

RAVI MEHTA
CHAIRMAN



SUPERSEDED
by I-99-120(HICKS)

FAIR POLITICAL PRACTICES COMMISSION

November 27, 1995

Ms. Joyce M. Hicks
Assistant City Attorney
City Hall
One City Hall Plaza
Oakland, CA 94612

Re: Your Request for Informal
Assistance
Our File No. I-95-331

Dear Ms. Hicks:

This is in response to your request for Commission advice under the campaign provisions of the Political Reform Act (the "Act")¹ regarding the City of Oakland's local ordinance on campaign reform. Since your letter does not request advice with regard to a specific set of facts, we have treated your request as one for informal assistance.²

QUESTION

Does Section 310 of the City of Oakland's Campaign Reform Act and the related regulation regarding elected officials' officeholder funds, conflict with any provisions of the Act?

CONCLUSION

Sections 310(a) and 312(a) of the ordinance, and Regulation No. 1 - Officeholder Fund, which permit contributions to be

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, Sections 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

deposited directly into an officeholder fund savings account or a legal expense fund without being deposited into the campaign bank account, conflict with the requirements of the Act and are therefore superseded by the Act.

FACTS

The City of Oakland adopted the Campaign Reform Act, Ordinance No. 11612, and a related Regulation No. 1 - Officeholder Fund which, among other things, permit a contributor to earmark contributions to an "Officeholder Fund Savings Account." (Ordinance Section 310(a) and Regulation No. 1, subparagraph (2).) The ordinance and regulation permit earmarked contributions to be deposited directly into a savings account which is separate and distinct from the campaign bank account established by the officeholder for his or her current office or election. The regulation provides that prior to expending funds from the officeholder fund savings account, the money shall be withdrawn from the savings account and deposited into the officeholder's campaign bank account established for the current office or election. (Regulation No. 1, subparagraph (c).)

At an August 1995 campaign workshop held in Oakland, Michelle Abney of the City Clerk's Office was informed by one of the Commission's consultants that Section 310(a) of the ordinance and Regulation No. 1 might be in conflict with the requirements of the Act.

ANALYSIS

Section 81009.5 of the Act limits the authority of local governments to enact an ordinance which imposes filing requirements additional to or different from the requirements of the Act. Generally, where the provisions of a local law conflict with the Act, the local law is superseded. (Section 81013.)

The conflicting language contained in the City of Oakland's ordinance and regulation states:

(a) Every elected City officeholder shall be permitted to establish one officeholder fund and account.

(Ord. No. 11612, Section 310.)

(2) All funds contributed to the Officeholder Fund Savings Account shall be earmarked by the contributor as a contribution to the Officeholder Savings Fund and shall be deposited into the officeholder's savings account.

(Reg. No. 1 - Officeholder Fund.)

(a) An elected City officeholder or candidate for city office may receive contributions for a separate legal expense fund, for deposit into a separate account, to be used solely to defray attorney's fees and other legal costs incurred in the candidate's or officer's legal defense to any civil, criminal, or administrative action or actions arising directly out of the conduct of the campaign or election process, or the performance of the candidate's or officeholder's governmental activities and duties.

(Ord. No. 11612, Section 312.)

The Act provides that a candidate or officeholder may have only one campaign bank account established for each election. Government Code Section 85201 provides:

(a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial institution located in the state.

* * *

(c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account.

(Emphasis added.)

Commission Regulation 18524 regarding the investment and expenditure of campaign funds provides as follows:

(a) All contributions received by a candidate shall be deposited in the candidate's campaign bank account established pursuant to Government Code Section 85201. The candidate shall make all campaign expenditures from the campaign bank account. Moneys in the candidate's campaign bank account shall be spent only on expenses associated with the candidate's election to the specific elective office designated in the statement of intention and expenses associated with holding that office.

(b) The candidate may transfer funds from the campaign bank account to certificates of deposit, interest-bearing savings accounts, money market accounts, or similar accounts which shall be established only for funds for the same elective office for which the campaign bank account was established. Prior to expenditure, the funds shall be redeposited in the candidate's campaign bank account.

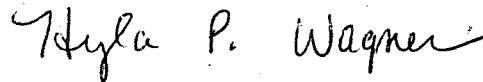
The Commission has previously advised that once a candidate is elected to office the candidate may maintain the campaign bank account established for that election for the costs associated with holding that office. (Miller Advice Letter, No. I-93-440.) Before an officeholder or candidate may deposit contributions and other funds into a savings account or other interest-bearing account, he or she must first deposit such monies into the campaign bank account. (Regulation 18524; Mendoza Advice Letter, No. A-93-255 (copy enclosed).)

The ordinance may continue to provide that officeholder funds and legal expense funds be kept separate from campaign funds. We suggest, however, that the language contained in Sections 310(a), and 312(a) of the ordinance and Regulation No. 1 - Officeholder Fund, be amended to provide that all funds contributed to an officeholder or candidate be deposited into the appropriate campaign bank account prior to being deposited into an officeholder fund savings account or a legal expense fund account.

If you have any questions, or wish to discuss this further, please feel free to contact me at 916/322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Counsel, Legal Division

Enclosure