



FAIR POLITICAL PRACTICES COMMISSION

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September 2, 2004

David Bauer
400 Capitol Mall, Suite 1560
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-04-179**

Dear Mr. Bauer:

This letter is in response to your request on behalf of Citizens for Bob Margett and the Committee to Re-elect Bob Margett for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Please note, the conclusions in this letter are based on the information you have provided. The Fair Political Practices Commission ("Commission") does not act as a finder of fact when providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71; section 83114.) In addition, the Commission does not provide advice relating to past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

Is the transfer of campaign funds from the Re-elect Bob Margett committee (hereinafter "Re-elect 2004") to the Citizens for Bob Margett committee (hereinafter "Citizens 2000") subject to the attribution rules of section 85306(a)?

CONCLUSION

Citizens 2000 is not subject to the contribution limits of sections 85301 and 85302 because it was formed for an election held prior to the effective date of Proposition 34. Since this is the case, attribution is not required and funds can be transferred from Re-elect 2004 to Citizens 2000 without limit. Given that attribution is not applicable, contributors to Re-elect 2004 committee may not make replacement contributions to Re-elect 2004. This will ensure that there is no evasion of the contribution limits applicable to the 2004 election.

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

FACTS

You are the treasurer of Citizens for Bob Margett and the Committee to Re-elect Bob Margett. Citizens 2000 is the recipient committee established by Bob Margett to run for state Senate in 2000. Re-elect 2004 is the recipient committee established by Senator Margett to run for re-election to the state Senate in 2004. Citizens 2000 has an outstanding loan payable balance of \$35,000 incurred in 2000 that is owed to an unaffiliated committee. Although it had sufficient funds to repay the loan, Citizens 2000 did not do so. In 2003, Citizens 2000 transferred to Re-elect 2004 approximately \$83,000. The transfer was attributed to Citizens 2000's donors using the last-in method. After the transfer, Citizens 2000 retained only a nominal balance in its bank account.

Re-elect 2004 wishes to transfer back to Citizens 2000 funds sufficient to repay the balance on the loan payable.

ANALYSIS

Introduction: One Bank Account Rule

In June 1988, the voters enacted (through Proposition 73) section 85201, which requires that all contributions or loans made to a candidate, or to the candidate's controlled committee, be deposited into a single campaign bank account. This section came to be known as the "one bank account" rule. This section requires the following:

- 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.
- All campaign expenditures had to be made from the appropriate campaign bank account.
- 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.

Thus, under the one bank account rule, contributions raised for the Senator's 2004 campaign must be deposited into the Re-elect 2004 account, and expenditures cannot be made from Re-elect 2004 to pay the expenses of any other committee.²

² Regulation 18525 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 (Citizens 2000) or the future election account (Re-Elect 2004). Thus, pursuant to regulation 18525(b), the Senator may use his 2004 reelection account to pay for officeholder expenses associated with holding that office in 2000. (See also, *Hiltachk* Advice Letter, A-04-006; *Danner* Advice Letter, No. A-96-109.) However, payment of outstanding campaign debts owed by another

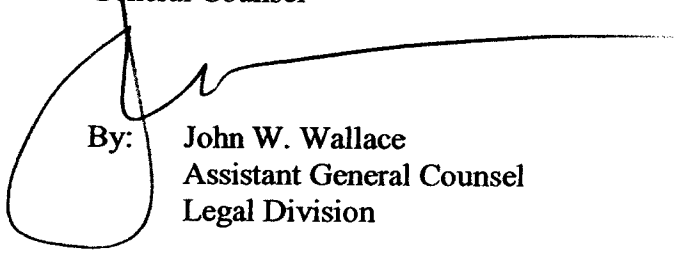
Proposition 34, passed by the voters in the November 2000 general election, imposed contribution limits on candidates for elective state office. (Sections 85300-85321.) However, section 85306(a) continues to allow candidates to transfer funds from one controlled committee to another of his or her controlled committees for elective state office under certain circumstances. 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, since Citizens 2000 is not subject to the contribution limits of sections 85301 and 85302 (because it was created for an election held prior to the effective date of Proposition 34)³ attribution is not required and funds can be transferred from Re-elect 2004 to Citizens 2000 without limit.⁴ (*Copp Advice Letter No. I-04-105.*) Please note, however, that since attribution is not utilized, new contributions cannot be received from the same contributors into Re-elect 2004 to replenish the transferred funds.⁵

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

Enclosure
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campaign committee would not be considered an officeholder expense and direct payment from the 2004 committee would not be permitted.

³ 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.)

⁴ This conclusion is based on the assumption that the contributions received by Citizens 2000 were not received for Senator Margett's 2004 re-election campaign and therefore, the funds were properly deposited into Citizens 2000 and properly transferred to Re-elect 2000 in the first instance.

⁵ This assumes that the contributor contributed the maximum amount to Re-elect 2004.