



FAIR POLITICAL PRACTICES COMMISSION

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June 21, 2002

Helen S. Kawagoe, MMC
City of Carson
Post Office Box 6234
Carson, CA 90749

**Re: Your Request for Advice
Our File No. A-02-109**

Dear Ms. Kawagoe:

This letter is in response to your request for advice regarding the use of campaign funds under the personal use provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May Mayor Daryl Sweeney establish a separate legal defense fund?
2. May he use his existing committee and campaign bank account for his legal defense?

CONCLUSIONS

1. No, the one-bank-account rule only allows a candidate for elective office to have one campaign bank account and one controlled committee for each specific election, not an additional legal defense fund.
2. Yes, Mayor Sweeney may use his existing committee and campaign bank account for his legal defense if he is defending against allegations arising directly out of his activities, duties, or status as an elected officer.

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

FACTS

You write on behalf of Mayor Daryl Sweeney, who would like to transfer funds² from his mayoral campaign committee to a legal defense fund. Per a May 6, 2002, telephone conversation, you added that there are no local campaign finance ordinances in effect. During this conversation, you also mentioned that there is an on-going FBI investigation of Mayor Sweeney and several members of the city council, although no one has been served with papers as of yet.

ANALYSIS

1. Officeholder Accounts.

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. This section is known as the "one-bank-account" rule. State law allows for candidates for elective state office or an elected state officer to have officeholder accounts or legal defense funds, however, none of these provisions apply to local candidates.³ (Section 85304; regulation 18530.4; *In re Pelham* (2001) 15 FPPC Ops. 1.)

2. Use of Campaign Funds.

We begin our analysis by noting that campaign funds are not the personal property of the candidate. (Section 89510; see also 66 Ops. Cal. Atty. Gen. 331 (1983) - opinion on the disposition in a will of an officeholder's surplus campaign funds.) Rather, campaign funds are deemed to be held in trust for payment of expenses associated with election and holding office. (*Id.*) The Act provides that expenditures are within the lawful scope of the trust if they are reasonably related to a "political, legislative or governmental purpose." (Section 89512.) Where an expenditure confers a substantial personal benefit on a candidate, the expenditure must be directly related to a political, legislative or governmental purpose. (*Id.*)

The payment of a candidate's attorney fees would confer a substantial personal benefit on a candidate. Section 89514 of the Act provides:

"Expenditures of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly

² In your letter, you refer to "surplus funds." Surplus funds are defined in section 89519. Since the Mayor is still in office, the funds are not yet surplus.

³ Please note that transfers of funds among a candidate's committees are allowed. (*Service Employees International Union v. Fair Political Practices Commission*, 955 F.2d 1312 (9th Cir. 1991), affirming *Service Employees International Union v. Fair Political Practices Commission*, 747 F.Supp. 580, 591 (E.D. Cal. 1990).) Also see section 89519(a)(6).

out of a committee's activities or out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action arising from an election contest or recount."

Thus, under section 89514, the Commission has advised that campaign funds may be expended for legal advice prior to commencement of an action (*Richter* Advice Letter, No. I-93-355); campaign funds may be expended for defense of a conflict-of-interest charge (*Lanning* Advice Letter, No. A-92-050); and, campaign funds may be used in defense of a complaint lodged with the Federal Elections Commission even though it is not one of the actions enumerated in the statute for which campaign funds may be used. (*Bagatelos* Advice Letter, No. A-94-091.) Additionally, under section 89513(c)(2), campaign funds may be expended for the payment of fines arising from violations of state or local campaign, disclosure, or election laws.

Accordingly, whether or not attorney's fees associated with the defense of a federal violation may be paid with campaign funds depends on the facts of each case. The rationale to apply to determine if there is a direct relationship is found in the Commission opinion *In re Montoya* (1989) 12 FPCC Ops. 7. The relationship between the lawsuit and the office sought or held by the public official determines if the legal expenditure is directly related to the candidate or officeholder's "activities, duties, or status."

According to your facts, Mayor Sweeney wishes to use his campaign funds to pay for legal expenses in contemplation of litigation based on an FBI investigation of him and several members of the city council. It is unclear if this investigation of potential violations arises directly out of the mayor's activities, duties, or status as an officer.

If it does directly relate, then there are policy reasons for allowing an elected officer to obtain legal advice even prior to the commencement of formal proceedings against the officer, in order for the elected officer to perform his governmental duties more effectively. This would include expenditures in contemplation of litigation, such as expenditures for investigations and efforts to settle a complaint before litigation. (*Brown* Advice Letter, No. I-91-048.) Therefore, use of campaign funds to pay the attorney fees and other costs associated with this activity in response to the FBI investigation would be permitted if the potential violation arises directly out of the mayor's activities, duties, or status as an officer.

However, campaign funds may not be used to defend against charges that do not arise directly out of the candidate or officeholder's duties, activities, or status as a candidate or officeholder. For example, we have advised that a council member who was accused of falsifying a city government health insurance document could not use

campaign contributions for his legal defense. (*Breitfelder* Advice Letter, No. A-95-058.)⁴ This was because while the actions in question related to employment, the actions related to any employment or any employee with health insurance and was not based on the fact that the individual was a public official.

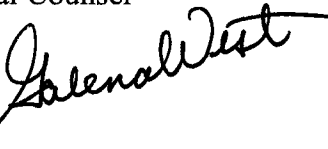
Additionally, Mayor Sweeney may also raise funds for this account on an on-going basis. An elected official currently holding office may maintain his or her campaign bank account, used to gain election to the term of office for the purpose of collecting funds, specifically to defray the costs of the election campaign for his or her current term of office, and the costs of holding that term of office. (Section 85201; regulations 18520 and 18521.) This would include paying litigation expenses that may be paid with campaign funds. (Section 89514.) Moreover, the Act does not set a specific time frame for raising funds. Thus, an officeholder may continue to raise funds for officeholder expenses. (*Danner III* Advice Letter, No. A-96-109.)

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

Sincerely,

Luisa Menchaca
General Counsel

By:



Galena West
Staff Counsel, Legal Division

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⁴ Donations raised for that council member's legal defense fund were considered gifts to the council member, not contributions.