



FAIR POLITICAL PRACTICES COMMISSION

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February 20, 2002

C. April Boling, CPA
7185 Navajo Road, Suite L
San Diego, CA 92119

Re: Your Request for Advice
Our File No. A-01-223

Dear Ms. Boling:

This letter is in response to your request for advice on behalf of Assemblymember Charlene Zettel regarding the personal loan provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May Assemblymember Zettel lend to her campaign the proceeds of a loan that she intends to obtain from a commercial lending institution, for which she will be personally liable, in addition to the \$100,000 in personal funds that she intends to personally lend to her campaign?
2. Would the loan secured by the candidate's and her spouse's residence be reported as a loan from the bank?
3. May the loan proceeds from the bank be deposited directly into the campaign account or may they be deposited to a joint checking or savings account, and then moved to the campaign account?
4. Must the interest payments on the loan be made from the campaign account?

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

CONCLUSIONS

1. Yes. The proceeds of a loan made to a candidate by a commercial lending institution for which the candidate is personally liable, made in the lender's regular course of business on terms available to members of the general public, which the candidate then lends to his or her campaign do not count toward the \$100,000 loan limit of Government Code § 85307(b).²

2. Yes. Because the bank is the *original source* of the loan, it would be reported as the lender on Form 460, Schedule B.

3. The loan proceeds may be deposited directly into the campaign bank account, or they may first be deposited into a joint checking or savings account and then moved to the campaign account. However, if the loan proceeds are first deposited to a joint account and then moved to the campaign account, the provisions of regulation 18533 must be followed.

4. Yes. Regardless of whether the committee pays the interest directly, or whether the candidate pays the interest with personal funds, the money with which the interest is paid must first be deposited to the campaign bank account, and the interest paid from that account.

FACTS

Assemblymember Charlene Zettel intends to establish a candidate committee for the state Senate and to personally lend the Senate committee \$100,000. Assemblymember Zettel also intends to obtain a bank loan collateralized by the residence that she and her husband own as community property. The funds obtained from the loan will be used solely for political purposes, i.e., for her committee to be established for state Senate. It is assumed that the proceeds of that loan will be payable jointly to the Assembly member and her husband. The amount of the bank loan secured by her and her husband's residence will then be loaned to her Senate committee, in addition to the \$100,000 she is personally lending to the committee.

ANALYSIS

- 1. May Assemblymember Zettel lend to her campaign the proceeds of a loan that she intends to obtain from a commercial lending institution, for which she will be personally liable, in addition to the \$100,000 in personal funds that she intends to lend her campaign?**

At its meeting on January 10, 2002, the Commission adopted regulation 18530.8,³ which implements section 85307 and expressly addresses the issue of whether the

² All further statutory references are to the Government Code, unless otherwise specified.

³ Regulation 18530.8 is in the rulemaking process. Although adopted by the Commission, it is not yet effective. However, the regulation expresses the Commission's policies regarding section 85307.

proceeds of loans obtained from a commercial lending institution are counted against the \$100,000 personal loan limit imposed by section 85307(b). Specifically, regulation 18530.8(c) states:

“(c) The proceeds of a loan made to a candidate by a commercial lending institution for which the candidate is personally liable, pursuant to the terms of subdivision (a) of Government Code section 85307, which the candidate then lends to his or her campaign do not count toward the \$100,000 loan limit of subdivision (b) of Government Code section 85307.”

Therefore, Assemblymember Zettel may lend the proceeds of her bank loan to her Senate committee, in addition to the \$100,000 in personal funds that she intends to lend to her campaign.

2. Would the loan secured by the candidate’s and her spouse’s residence be reported as a loan from the bank?

Yes. The instructions to Form 460, Schedule B state:

“For each loan of \$100 or more that was received or was outstanding during the reporting period, disclose the lender’s name and address. Report the original source of all loans received. *E.g., for a loan from a commercial lending institution for which a candidate is personally liable, report the lending institution as the lender.*”

3. May the loan proceeds from the bank be deposited directly to the campaign account or may they be deposited into a joint checking or savings account, and then moved to the campaign account?

The loan proceeds may be deposited directly to the campaign account or may be deposited into a joint checking or savings account, and then moved to the campaign account. Section 85201(c) requires all contributions and loans to the candidate’s controlled committee to be deposited in the campaign bank account. Further, sections 85201(d) and (e) provide:

“(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

“(e) All campaign expenditures shall be made from the account.”

Therefore, prior to their use for campaign expenditures, the loan proceeds must first be deposited in the campaign account. If the loan proceeds are first deposited into a joint checking or savings account and then moved to the campaign account, then the provisions of regulation 18533 must be followed.

Regulation 18533 provides:

“(a) A contribution made from a checking account by a check bearing the printed name of more than one individual shall be attributed to the individual whose name is printed on the check and who signs the check, unless an accompanying document directs otherwise. The document shall indicate the amount to be attributed to each contributing individual and shall be signed by each contributing individual whose name is printed on the check. If each individual whose name is printed on the check signs the check, the contribution shall be attributed equally to each individual, unless an accompanying document signed by each individual directs otherwise.

“If the name of the individual who signs the check is not printed on the check, an accompanying document, signed by the contributing individuals, shall state to whom the contribution is attributed.”

Therefore, in the event the proceeds of a bank loan are first deposited into a joint checking account and are then moved to the campaign account, either the candidate, alone, must sign the check, or the check must be accompanied by a document indicating that the entire amount of the check is to be attributed to the candidate.

4. Must the interest payments on the loan be made from the campaign account?

Section 85201 requires that every campaign contribution or expenditure be run through the campaign's bank account. Interest paid on loans made to the committee are campaign expenditures, which must be made from the campaign account. If the candidate wishes to pay the interest with personal funds, those funds must first be deposited to the campaign account, at which time they become an additional contribution from the candidate to her campaign, which may not be reimbursed. (Reg. 89511.5; *See also, McConnell Advice Letter, No. A-95-047.*) The interest may then be paid from the campaign account. In the alternative, the interest on the loan may be paid directly from campaign funds.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in cursive script that reads "Holly B. Armstrong".

By: Holly B. Armstrong
Staff Counsel, Legal Division

HBA:jg
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