



FAIR POLITICAL PRACTICES COMMISSION

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July 6, 2004

Harvey Gerber
7 Johnar Boulevard
Rancho Mirage, CA 92270

**Re: Your Request for Advice
Our File No. A-04-122**

Dear Mr. Gerber:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ The advice in this letter is based solely on the facts provided in your letter. The Commission does not confirm telephone advice.²

QUESTION

May you use campaign funds to make a donation to the nonprofit McCallum Theatre?

CONCLUSION

Yes, you may use campaign funds to make the donation because the donation bears a reasonable relation to a governmental purpose, provided that the McCallum Theater is a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, and no substantial part of the proceeds from the donation will have a material financial effect on you, the campaign treasurer, or any individual with authority to approve the expenditure of committee funds, or on a member of that person's immediate family.

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

² For future reference, please also note that the Secretary of State's office has no authority to interpret or advise regarding the provisions of the Political Reform Act.

FACTS

You were re-elected to the Rancho Mirage City Council on April 13, 2004. You have approximately \$30,000 in raised campaign funds which were not used during the campaign for your re-election. You would like to donate a portion of those funds to a nonprofit organization known as the McCallum Theatre.

The contemplated donation would be made to complete a pledge you made personally. You have already fulfilled part of the pledge using personal funds, and you wish to use \$5,000 of the excess campaign funds to complete the pledge.

As a result of completing the pledge, your name will be placed on a donor's plaque at the McCallum Theatre. You will not receive any financial benefit in addition to the recognition associated with the addition of your name on the donor's plaque. In a telephone conversation June 29, 2004, you clarified that you are not financially responsible for the unpaid portion of the pledge. You also said that the McCallum Theatre has in the past received financial support from the city, and that the city uses the theater as a venue for city-produced events.

ANALYSIS

The use of campaign funds for donations is governed by Government Code section 89515. That section provides:

“Campaign funds may be used to make donations or loans to bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations, where no substantial part of the proceeds will have a material financial effect on the candidate, elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or member of his or her immediate family, and where the donation or loan bears a reasonable relation to a political, legislative, or governmental purpose.”

In order for you to be able to donate campaign funds to the McCallum Theatre, you must be able to answer "yes" to all three of the following questions:

1. Is the recipient organization a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization?
2. Will no substantial part of the proceeds from the donation have a material financial effect on you, the campaign treasurer, any individual with authority to approve the expenditure of the funds, or any member of that person's immediate family?

3. Does the donation bear a reasonable relation to a political, legislative, or governmental purpose?

In your request for advice you identified the McCallum Theatre as a nonprofit organization. It appears from your letter that the theatre would qualify as a "similar tax-exempt, nonprofit organization." You also indicated that you would not receive any financial benefit and that you are not under any contractual obligation to provide the funds. Assuming this is also true for your immediate family and for those with authority to approve the expenditure of campaign funds, the remaining condition is that the donation be reasonably related to a political, legislative, or governmental purpose.

You may make this donation with campaign funds, provided that such a reasonable relationship exists. The Commission has previously advised that a reasonable relationship existed for donations to a graffiti removal program (*Neely* Advice Letter, No. A-98-133) and a local symphony (*Antonovich* Advice Letter, No. A-91-476), among others. Copies of these letters are provided for your review. You indicated that support for and use of the theater has been a part of the city's operation and budget. Accordingly, it appears that a donation of campaign funds to the McCallum Theatre would be an appropriate expenditure of campaign funds reasonably related to a governmental purpose.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Hal Dasinger
Political Reform Consultant

Enclosures
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