FAIR POLITICAL PRACTICES COMMISSION
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March 25, 1999

Mark Sellers
City Attorney
City of Thousand Oaks
2100 Thousand Oaks Boulevard
Thousand Oaks, California 91362-2903

Re: Our File No. G-99-045

Dear Mr. Sellers:

This letter is in response to a request for advice by a third party who resides in your jurisdiction regarding the provisions of your local campaign finance ordinance and the Political Reform Act (the "Act").[1] Since the Commission does not provide advice to third parties, we are issuing our written response to you. (Regulation 18329(c)(4)(C).)

In a previous advice letter, we provided comments to the City of Thousand Oaks regarding its campaign finance ordinance in the *Dillon* Advice Letter, No. I-98-168. We recently received a request from your jurisdiction regarding a specific provision of the ordinance relating to its restrictions on when campaign contributions may be received. We are providing you our comments regarding that issue.

The specific inquiry is whether it is legal for a local campaign finance ordinance to outlaw officeholder accounts. Presumably this is in reference to section 1-13.03(b) of the ordinance, which prohibits an elected officer from raising funds for officeholder expenses during a specified time period. We recognize that the Commission does not have jurisdiction to comment on the validity of local ordinances. However, the Commission may determine whether a local ordinance conflicts with the Act. As discussed below, it does not appear that section 1-13.03(b) conflicts with any provision of the Act since the Act explicitly permits local jurisdictions to establish more stringent contribution laws, and the prohibition does not prevent local candidates from complying with the requirements of the Act.

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

ANALYSIS

The City of Thousand Oaks recently passed a campaign finance ordinance (Ordinance No. 1325-NS), which went into effect on August 13, 1998. Section 1-13.03(b) of the ordinance provides:

> "(1) No candidate...shall accept any contributions more than six calendar months prior to any election in which the candidate is attempting to be on the ballot or is a write-in candidate...
>
> "(2) No candidate...shall accept any contributions after the earlier of: (i) 90 days after the date of their candidate's withdrawal as a candidate, defeat or election to office; or (ii) the date on which outstanding bills or debts owed by the candidate or committee are paid in full. Contributions received during such 90 day period shall be used only to pay outstanding bills or debts owed by the candidate or committee for that election....
>
> "(3) If, at the end of the period...there remains any unexpended balance in the campaign bank account of any such candidates or committees, such unexpended funds remaining in the account shall be disposed of by either returning the funds to contributors *pro rata* or turning such funds over to the General Fund..."[2]

The Act contains several provisions regarding the implementation of local ordinances. (Sections 81009.5, 81013, and 85101.) Generally, if a local law conflicts with the Act, it is superseded. (Section 81013.) The Act does not, however, prevent local jurisdictions from either imposing lower contribution limits or from imposing additional requirements, if such laws do not prevent candidates from complying with the Act. (Sections 81013 and 85101.)

Under the Act, an elected officer may maintain a campaign bank account established for the previous election for officeholder expenses. (Section 89512.) After the election, the officer may continue to raise funds for such expenses. The Act currently refers to "surplus funds" as campaign funds remaining in a candidate's campaign account upon leaving elected office, or at the end of the post-election reporting period following the candidate's defeat for elective office, whichever occurs last. (Section 89519.) Surplus funds may only be used for certain enumerated expenditures. (Section 89519(a).) Campaign funds do not become surplus if a candidate redesignates his or her campaign account for a future election.

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[2] We note that although the question concerns officeholder accounts, the ordinance does not permit the establishment of a separate campaign bank account. Therefore, it is unnecessary to address a possible conflict with the Act's "one bank account rule." (Sections 85200 and 85201.)

In contrast, section 1-13.03(b) of the city's ordinance places restrictions on when an officeholder may receive contributions. Under the ordinance, an officeholder may only receive contributions within six months before an election in which the officer is a candidate. The ordinance further provides that a candidate may not accept contributions 90 days after the election, or the date on which the candidate pays all outstanding debts, whichever is earlier. Moreover, any contribution received after the election must be used to pay the candidate's debts. If there are any campaign funds left at the end of the specified time period, such funds must be returned to contributors on a pro rata basis or deposited in the city's general fund. These restrictions operate to prohibit local officeholders from raising funds for officeholder expenses during the specified time period.

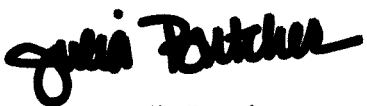
An elected officeholder is not required by the Act to spend excess campaign funds on expenses associated with holding office in order to comply with the provisions of the Act. (*Riddle* Advice Letter, No. I-89-536, copy enclosed.) Moreover, with respect to contribution limitations and restrictions, the Act specifically allows local jurisdictions to enact provisions that are more stringent than the provisions in the Act. (Section 85101.) Accordingly, the Act does not supersede the ordinance's prohibition against officeholder accounts.

Please note that the Act was amended by the California Political Reform Act of 1996 ("Proposition 208"), which became effective on January 1, 1997. The Commission is presently enjoined from enforcing the provisions of Proposition 208. (*California Prolife Council Political Action Committee v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282.) Therefore, we do not address whether the local ordinance prohibition against officeholder accounts conflicts with the Act as amended by Proposition 208.

If you have 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

cc: Daryl Reynolds

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