



## FAIR POLITICAL PRACTICES COMMISSION

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June 16, 1999

Joyce M. Hicks  
Assistant City Attorney  
City of Oakland  
One City Hall Plaza, 6th Floor  
Oakland, California 94612

**Re: Your Request for Advice  
Our File No. I-99-120**

Dear Ms. Hicks:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Consistent with Government Code section 85201, may an officeholder open an additional campaign account for a future election and use that account for his or her officeholder fund?
2. The Oakland Campaign Reform Act states that a contribution will not be considered to be received if it is not deposited and is returned to the donor within 72 hours. What is the state law deadline for deposit of contributions?

### CONCLUSIONS

1. Yes, an officeholder may maintain his or her campaign committee and account from the most recent election until all debts from that election are paid off, and open a new committee and account for a future election to use for officeholder contributions and expenditures.

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

2. State law does not have a specific deadline for deposit of contributions. State law provisions concerning the receipt and deposit of contributions are discussed below.

### FACTS

The City of Oakland has a campaign reform act that limits campaign contributions and establishes voluntary campaign expenditure ceilings. The Oakland Campaign Reform Act also provides for the establishment and maintenance of an officeholder account. (Oakland Municipal Code section 3.12.150.)

You are requesting that the Commission reconsider the advice we provided to you in the *Hicks* Advice Letter, No. I-95-331. That letter concluded that the officeholder account provisions of the Oakland ordinance conflicted with requirements of state law because the Oakland ordinance permitted candidates to set up a campaign committee and account, and a separate officeholder account and legal defense fund account in connection with the same election. This conflicted with the state law requirement that a candidate may only set up one bank account and one committee per election. The letter went on to suggest a method of segregating officeholder funds from campaign funds that was cumbersome.<sup>2</sup>

You ask whether instead of keeping the officeholder funds in a savings account associated with the campaign checking account and bringing them in and out through the campaign account, a local official can set up a committee and account for a future election and use that for officeholder expenses. You also ask what the deadline for depositing contributions is under state law.

### ANALYSIS

**1. Officeholder Accounts.** The "one bank account" rule of section 85201 came into state campaign finance law as part of Proposition 73, adopted by the voters in June 1988. Section 85201 provides that all contributions or loans made to a candidate, or the candidate's controlled committee, shall be deposited in a single campaign bank account.

State law does not have a separate provision authorizing officeholder accounts or legal defense funds. In this respect it differs from many local laws in California that specifically provide for such accounts, and may set separate contribution limits for the campaign and for the

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<sup>2</sup> We regret if our attempt to reconcile state law and the Oakland ordinance in that letter led to an awkward procedure for officeholder expenses in Oakland, and appreciate your writing in concerning an alternate procedure. While the conclusion in the *Hicks* Advice Letter, No. I-95-331, that the Oakland statute's provision for two separate accounts in connection with one election conflicted with state law is not incorrect, for the sake of clarity that letter is superseded.

officeholder account. Meshing the state's one bank account rule with local jurisdictions' rules for campaign accounts and officeholder accounts has sometimes proved difficult. Particularly following the enactment of Proposition 73, there was tension between the state's one-bank account rule and the rules of some local jurisdictions that authorized or required a candidate to have multiple accounts for a single election. The one-bank account rule initially operated together with the trust provisions of section 89510 (formerly numbered section 85202), which stated that all contributions to a candidate are deemed to be held in trust for expenses associated with one particular election and the expenses of holding that office.

For example, the *Riddle* Advice Letter, No. A-88-409, addressed the effects of Proposition 73 on San Francisco's campaign ordinance, and in particular, on local candidate's "Friends Committees" which were commonly used for officeholder funds. The letter concluded that because section 85202(b) of Proposition 73 provided that each state and local candidate may have one controlled committee, friends committees had to be assimilated into the single controlled committee allowed for each candidacy. Similarly, the *Gallo* Advice Letter, No. I-88-454, assessed Proposition 73's impact on the San Jose campaign ordinance which provided for separate campaign and officeholder accounts. It concluded that a local elected official could not have a campaign committee and officeholder committee for the same election.

