



FAIR POLITICAL PRACTICES COMMISSION

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July 23, 2004

Diane M. Fishburn
Olson, Hagel & Fishburn, LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814-4602

Re: Your Request for Advice
Our File No. A-04-110

Dear Ms. Fishburn:

This letter is in response to your request on behalf of Jack O'Connell, the O'Connell 2006 committee, and the O'Connell 2002 committee for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May O'Connell 2006 receive contributions for the November 2006 general election prior to the March 2006 primary election?
2. What methods of obtaining occupation and employer information are acceptable compliance of Government Code section 85700?
3. What records must the committee keep to document the collection of occupation and employer information required by 85700?
4. What is the appropriate treatment of interest income earned on pre-Proposition 34 funds?

CONCLUSIONS

1. Yes.

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

2. Section 84104 requires the committee to report accurate information. Therefore, so long as the information reported is accurate, there is no specific method mandated for obtaining the information required by section 85700.
3. Your question is general in nature. We can say, generally speaking, that there is no specific method for keeping records on the information obtained pursuant to section 85700. Ultimately, the sufficiency of any record keeping in a particular instance will be assessed against the requirements of regulation 18401.
4. Interest earned on pre-34 funds that are held in a separate money market account may be transferred as pre-34 funds subject to section 85306, subdivision (c).

FACTS

Jack O'Connell was elected in 2002 to the office of State Superintendent of Public Instruction. O'Connell 2002 was formed to support Mr. O'Connell's 2002 election campaign. O'Connell 2006 was formed to support Mr. O'Connell's reelection campaign in 2006.

ANALYSIS

1. *May O'Connell 2006 receive contributions for the November 2006 general election prior to the March 2006 primary election?*

Government Code section 85318 allows "a candidate for elective state office" to accept contributions towards the general election prior to the primary election. As the Superintendent of Public Instruction is an elective state office under section 82024, Mr. O'Connell may raise funds into a general election account or committee prior to the conclusion of the primary election in 2006. In the event Mr. O'Connell wins reelection in the primary, any contributions held for the general election must be returned to contributors, less fund-raising expenses. (§ 85318.)

2. *What methods of obtaining occupation and employer information are acceptable compliance of Government Code section 85700?*

Section 85700 requires a candidate to return contributions within 60 days of their receipt if the candidate does not have on file certain information in his or her records, such as the occupation of the contributor and his or her employer. (§ 85700, subd. (a).) Section 84211 requires, among other things, that a candidate report the name, address, occupation and employer of any individual who contributes \$100 or more in a calendar year. If a candidate is unable to acquire this information, section 85700 requires the candidate to return the contribution. In your letter, you state a committee sometimes is unable to obtain the required information from the contributor and must instead rely on

other sources for the information. You pose nine different possible sources for information:

- Occupation and employer information obtained from committee records of prior contributions to O'Connell 2002 or another committee controlled by Jack O'Connell;
- Personal knowledge by Jack O'Connell or O'Connell 2006 committee staff and consultants regarding a donor's occupation and employer information;
- Publicly available profiles of donors (e.g., company profiles on the Internet);
- Publicly available professional license databases such as California State Bar Association records or California Medical Association records;
- Publicly available professional organization rosters such as the California Society of Certified Public Accountants or the International Chiropractors Association of California;
- Occupation and employer information obtained from campaign statements filed with the Secretary of State by other committees;
- Telephone follow-up with employees, secretaries, or assistants of the donor;
- Requesting donor information from the host of a fund-raising event; and
- Personal knowledge by third parties such as a fund raiser or other persons regarding a donor's occupation and employer.

Section 85700 does not require that the information is obtained firsthand from the contributor. Section 85700, subdivision (a), requires that a candidate or committee have the required information on file at the time of receiving the contribution or within 60 days thereafter. Therefore, so long as accurate information required to be disclosed under section 84211 is on file at the time of receiving the contribution or within 60 days thereafter, no particular method for obtaining the information is required by section 85700.

3. What records must the committee keep to document the collection of occupation and employer information?

Under section 85700, the Act requires a committee to return a contribution within 60 days if the committee is unable to obtain the donor's occupation and employer on file in the records of the committee. So that compliance with the Act's 60-day rule may be established in the event of audit, the Commission adopted regulation 18570, subdivision (d), requiring the committee to maintain in its records the date the occupation and employer information is obtained.

Section 84104 states that it is the duty of each candidate and treasurer to maintain the records necessary to complete the reports required to be filed under the Act. Regulation 18401, which further specifies the records that must be maintained by committees, does not specify the form of records kept by the committee as they relate to occupation and employer information. You ask whether any of various potential forms of record keeping are acceptable:

- Hand-written or typed notations kept in the committee's files to preserve information which is obtained orally from committee staff or third parties;
- Direct input of occupation and employer information into campaign-reporting software (the information is stored electronically and can be printed and viewed for audit purposes);
- Printing documentation obtained from publicly available databases or directories and placing the print-out in committee files; and
- Preserving correspondence and other documentation from committee staff or third parties regarding occupation and employer information.

Generally speaking, the methods you describe above are sufficient methods for keeping records of the information obtained pursuant to section 85700. Ultimately, the sufficiency of any record keeping in a particular instance will be assessed against the requirements of regulation 18401.² For instance, with respect to electronic contributor records, we have advised that they may be maintained on a CD-ROM format. (*McAndrews* Advice Letter, No. A-03-197.) That record keeping is a separate obligation of candidates and treasurers. Having otherwise sufficient documentation of a fact does not excuse a candidate or treasurer from disclosing true and correct information.

4. *What is the appropriate treatment of interest income earned on pre-Proposition 34 funds?*

You indicate that O'Connell 2002 possesses contributions which were received prior to November 6, 2002, the effective date of most Proposition 34 provisions applicable to candidates for statewide office. These funds earn interest in a separate money market account. As these funds may be transferred without attribution pursuant to section 85306, subdivision (c), you ask whether the interest earned may also be considered part of the pre-34 funds for purposes of section 85306.

The Commission has advised that committees report interest on disclosure forms as a miscellaneous increase to cash. (*Trask-Lee* Advice Letter, No. I-04-047; *Odom* Advice Letter, No. I-91-172.) This system regards the committee's contributions on hand and the interest earned by those contributions as an undifferentiated pot of money. As a result, interest earned by O'Connell 2002 may be transferred as part of the pre-34 funds pursuant to section 85306, subdivision (c).³

² See also the *Sutton* Advice Letter, No. A-96-287, discussing the pertinent record-keeping rules in the context of *de minimis* contributions.

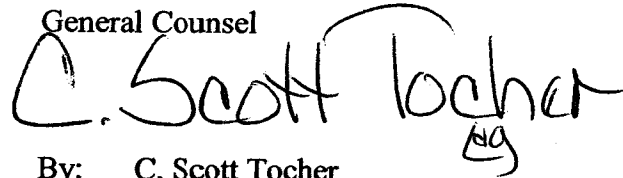
³ We note that regulation 18524, subdivision (b), allows funds to be deposited into a money market account, but requires the funds be transferred back into the campaign bank account prior to expenditure:

“(b) The candidate may transfer funds from the campaign bank account to certificates of deposit, interest-bearing savings accounts, money market accounts, or similar accounts which shall be established only for funds for the same elective office for which the campaign bank account was established. Prior to expenditure, the funds shall be re-deposited in the candidate's campaign bank account.”

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 "C. Scott Tocher" with a stylized flourish at the end. Below the signature is a small handwritten mark that appears to be "eg".

By: C. Scott Tocher
Counsel, Legal Division

CST:jg
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