



FAIR POLITICAL PRACTICES COMMISSION

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August 7, 2003

Wayne Ordos
915 L Street, Suite 1130
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-03-144**

Dear Mr. Ordos:

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

QUESTION

May surplus campaign funds be donated to charity?

CONCLUSION

Surplus funds may be donated to a charity so long as that entity is a bona fide charitable tax-exempt nonprofit organization and the donation will not have a material financial effect on the former candidate or official.

FACTS

You seek advice regarding the proper distribution of surplus funds from a campaign account of a former Kern County supervisor, now deceased. You represent his former committee treasurer, Judith Austin. The supervisor's widow, through Ms. Austin, has requested that the surplus funds from the campaign account be distributed among various entities.

ANALYSIS

You ask whether any of the funds in question may be donated to charity, used for civic projects such as a foster care transitional program and various educational and civic improvement projects in the community. We have advised that campaign funds

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

belonging to a candidate become surplus immediately upon the candidate's death. (*Mastrantonio* Advice Letter, No. I-91-561.)² Generally, surplus funds may be used for charitable purposes, which may include those described here. However, section 89519 specifies that such donations for charitable purposes be directed to bona fide tax-exempt organizations.

A civic improvement project, law enforcement program, or even a youth scholarship may or may not fall under the auspices of a bona fide tax-exempt organization. There are corporate and other for-profit business interests that sponsor youth scholarships or civic improvements as part of giving back to the community. Moreover, private fundraising by for-profit entities has occurred in some communities in order to purchase equipment for local police departments. Thus, we have advised that surplus funds could not be channeled to these endeavors since the sponsoring organizations are not bona fide tax-exempt organizations. (See *Johannessen* Advice Letter, No. I-02-292.)

Thus, surplus campaign funds may be donated to a nonprofit organization as long as: (1) the recipient organization is a bona fide charitable, educational, religious, or similar tax-exempt nonprofit organization under Section 501(c)(3) of the Internal Revenue Code or civic organization under Section 501(c)(4) of the Code, and (2) no substantial part of the proceeds of the donation will have a material financial effect on the former candidate or official, his or her immediate family, or campaign treasurer. (§ 89519; *Roche* Advice Letter, No. G-95-112.) You will have to apply these rules to each organization to which a contribution may be made.

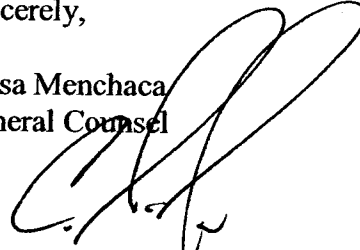
While the Commission has not defined the term "material financial effect" in the context of uses of campaign funds, it has by analogy, applied an analysis similar to that used in the Act's regulation of conflicts of interest. (*Spillane* Advice Letter, A-95-071; and *Spain* Advice Letter, I-90-410.) Generally, Commission regulations find that a transaction has a material financial effect on an official if it increases his or her income or assets by \$250 or more. (See reg. 18705.5(a).) Therefore, if a donation of surplus campaign funds would increase the income or assets of the elected official, his immediate family, or his campaign treasurer by \$250 or more, the donation will be prohibited. (*Weiss* Advice Letter, No. A-91-158; *Spain* Advice Letter, *supra*; and *Statham* Advice Letter, I-89-690.) In light of the fact that the former supervisor is deceased, it does not appear that the donations you describe would violate this rule, at least with respect to the former candidate.

² The Commission is in the process of reevaluating staff advice on this point. At a prenotice hearing on regulation 18951, governing surplus funds, in June of this year, the Commission made a preliminary decision to overturn this advice. Currently, draft regulation 18951 includes language that states a deceased candidate's campaign funds become surplus "on the earlier of either June 30 or December 31 following the candidate's death." (Proposed reg. 18951, subd. (a)(3).) The regulation is set for adoption at the August 11, 2003, Commission meeting. The staff memorandum and draft regulation may be found under the "Agendas" link on the Commission's website, www.fppc.ca.gov.

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, appearing to read 'C. Scott Tocher', written over the printed name of the signatory.

By: C. Scott Tocher
Counsel, Legal Division

CST:jg
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