



FAIR POLITICAL PRACTICES COMMISSION

December 5, 1997

Mr. Ron Peterson
Committee Treasurer
19738 Bradbury Avenue
Turlock, California 95380

**Re: Your Request for Advice
Our File No. A-97-553**

Dear Mr. Peterson:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act")¹ on behalf of the Wade Haley for City Council Committee.

QUESTION

What rules govern the expenditure of excess contributions from a November 5, 1996, city council race that the candidate "redesignated" to a 1998 election, when the candidate has moved and no longer intends to seek city office in 1998?

CONCLUSION

While the funds are not yet surplus, the candidate may spend the funds for all purposes permitted under the Act. The candidate may make donations to charitable organizations as long as the donations are reasonably related to a political, legislative or governmental purpose and do not financially benefit the candidate (see section 89515). The funds will be considered surplus when the candidate "withdraws" from the 1998 city council election upon the earliest of the following dates: when the candidate terminates his form 501 or sends a letter to the local city clerk stating that he is no longer a candidate, or when the deadline for filing nominating petitions and a declaration of candidacy for the race passes and the candidate has not filed. Within 90 days after the candidate "withdraws" from the 1998 election, he must distribute any surplus funds pursuant to section 89519 to a political party, pro rata to contributors, or to the general fund.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

FACTS

All of the campaign contributions for Wade Haley's November 5, 1996, city council election were received and deposited prior to January 1, 1997. Mr. Haley was not elected to office and as such all remaining funds in his controlled committee account were redesignated to the 1998 election prior to December 31, 1996. Therefore, these funds were not considered surplus after December 31, 1996. The Wade Haley for City Council Committee has approximately \$800 which Mr. Haley would like to contribute to a charitable organization.

Since that time, Mr. Haley has moved away from the area for work-related reasons. Because the candidate no longer lives in the area, he no longer plans to run in the 1998 city council election. Mr. Haley has not filed with the city clerk any papers regarding the November 1998, city council election.

ANALYSIS

Proposition 208 enacted a new surplus funds provision effective January 1, 1997, under which a candidate must distribute all surplus campaign funds within 90 days after his or her withdrawal, defeat, or election to office.

Section 89519 provides as follows:

“Any campaign funds in excess of expenses incurred for the campaign or for expenses specified in subdivision (d) of Section 85305, received by or on behalf of an individual who seeks nomination for election, or election to office, shall be deemed to be surplus campaign funds and shall be distributed within 90 days after withdrawal, defeat, or election to office in the following manner:

(a) No more than ten thousand dollars (\$10,000) may be deposited in the candidate's officeholder account; except such surplus from a campaign fund for the general election shall not be deposited into the officeholder account within 60 days immediately following the election.

(b) Any remaining surplus funds shall be distributed to any political party, returned to contributors on a pro rata basis, or turned over to the General Fund.”

Regulation 18519.4(a) states that “[c]ampaign funds that become surplus on or after January 1, 1997, including surplus funds from the November 5, 1996, general election, are subject to the surplus rules of Government Code section 89519.”

Under the surplus funds rule in effect prior to the passage of Proposition 208, candidates could “re designate” or transfer their surplus campaign funds from one election to a committee

formed for a future election, to prevent the funds from "becoming surplus." In contrast, Proposition 208's surplus funds rules require that a candidate "zero out" his or her campaign funds after each election. For elections that take place after January 1, 1997, candidates may not simply "redesignate" or transfer funds raised for one election cycle to a committee for a future election. The candidate must distribute surplus funds raised for one election cycle within 90 days after the election or within 90 days of the candidate's withdrawal from the election.

Under Proposition 208, the funds are no longer considered to "become surplus" on a particular date. Rather, funds raised for a particular election cycle that are in excess of campaign expenses are surplus funds. The FPPC has noticed regulations 18519.1-18519.3 which define the term "surplus campaign funds" and explain how to calculate the amount of surplus funds at the end of the campaign. These regulations will be considered for adoption at the Commission's January meeting, and copies of the draft regulations sent out in October are enclosed for your information.

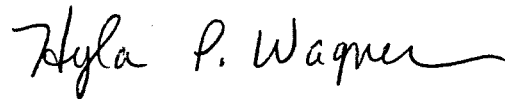
However, Proposition 208 was not in effect until January 1, 1997. As you described, the candidate "redesignated" his funds from the November 5, 1996, election to a committee for a 1998 election to prevent them from being considered surplus funds. Mr. Haley's campaign funds are not considered surplus until he withdraws from the 1998 city council race. Until the funds are considered surplus, Mr. Haley's committee may spend the funds for any purpose permitted in the Act under sections 89510-89518 concerning the use of campaign funds. (Enclosed is an outline regarding the use of campaign funds and the Act's prohibitions on the personal use of campaign funds.) Under section 89515 (enclosed), Mr. Haley may donate campaign funds to a charitable organization as long as the donation is reasonably related to a political, legislative or governmental purpose and will not financially benefit himself or his campaign treasurer.

You state that Mr. Haley no longer intends to run for city office in 1998 because he has moved out of the area. Under Elections Code section 10224, municipal candidates must file their nomination papers no later than the 88th day before the election. Because Mr. Haley was contemplating running for a city council election in November of 1998, he has not yet filed nominating petitions and a declaration of candidacy with the local city clerk. Therefore, he will be considered to "withdraw" from the 1998 race upon the earliest of the following dates: when he terminates his form 501 (Candidate Intention Statement containing the office sought, district, and date of election) or sends a letter to the local city clerk stating that he is no longer a candidate, or when the deadline for filing nominating petitions and a declaration of candidacy for the race passes and he has not filed. Within 90 days after this withdrawal date, the candidate is required to distribute his surplus funds to a political party, to contributors pro rata, or to the general fund.

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 black ink that reads "Hyla P. Wagner". The signature is written in a cursive style with a long horizontal flourish at the end.

By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosures

SGC:HW:tls