



## FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

June 9, 2004

Vona Copp, Treasurer  
Nakanishi for Assembly 2004  
8958 Ivanpah Court  
Elk Grove, CA 95624

**Re: Your Request for Advice  
Our File No. I-04-105**

Dear Ms. Copp:

This letter is in response to your request for advice on behalf of Nakanishi for Assembly 2004 for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Since you are asking for advice on the general application of the law, we are treating your request as one for informal assistance pursuant to regulation 18329(c). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed.) Nothing in this letter shall be construed to comment on any conduct which has already occurred.

### QUESTIONS

1. May funds on hand in the Nakanishi for Assembly 2004 committee be used to pay the debts of the following:

- (a) Nakanishi for Assembly 2002 (formed for the Assembly member's current term of office).
- (b) Nakanishi for Assembly 1998 (Pre-Proposition 34).
- (c) Nakanishi for Senate (Pre-Proposition 34).

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<sup>1</sup> Government Code sections 81000 – 91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

2. After the November 2004 election, what limitations does the Act impose on the funds remaining in Nakanishi for Assembly 2004?

### CONCLUSIONS

1.(a) *Nakanishi for Assembly 2002 (formed for the Assembly member's current term of office)*: Section 85306(a) allows candidates to transfer funds from one controlled committee to another of his or her controlled committees for elective state office. The funds must be attributed to contributors of the committee making the transfer using a "last in, first out" or "first in, first out" accounting method and the total transferred funds attributed to a particular contributor cannot exceed the amount that person actually contributed.

1. (b) and (c) *Nakanishi for Assembly 1998 and Nakanishi for Senate (Pre-Proposition 34)*: Neither of the two committees receiving funds is subject to the contribution limits of sections 85301 and 85302. Since this is the case, attribution is not required and funds can be transferred from Nakanishi for Assembly 2004 to these committees without limit. Given that attribution is not applicable, contributors to the 2004 committee may not make replacement contributions to the 2004 committee, ensuring there is no evasion of the contribution limits applicable to the 2004 election. These funds, once transferred, will be surplus funds subject to section 89519, as discussed below.

2. *Assuming you win the November 2004 election and have funds remaining*, any expenditure of campaign funds held in Nakanishi for Assembly 2004 must comport with the "personal use" law. The funds do not become "surplus funds" subject to greater restriction until you leave office.

### FACTS

Assemblymember Nakanishi has three committees with outstanding debt from previous elections. Nakanishi for Assembly 1998, a pre-Proposition 34 committee, has \$66,500 in loans due to Alan Nakanishi. Nakanishi for Senate, also a pre-Proposition 34 committee, has \$51,000 in loans to Alan Nakanishi and an additional loan of \$5,000 owed to Vellutini Corporation. The third committee, Nakanishi for Assembly 2002 has loans of \$93,000 due to Alan Nakanishi and \$2,000 due to Pat Bates for Assembly.

Assemblymember Nakanishi wishes to use funds on hand in the 2004 committee to pay the debts of these old committees.

## ANALYSIS

### ***Introduction: One Bank Account Rule***

In June 1988, Proposition 73 was approved by the voters as amendments to the Act. Among other things, Proposition 73 enacted section 85201, which required that all contributions or loans made to a candidate, or to the candidate's controlled committee, had to be deposited into a single campaign bank account. This section came to be known as the "one-bank account" rule. Proposition 73 required the following:

- Section 85201 provided that all contributions or loans made to a candidate, or to the candidate's controlled committee, had to be deposited in a single campaign bank account.
- Section 85201(e) provided that all campaign expenditures had to be made from the appropriate campaign bank account.
- Section 85202(b) provided that contributions deposited into the campaign bank account must be used only for expenses associated with the election of the candidate to the specific office which the candidate intended to seek or expenses associated with holding that office.<sup>2</sup>

Thus, under the one-bank account rule, contributions raised for a specific election must be deposited in the account established for that election, and expenditures cannot be made from the 2004 committee to pay the expenses of any other committee, except as set forth in regulation 18525, which provides a limited exception to this rule for officeholder expenditures. Regulation 18525 addresses incumbent candidates' election expenses and officeholder expenses. Regulation 18525 (copy enclosed) sets forth the kinds of expenditures which *must* be made from accounts for election to future office by incumbent elected officers, and allows other expenditures to be made from either the officeholder account (the Assembly member's 2002 account) or the future election account (2004). Thus, pursuant to regulation 18525(b), the Assembly member may use his 2004 reelection account to pay for officeholder expenses associated with holding that office won in 2002. (See also, *Hiltachk* Advice Letter, A-04-006; *Danner* Advice Letter, No. A-96-109.) However, payment of outstanding campaign debts owed by another campaign committee would not be considered an officeholder expense and direct payment from the 2004 committee would not be permitted.

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<sup>2</sup> As conceived, Proposition 73 prohibited a candidate from transferring contributions directly or indirectly among his or her various campaign bank accounts. On September 25, 1990, the United States District Court in *Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission* invalidated portions of the Act added by Proposition 73, including the fiscal year contribution limitations and the ban on inter- and intra-candidate transfers. However, despite a candidate's ability to transfer campaign funds among his or her own campaign bank accounts, the "one-bank account" rule continued to prohibit more than one bank account per election.

