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FAIR POLITICAL PRACTICES COMMISSION

April 25, 1996

Mr. Nickolas P. Tooliatos  
Hallgrimson McNichols McCann, LLP  
5000 Hopyard Road, Suite 400  
Pleasanton, California 94588-3348

Re: Your Request for Advice  
Our File No. A-96-118

Dear Mr. Tooliatos:

This is in response to your request for advice on behalf of Supervisor Gayle Bishop regarding the use of campaign funds under the Political Reform Act (the "Act").<sup>1</sup>

QUESTION

May Supervisor Gayle Bishop use political campaign contributions to her current and active committee to pay legal fees incurred in her representation against accusations by the civil grand jury?

CONCLUSION

Under the Political Reform Act, Supervisor Bishop may use her campaign funds to pay legal fees incurred in defending against counts one through eleven of the grand jury accusation. She may not, however, use campaign funds to pay legal fees incurred in defending against count twelve of the accusation, which alleges the improper use of county staff and resources to benefit her personal law practice.

FACTS

Your law firm represents Contra Costa County Supervisor Gayle Bishop with respect to a civil grand jury accusation of willful misconduct in office.

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<sup>1</sup> Government Code Sections 81000-91015. References are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18995.

ANALYSIS

Under the Act, campaign funds may be used to pay attorney fees and other costs in connection with administrative, civil, or criminal litigation where the litigation arises directly out of the candidate or elected officer's activities, duties, or status as a candidate or elected officer. (Section 89514; see also Thirteen Committee v. Weinreb (1985) 168 Cal.App.3d 528, 536.) The statute states that such litigation includes, but is 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, and an action arising from an election contest or recount. (Section 89514.)

Three Commission opinions address whether funds used by candidates or officeholders to defend against litigation arising out of the candidate or officeholder's activities, duties, or status as a candidate or officeholder, are considered contributions. In the Commission opinion In re Montoya (1989) 12 FPPC Ops. 7, former Senator Montoya used campaign contributions to defend against a federal criminal indictment alleging that he improperly used the office of state senator as a vehicle to obtain payments in the form of campaign contributions. In the opinion In re Johnson (1989) 12 FPPC Ops. 1, the officeholder raised funds for his defense against a civil lawsuit which challenged his election on the grounds of unlawful conduct occurring at the polls on election day. In the opinion In re Buchanan (1979) 5 FPPC Ops. 14, the candidate raised funds in connection with his defense against a civil action which sought to have his name removed from the ballot. In addition, we have advised that campaign funds may be used to defend against alleged conflict-of-interest violations so long as the activities complained of arose directly out of the individual's activities as an elected officer. (Lanning Advice Letter, No. A-92-050.)

The grand jury accusation against Supervisor Bishop alleges the improper use of her office for campaign purposes. Counts one through eleven of the accusation charge that Supervisor Bishop improperly used county employees' time and county equipment and supplies for campaign purposes, including the following: creating and maintaining campaign mailing lists, creating and disseminating flyers and political mailers; faxing invitations to political fundraisers; delivering campaign contribution checks; copying and filing campaign contribution checks; obtaining political endorsements; circulating petitions; preparing and disseminating position statements; preparing and disseminating targeted campaign material; and attending campaign functions. Count eleven alleges that Supervisor Bishop failed to report the monetary value of these in-kind contributions received from her county staff, in violation of Sections 84200-84211. Under the Act, Supervisor Bishop may use campaign funds to defend against counts one through eleven of the accusation.

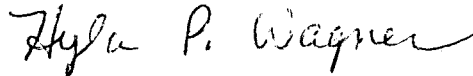
Under Section 89514, however, campaign funds may not be used to defend against charges that do not arise directly out of the candidate or officeholder's duties, activities, or status as a candidate or officeholder. For example, we have advised that a councilmember who was accused of falsifying a city government health insurance document could not use campaign contributions for his legal defense. (Breitfelder Advice Letter, No. A-95-058.)<sup>2</sup>

Count twelve of the accusation alleges that Supervisor Bishop directed her county staff employees, during regular business hours, to answer a special phone, to contact witnesses and other entities, and to prepare letters, documents and other papers, using county equipment and supplies, for work relating to Supervisor Bishop's private law practice. Supervisor Bishop may not use her campaign funds for the defense of this count. She should apportion her legal defense expenditures accordingly. Supervisor Bishop should use personal funds, or gifts (subject to the \$280 gift limit), to pay for legal costs incurred in the defense of this count.

I trust this answers your question. If you have any further questions regarding this matter, please contact me at 916/322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Hyla P. Wagner  
Counsel, Legal Division

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<sup>2</sup> Donations raised for that councilmember's legal defense fund were considered gifts to the councilmember, not contributions.