -95-313
Page Four

If you have any additional questions, please call me at (916)
322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Alice Hughes
Political Reform Consultant
Technical Assistance Division