

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 18, 1997

The Honorable Ross Johnson
Senator, Thirty-Fifth Senatorial District
State Capitol
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. I-97-138**

Dear Senator Johnson:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS AND CONCLUSIONS

1. *An officeholder has pre-1997 campaign funds in a campaign account that was established for an election held prior to January 1, 1997. Those campaign funds are being used in off-election years for expenses relating to legislative or governmental purposes (officeholder expenses). Would expenditure of those pre-1997 campaign funds for such officeholder expenses count toward the voluntary expenditure limit for the officeholder's next primary campaign? (Note: the officeholder has not yet opened up a campaign committee for his/her next election.)*

The expenditure of pre-1997 funds for strictly legislative or governmental purposes (i.e., officeholder expenses) would not count toward the voluntary spending limit for the officeholder's next primary campaign. You state that the officeholder has not yet opened up a campaign committee for his or her next election. Any expenditures for the officeholder's next primary campaign must be made out of the officeholder's campaign bank account designated for that election. (Section 85201(e).)

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations. Informal assistance does not provide the requestor with immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Regulation 18525 distinguishes an incumbent elected officeholder's campaign expenses from officeholder expenses. Regulation 18525 provides as follows:

“(a) An incumbent elected officer shall make expenditures for the following campaign expenses from the appropriate campaign bank account for election to a future term of office:

(1) Payments for fundraising and campaign strategy expenses for election to a future term of office.

(2) Payments for mass mailings, political advertising, opinion polls or surveys, and other communications in connection with election to a future term of office. For purposes of this section, a mass mailing, political advertisement, opinion poll or survey, or other communication shall be considered "in connection with election to a future term of office" if it makes reference to the officer's future election or status as a candidate for a future term of office, or if it is made by an incumbent officer within 3 months prior to an election for which he or she has filed any of the following:

(A) A statement of intention to be a candidate for a specific office, pursuant to Government Code Section 85200.

(B) A declaration of candidacy or nomination papers, as specified in Chapter 5 (commencing with Section 6400) of Division 6 of the Elections Code.²

(C) Any other documents necessary to be listed on the ballot as a candidate for any state or local office.

(3) Payments for services and actual expenses of political consultants, the campaign treasurer and other campaign staff, pollsters and other persons providing services directly in connection with a future election.

(4) Payments for voter registration and get-out-the-vote drives.

(b) An incumbent elected officer may make expenditures for purposes not enumerated in subdivision (a) from either the campaign bank account established pursuant to Government Code Section 85201 for election to the incumbent term of office or from a campaign bank account established pursuant to Government Code Section 85201 for election to a future term of office. This

² This reference has changed to Chapter 1 (commencing with Section 8000) of Division 8 of the Elections Code.

section shall not be construed to permit an incumbent elected officer to make expenditures from any campaign bank account for expenses other than those associated with his or her election to the specific office for which the account was established and expenses associated with holding that office.”

The officeholder must make any campaign-related expenditures, such as those described in regulation 18525(a), from his or her campaign bank account. All campaign expenditures count towards the voluntary spending limit for the officeholder’s next primary campaign.

2. An officeholder has pre-1997 campaign funds in a campaign account created prior to January 1, 1997. (a) If those funds are used to buy computer equipment to communicate with voters on legislative or governmental issues (non-advocacy), would that expenditure count toward the voluntary expenditure limit of the officeholder's next primary campaign? (b) If that computer equipment was subsequently used on a campaign, would that expenditure count toward the voluntary expenditure limit? (Note: the officeholder has not yet opened up a campaign committee for her/her next election.)

(a) As discussed above, the expenditure of pre-1997 funds that are used to buy computer equipment for legitimate officeholder expenses would not count toward the voluntary spending limit of the officeholder’s next primary campaign. However, all expenses related to the officeholder’s next primary campaign must be made out of a campaign account designated for that election.

(b) If the computer equipment is subsequently used on a campaign, the use of the equipment for the campaign will constitute an in-kind contribution to the campaign. Because the use of the computer equipment for the campaign is a transfer between the candidate’s own committees, it would not be limited. You ask whether the campaign committee’s use of the computer equipment will count toward the candidate’s voluntary expenditure limit. The Commission does not currently require in-kind contributions to be reported as both contributions and expenditures. However, federal campaign finance law and certain other jurisdictions treat in-kind contributions as both contributions and expenditures because a campaign that receives in-kind contributions of goods or services would have had to pay for the items or services had they not been donated.

From an accounting and recordkeeping perspective, it is more accurate for in-kind contributions to be treated as both contributions and expenditures. Not counting in-kind contributions as expenditures understates a campaign’s actual expenditures. For example, if one campaign pays \$250 for copying at a copy shop and another receives \$250 worth of donated copied material, the first campaign committee will show an expenditure of \$250 whereas the other will show expenditures of zero. Given Proposition 208’s system of voluntary spending limits, the fact that a campaign’s expenditures are undercounted if the campaign receives in-kind contributions presents a problem. The Commission may consider a regulation to require that in-kind contributions be treated as both contributions and expenditures in the future. Therefore, if the officeholder uses the computer equipment on his or her upcoming campaign, the officeholder

should be advised that the fair market value of the use of the computer equipment may count against the spending limits of the election.

3. *A candidate-controlled committee owns extensive computer equipment, including hardware and software programs. May that system be sold or leased to a business entity for fair market value if that business provides computer services for profit to other political campaigns in the normal course of its daily business? Could the committee sell or lease the equipment to another candidate-controlled committee for fair market value?*

A candidate-controlled committee may sell or lease computer equipment to a business entity or another candidate-controlled committee for the fair market value of the equipment. The *Chandler* Advice Letter, No. A-92-548 (copy enclosed), discusses the disposition of campaign assets. If the business entity or candidate controlled committee pays fair market value for the computer equipment, no gift or contribution will result. (Sections 82015 and 82028; *Chandler* Advice Letter, *supra*, and *Moniz* Advice Letter, No. A-88-028.) The sale of committee assets should be disclosed as an increase to cash on Schedule I of the committee's Form 490. A candidate or committee purchasing the assets must disclose the payments as expenditures on Schedule E.

In general, the fair market value of an asset is the value that it would command in the open market, such as the sales price of a similar item. (*In re Hopkins* (1977) 3 FPPC Ops. 107; Section 82025.5.) To determine the fair market value of an asset, you may consider the price of comparable items. (*In re Cory* (1975) 1 FPPC Ops. 153.) You may wish to contact used computer dealers to get an estimate of the value of the computer equipment.

The transfer ban of section 85306 would prohibit the candidate-controlled committee from transferring the computer equipment to another candidate-controlled committee at no cost or below fair market value. In addition, the candidate-controlled committee may not transfer the computer equipment to a third party or business no cost or below fair market value, because the candidate would be making a gift of the asset to the third party, to the extent that the fair market value is not received. Section 89513(f) prohibits gifts of campaign funds unless the making of the gift is directly related to a political, legislative or governmental purpose.

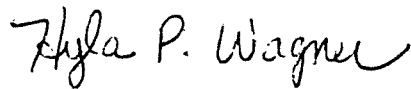
4. *A candidate has pre-1997 funds in a campaign committee for a 1998 election. Those funds are in an interest-bearing account. The candidate must pay taxes to the IRS on the interest received. Would that payment count toward the candidate's voluntary expenditure limit for the 1998 election?*

A payment from a campaign committee designated for a 1998 election to pay taxes on the interest earned on the account would count toward the candidate's voluntary spending limit for the 1998 election.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Hyla P. Wagner".

By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosure
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