



FAIR POLITICAL PRACTICES COMMISSION

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February 4, 2004

Thomas W. Hiltachk
Bell, McAndrews, Hiltachk &
Davidian, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-04-006**

Dear Mr. Hiltachk:

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

QUESTION

May the Governor use campaign funds belonging to his 2006 re-election campaign committee to pay for temporary accommodations while staying in Sacramento?

CONCLUSION

If Governor Schwarzenegger's trips to Sacramento are directly related to governmental or legislative purpose, defined in the Act as meeting the standard for deducting business travel set forth in the Internal Revenue Code, then Governor Schwarzenegger may use campaign funds from his 2006 Governor's election account to pay for his hotel room for a period not to exceed one year.

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

FACTS

Although most states provide a residence for the Governor in the state capitol, the State of California has not provided such a residence for over three decades nor does the state provide any payments toward the Governor's living expenses while in Sacramento. During the last three years, a private foundation has provided a residence for use by the Governor; however, that is no longer the case. Without any place to reside, Governor Schwarzenegger is temporarily staying at a local hotel when in Sacramento since his personal residence is in Southern California.

ANALYSIS

Permissible Use of Campaign Funds

The Act's personal use of campaign funds provisions (sections 89510-89522) are designed to ensure that campaign funds are not expended for a candidate or officeholder's personal purposes but rather are held in trust for payment of expenses associated with election and holding office. (Section 89510.) 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"² on a candidate, the expenditure must be directly related to a political, legislative or governmental purpose. (*Id.*) We assume for purposes of this letter that the payment of Governor Schwarzenegger's hotel bills from his campaign funds would confer a substantial personal benefit on Governor Schwarzenegger.

Section 89513, which governs the use of campaign funds for certain specific expenditures, contains language in subdivision (a) that specifically allows a committee to pay a candidate for travel expenses only when those expenses directly relate to a political, legislative or governmental purpose. Section 89513(a) provides:

"(a) Campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or employees or staff of the committee or the elected officer's governmental agency for travel expenses and necessary accommodations except when these expenditures are directly related to a political, legislative, or governmental purpose.

(1) For the purposes of this section, payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a

² "Substantial personal benefit" is defined to mean "an expenditure of campaign funds which results in a direct personal benefit with a value of more than two hundred dollars (\$200) to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee." (Section 89511(b)(3).)

political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.

(2) For the purposes of this section, payments or reimbursement for travel by the household of a candidate or elected officer when traveling to the same destination in order to accompany the candidate or elected officer shall be considered for the same purpose as the candidate's or elected officer's travel."

Under section 89513(a)(1), travel expenses directly relate to a permissible purpose if they meet the ordinary and necessary business travel deduction standard in the Internal Revenue Code. Internal Revenue Code section 162(a)³ sets forth general rules which permit the deduction of all "ordinary and necessary" traveling expenses while away from home in the pursuit of a trade or business. In pertinent part, the section states that:

"(a) In general. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

- (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;
- (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business;

¶...¶

For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year."

Applying the concepts enunciated in the Internal Revenue Code provisions, an individual is considered to be "traveling" when the person is temporarily away from home during any period of employment, if such period is of one year or less in duration. Further, elected officials may use campaign funds for travel and accommodations provided such travel and accommodations are deemed "ordinary and necessary" to accomplish a political, legislative or governmental purpose. Therefore, if Governor Schwarzenegger's temporary lack of a home in Sacramento requires him to travel to Sacramento for one year or less, then payments for his hotel room will be considered to be payments for travel. Because Governor Schwarzenegger is performing the

³ We look at Internal Revenue Code section 162 rather than Internal Revenue Code section 274 which establishes rules regarding deductions for foreign travel.

governmental functions of California's chief executive while in Sacramento, his travel is directly related to a legislative or governmental purpose and, thus, comparable to travel "while away from home in the pursuit of a trade or business." (IRC section 162(a)(2). See also *Walters* Advice Letter, No. A-90-308 and *Benninghoven* Advice Letter, No. A-90-411.) His travel expenses will be limited, however, to those that are neither lavish nor extravagant⁴ under the circumstances and, as stated above, he will be limited to a period of one year in which he may use his campaign funds and have the payment meet the exception in section 89513(a).

In light of the purpose behind the personal use law, we have interpreted the Internal Revenue Code sections to allow only for the use of campaign funds for the "business portions" of a trip. (*Bass* Advice Letter, No. A-90-474.) Thus, trips to Sacramento must be broken into business days and nonbusiness days. Where a weekend falls between business days, the weekend will also be counted as business time. (*Bagatelos* Advice Letters, Nos. A-93-309/A-93-441.) For example, in the event there is business to attend on both a Friday and the subsequent Monday, the weekend days will count as business days.

Paying for the Travel Payments from the Appropriate Campaign Account

Although regulation 18525 (copy enclosed) sets forth the kinds of expenditures that must be made from accounts for election to future office by incumbent elected officers, travel payments are not listed among them. Subdivision (b) of that regulation deals with expenditures not specifically listed, and states, in pertinent part:

"An incumbent elected officer may make expenditures for purposes not enumerated in subdivision (a) 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"

Thus, pursuant to regulation 18525(b), Governor Schwarzenegger may use his 2006 Governor's election account to pay for his accommodations in Sacramento. This section shall not be construed to permit an incumbent elected officer to make expenditures from any campaign bank account for expenses other than those associated with his or her election to the specific office for which the account was established and expenses associated with holding that office. (*Danner* Advice Letter, No. A-96-109.)

⁴ Pursuant to page 5 of Internal Revenue Service Publication 463, entitled "Travel, Entertainment, Gift, and Car Expenses" an expense "is not considered lavish or extravagant if it is reasonable based on the facts and circumstances. Expenses will not be disallowed merely because they are more than a fixed dollar amount or take place at deluxe restaurants, hotels, nightclubs, or resorts."

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 that reads "Adrienne Korchmaros". The signature is written in a cursive style with a large, sweeping initial 'A'.

By: Adrienne Korchmaros
Political Reform Consultant

Enclosure
AK:jg

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