FAIR POLITICAL PRACTICES COMMISSION

February 10, 1998

Mark Matsumura
Campaign Manager
Ho Chung for State Assembly Campaign
8744 Garden Grove Blvd.
Garden Grove, California 92844

Re: Your Request for Advice
Our File No. A-98-008

Dear Mr. Matsumura:

This letter is in response to your request for advice on behalf of Assembly candidate Ho Chung regarding the campaign provisions of the Political Reform Act (the "Act").[1]

QUESTIONS

1. May City Councilmember Ho Chung, who is running for the California Assembly, distribute his autobiography to city residents?

2. May the city councilmember use personal funds to publish an English version of his autobiography?

CONCLUSIONS

1. The Act does not prohibit the councilmember from distributing his autobiography to city residents. However, the Act does require the councilmember to disclose this activity as a nonmonetary contribution to either his committee established for his previous city council election or his committee established for the future Assembly election.

2. The Act may require the councilmember to use campaign funds for expenses related to the publication of the English version of his autobiography.

---

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

FACTS

You represent Garden Grove City Councilmember Ho Chung who is running for the California Assembly. Independent from his political campaign for the Assembly, Councilmember Chung would like to distribute his autobiography to city residents. The books that will be distributed are extra complimentary copies written in Korean. In addition, the councilmember plans to publish an English version of the autobiography and distribute those to city residents.

ANALYSIS

Nothing in the Act prohibits the councilmember from distributing his autobiography to city residents. However, as a member of the city council, the councilmember must file campaign statements disclosing the contributions he has received and expenditures he has made related to holding office. (Sections 84200, 84201.) In addition, as a candidate for the Assembly, the councilmember must report the contributions he has received and expenditures he has made related to that candidacy. (Sections 84200, 84201.)

Korean Version of the Autobiography

The Act defines a "contribution" as a payment made for political purposes for which full and adequate consideration is not received. (Section 82015(a); Regulation 18215(a).) A payment is made for political purposes if it is made for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate. (Regulations 18215(a)(1), 18225(a)(1).)

A contribution also includes a candidate's own money or property used on behalf of his or her candidacy. (Section 82015(c); Regulation 18215(b)(2).) In addition, a contribution includes an elected officer's own money or property used on behalf of his or her status as an officeholder if the officeholder does not receive reimbursement from his committee within a 90-day time period. (Section 89511.5(d).)

The councilmember wants to distribute his autobiography to city residents in order to show his gratitude for their support to him *as a city councilmember*. Because the councilmember is using his personal property (i.e., extra copies of his autobiography) on behalf of his status as an officeholder and it does not appear that he will be seeking reimbursement, he must report this activity as a nonmonetary contribution to his campaign committee established for the previous city council election.

However, if the autobiography is distributed at any event that makes reference to the councilmember's bid for the Assembly, or if the autobiography, or any writing enclosed with the autobiography, makes reference to the councilmember's bid for the Assembly, the

councilmember will be required to report the distribution of the autobiography as a nonmonetary contribution to his committee established for the future Assembly election instead. (Section 89511.5(e); Regulation 18525(b).)

English Version of the Autobiography

Councilmember Chung intends to publish an English version of his autobiography. You would like to know whether he may use his personal funds to publish the English version. Section 85201 provides that any personal funds used by a candidate to promote his or her election must be deposited in his or her campaign bank account prior to the expenditure. (Section 85201(d).)

However, the Act also provides that an incumbent may use personal funds for officeholder expenses without depositing the funds in the campaign bank account if two conditions are met: 1) the expenditures are not campaign expenses, and 2) the treasurer of the committee is provided with a dated receipt and a written description of the expenditures. (Section 89511.5(a).)

For purposes of section 89511.5, "campaign expenses" include payments for: fundraising and campaign strategy expenses, political consultants, campaign treasurers, pollsters, campaign staff, mass mailings, political advertising, opinion polls or surveys, and other communications that make reference to the officer's future election or status as a candidate for a future term of office, or is made by an incumbent officer within three months prior to an election for which he or she has filed candidacy papers. (Regulation 18525, see *Morrissey* Advice Letter, No. A-95-388 [applying the definition of "campaign expenses" in regulation 18525 to determine whether an assemblymember could use personal funds to pay for a trip to Vietnam].)

Accordingly, if the English version of the autobiography (or any accompanying materials) makes reference to the councilmember's bid for the Assembly or is distributed within three months prior to the primary or general election, the expenses related to its publication will be considered "campaign expenses" as defined in regulation 18525. In such case, the councilmember will be required to deposit his personal funds into his campaign committee established for the future Assembly election before he may use such funds to pay the publication expenses. In addition, the committee will be required to report the receipt of the personal funds as a contribution and the payment of the publication expenses as an expenditure.

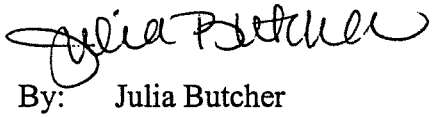
On the other hand, if the publication of the English version of the autobiography is not a "campaign expense" as defined in regulation 18525, the councilmember may use his personal funds to publish the book without depositing such funds in his campaign bank account. Under such circumstances, if the councilmember does not receive reimbursement from his committee within 90 days of the expenditure or within 90 days of the end of the billing period for a credit card or charge account expenditure, the expenditure of his personal funds must be reported as a

nonmonetary contribution to his committee established for the previous city council election. (Section 89511.5(d).) If the councilmember does receive reimbursement from his committee, the committee must disclose the reimbursement as a committee expenditure.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Staff Counsel, Legal Division

SGC:JB:tls