In the litigation challenging Proposition 73, the ban on transfers among a candidate's own committees was struck down. (*Service Employees International Union v. Fair Political Practices Commission*, 955 F.2d 1312 (9<sup>th</sup> Cir. 1991), affirming *Service Employees International Union v. Fair Political Practices Commission*, 747 F.Supp. 580, 591 (E.D. Cal. 1990).) The Commission modified its interpretation of the trust provisions of section 89510 in response to these cases. (*Leidigh* Advice Letter, No. I-92-547; *Dorman* Advice Letter, No. I-91-253.)

In light of these changes, the one bank account rule is currently interpreted to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each specific election. Thus, despite the one bank account rule, a candidate may have numerous bank accounts/committees open simultaneously if the candidate keeps a bank account/committee from a previous election open and establishes bank accounts/committees for future elections.

A common practice among statewide and state legislative officeholders is to keep the bank account and committee from their most recent election open and use it for officeholder expenses. They then open an account/committee for a future election to use as their campaign account/committee for the upcoming election.

You informed me that in Oakland a candidate is required to keep separate his or her old account with debt from a previous election, so that using the old campaign account for an officeholder account is not convenient for Oakland officeholders. That is why you are asking if local officials can open a committee and an account for a future election and use it for

officeholder funds. They may do so under state law.<sup>3</sup> Regulation 18525(b), copy enclosed, states that an incumbent elected officer may make officeholder expenses "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."

**2. Deposit and Return of Contributions.** As to returning contributions, the Oakland Campaign Reform Act provides as follows:

"A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and in addition, it is returned to the donor within seventy-two (72) hours of receipt. In the case of a late contribution as defined in Government Code Section 82036, it shall not be deemed received if it is returned to the contributor within forty-eight (48) hours of receipt." (Oakland municipal code section 3.12.070.)

Candidates and treasurers have told you that Oakland's 72 hour deadline can be difficult to meet and that the time frames are not as tight under state law. State law does not have a particular deadline for the deposit of contributions. The time frames for the return of contributions under state law, however, are longer than the deadlines specified in the Oakland ordinance (except with respect to late contributions).

On the state level, regulation 18421.1 (copy enclosed) describes when contributions are "made" and "received." Regulation 18421.1(c) states when a monetary contribution is received:

"(c) A monetary contribution is "received" on the date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made. All contributions received by a person acting as an agent of a candidate or committee shall be reported to and disclosed by the candidate or committee, or by the committee's treasurer, no later than the closing date of the next campaign statement that the committee or candidate is required to file.

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<sup>3</sup> We gave similar advice in the *Mendoza* Advice Letter, No. A-93-255, which stated: "Under the Act, Mayor-Elect Riordan is prohibited from maintaining separate officeholder and election accounts in connection with his 1993 election. However, he would be permitted to accept contributions and make expenditures for both officeholder expenses and to retire campaign debts from his current 1993 election account. He also would be permitted to open a new account for reelection purposes and pay officeholder expenses from that account."

(f) The standards for when a contribution is "made" and "received" set forth in this section are not applicable where a contribution is disposed of pursuant to Government Code Sections 84211(q), 84203(c), or California Code of Regulations, Title 2, Section 18531."

The required contents of campaign reports are spelled out in section 84211. Section 84211(q) states:

"A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported."

Under the Act, a late contribution must be reported within 24 hours of the time it is received. (Section 84203.) However, section 84203(c) provides that a "late contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated or deposited and is returned to the contributor within 24 hours of its receipt."

In addition, Commission regulation 18531, adopted in 1989 to implement the contribution limits of Proposition 73, provides for the return of contributions received in excess of limits. Because there are no statewide contribution limits now in effect except for special elections, this regulation only applies to special elections. (Section 85305.) It provides a monetary contribution that exceeds the special election limits shall be deemed not to have been accepted if it is returned prior to deposit, within 14 days of receipt.<sup>4</sup>

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<sup>4</sup> Finally, regulation 18523 also contains rules about the deposit of contributions in situations where a candidate has more than one controlled committee. It states that if a contributor makes a contribution to a candidate with more than one controlled committee and does not designate the contribution for a particular committee, the candidate or treasurer may allocate the contribution to any one of the candidate's controlled committees. In this case, the regulation provides that a "monetary contribution shall be reported in the campaign statement for the reporting period in which it is received, and shall be deposited in the campaign bank account for the controlled committee to which it is being allocated within 30 days of receipt."

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 Wagner". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

By: Hyla P. Wagner  
Staff Counsel, Legal Division

Enclosures

SGC:HPW:tls