



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

September 27, 2002

Aldo Giacchino
AG Consulting Services
1005 Pelton Avenue
Santa Cruz, California 95060

**Re: Your Request for Advice
Our File No. A-02-235**

Dear Mr. Giacchino:

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

QUESTION

With respect to legal expenses incurred in your attempt to eliminate two candidates from the City of Santa Cruz ballot for city council, should the payments for these legal expenses be made from your campaign bank account, or may you use your personal funds without first placing the funds in your campaign bank account and reporting their use on your campaign statements?

CONCLUSION

Because payments for these legal expenses constitute campaign expenditures under the Act, they must be paid for from your campaign bank account and reported on your campaign statements.

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

FACTS

You are a candidate for city council. In your capacity as a private citizen, however, you are challenging the eligibility of two other candidates because you believe that they do not meet the local term-limits requirements. You wish for your campaign committee to have no role in this matter and plan to use only personal funds rather than campaign funds to pursue the challenge.

ANALYSIS

Under the Act, a candidate is required to file campaign statements disclosing contributions received and expenditures made. (Sections 84200 - 84213.) Most pertinent to your question is the definition of "expenditure" which is defined under the Act as any payment made for political purposes. (Section 82025.) Under regulation 18225, a payment is made for political purpose when it is "[m]ade by: [a] candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy...." (Regulation 18225(a)(2)(A.) In the *Buchanan* Opinion, the Commission asserted that under certain circumstances, litigation costs are

"...as key to the success of the campaign as traditional campaign costs such as mailings and media advertisements. When expenditures are . . . aimed at keeping a candidate or measure off the ballot . . . the expenditures are made for the purpose of influencing the outcome of the election in favor of or against a particular candidate or measure and should be reported." (*In re Buchanan* (1979) 5 FPPC Ops. 14)
(Copy enclosed.)

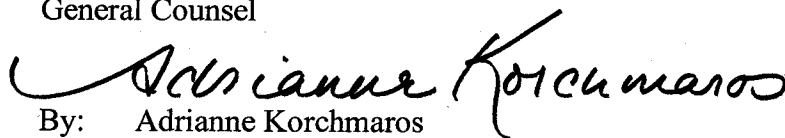
Eliminating two opposing candidates from a ballot on which you are also a candidate would presumably increase the chances that you will be elected. Therefore, because the circumstances surrounding your legal expenses cannot be said clearly to be for personal purposes unrelated to your candidacy, the payments will be "expenditures" as that term is defined in the Act and, as campaign expenditures, they must be made from your campaign bank account under section 85201(e). To the extent that your personal funds are used to pay for the expenses, the funds must be deposited in the campaign account prior to making the expenditure under section 85201(d).²

² See also regulation 18215(b)(2) which states that "[t]he term 'contribution' includes: . . . [a] candidate's own money or property used on behalf of his or her candidacy." The term "contribution" includes loans made by the candidate to the committee. (Section 82015.)

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 black ink, reading "Adrienne Korchmaros". The signature is written in a cursive style with a large, sweeping initial 'A'.

By: Adrienne Korchmaros
Political Reform Consultant

Enclosure
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