***Question 1a. Transfer to Nakanishi for Assembly 2002 (formed for the Assembly member's current term of office).***

Proposition 34, passed by the voters in the November 2000 general election, imposed contribution limits on candidates for elective state office. (Sections 85300-85321.).<sup>3</sup> However, section 85306(a) continues to allow candidates to transfer funds from one controlled committee to another of his or her controlled committees for elective state office under certain circumstances.<sup>4</sup> The funds must be attributed to specific contributors to the committee making the transfer using a "last in, first out" or "first in, first out" accounting method. Implicit in the concept of attribution is the requirement that the total transferred funds attributed to a particular contributor cannot exceed the amount that person actually contributed. (Regulation 18536(b).) However, once the funds of a contributor to the 2004 committee have been transferred, this contributor is able to contribute again up to the applicable limit.

For example, applying the rule in the context of a \$3,200 contribution limit, if the contributor gave \$2,000 to the 2004 committee, all of which is transferred to the 2002 committee, that contributor can give \$3,200 to the 2004 committee. On the other hand, if only \$1,000 of that contributor's contributions are transferred to the 2002 committee, then \$1,000 of that contributor's contributions remain in the 2004 committee, and only \$2,200 could be contributed by that contributor to the 2004 committee.

***Questions 1(b) and (c). Transfer to Nakanishi for Assembly 1998 and Nakanishi for Senate.***

Neither of the two committees receiving funds is subject to the contribution limits of sections 85301 and 85302. (Section 85321.) Since this is the case, attribution is not required and funds can be transferred from Nakanishi for Assembly 2004 to these committees without limit.<sup>5</sup> Please note, however, that since attribution is not utilized, new contributions cannot be received from the same contributors into the 2004 committee to replenish the transferred funds. When campaign funds are transferred into these old

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<sup>3</sup> Contribution limits may increase or decrease every two years based on changes in the Consumer Price Index. The current limit for Assembly candidates is \$6,400 from small contributor committees, and \$3,200 from all other persons. Political parties are not limited in how much they may contribute to Assembly candidates.

<sup>4</sup> Section 85318 has additional restrictions on the use of campaign funds raised for a general election. For example, while section 85318 allows candidates to raise general election and primary election funds simultaneously, it also provides: "If the candidate for elective state office is defeated in the primary election or special primary election, or otherwise withdraws from the general election or special general election, the general election or special general election funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election or special general election contributions." However, this section is not triggered since you were successful in the primary election.

<sup>5</sup> However, as of January 24, 2004, post-election fund-raising (regardless of the date of the election for which the funds are being raised) is limited by section 85316 to outstanding net debt. (Regulation 18531.61.)

accounts, these funds become surplus and may only be used for purposes set forth in section 89519, including repayment of debt, as discussed below.

In contrast to the example set forth in question 1(a) above, in this case money transferred to the old committee is not attributed to anyone and therefore no contributor's funds are removed from the 2004 committee. Consequently, there is no change with respect to those persons who contributed to the 2004 committee. For example, if a contributor gave \$1,000 to the 2004 committee, that contributor could only give an additional \$2,200 to the 2004 committee. None of the original \$1,000 can be considered to have been transferred out.

***Question 2. Use of Funds in the Nakanishi for Assembly 2004 Committee after the Election***

*Assuming you win the November election and have leftover funds remaining, the use of the funds will be subject to the Act's provisions concerning the permissible uses of campaign funds (sections 89510-89522). The general rule is that absent an express provision pertaining to the expenditure, any expenditure of campaign funds must be, at a minimum, reasonably related to a political, legislative, or governmental purpose.*

Where campaign funds are "surplus," stricter rules apply. Section 89519 provides that "[u]pon leaving any elected office, or at the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last," funds held by a defeated candidate are considered "surplus" campaign funds and may only be used for certain restricted purposes. Assuming you win in November, your funds will not be considered surplus until after you leave office. Under section 89519, a candidate may only spend surplus funds on the following expenses:

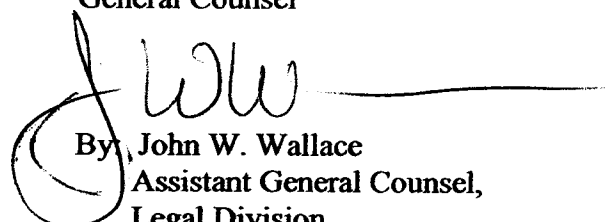
- Payment of outstanding campaign debts or officeholder expenses.
- Repayment of contributions.
- Donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the candidate, any member of his or her immediate family, or the campaign treasurer.
- Contributions to a political party or committee, as long as the funds are not used to make contributions in support of or in opposition to a candidate for elective office.
- Contributions to support or oppose any candidate for federal office, any candidate in another state, or any ballot measure.
- Professional services, such as legal or accounting services reasonably required by the committee to assist in its administrative functions.

- A home or office security system, if the candidate has received threats to his or her physical safety and other conditions are met.

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

Sincerely,

Luisa Menchaca  
General Counsel



By, John W. Wallace  
Assistant General Counsel,  
Legal Division

Enclosures  
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