



FAIR POLITICAL PRACTICES COMMISSION

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October 22, 2004

Ash Pirayou
Pirayou Law Offices
6950 Almaden Expressway, Suite 125
San Jose, CA 95120

**Re: Your Request for Advice
Our File No. A-04-221**

Dear Mr. Pirayou:

This letter is in response to your request on behalf the Committee to Protect Neighborhood Libraries – Yes on Measure S, and the San Jose Taxpayers for a Secure Airport – Yes on Measure A committees for advice regarding the use of funds provisions of the Political Reform Act (the “Act”).¹ Please note, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct which may have already taken place, and any conclusions contained herein apply only to prospective actions.

QUESTION

May the Measure A Committee, a local ballot measure committee, contribute a portion or all of its current cash on hand to the Measure S Committee, a local ballot measure committee, to support the passage of Measure S without violating the “personal use” restrictions of the Act?

CONCLUSION

The Measure A Committee may contribute a portion or all of its current cash on hand to the Measure S Committee to support the passage of Measure S without violating the “personal use” restrictions of the Act so long as the transfer does not have a substantial personal benefit on any person who directs or controls the activities of the Measure A Committee.

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

FACTS

You serve as the treasurer and legal counsel to the above-mentioned committees and are authorized by the committees to seek a formal opinion on their behalf. The San Jose Taxpayers for a Secure Airport – Yes on Measure A (“Measure A Committee”) was formed on December 12, 2002, as a primarily formed committee to support the passage of Measure A, dealing with airport security and traffic relief. When completing the Form 410, the Measure A Committee did not state any disposition of surplus funds, as such an option was not available on the current Form 410. The Measure A Committee campaign’s voter outreach efforts to San Jose voters emphasized the importance of making the City of San Jose a better city with a world-class airport. The Measure A Committee was a local committee filing its disclosure reports with the San Jose city clerk and was comprised of individuals representing the local labor and business communities. The Measure A Committee has retained you to provide professional treasurer and legal services to ensure compliance with the Political Reform Act, and has retained Dustin DeRollo (via his association with Platinum Advisors) as a committee campaign consultant. The Measure A Committee has also retained Staton & Hughes as a committee campaign consultant. Neither Mr. DeRollo, Staton & Hughes nor you have any authority to approve the expenditure of the committee’s funds, absent the express approval of the Measure A Committee members. No vendors participated as members of the committee.

Measure A was approved by the voters of San Jose in March 2003. Following approval of the Measure A and the payment of all outstanding invoices, the Measure A Committee had a balance of \$57,660 in campaign funds.

The Committee to Protect Neighborhood Libraries – Yes on Measure S (“Measure S Committee”) was formed on August 6, 2004, as a primarily formed committee to pass Measure S, a continuation of an annual parcel tax funding City of San Jose library operations. Measure S Committee members are nearly identical to the members of the Measure A Committee, including representatives of the labor and business communities. The Measure S Committee is a local committee filing its disclosure reports with the San Jose city clerk. The Measure S Committee has also retained you to provide professional treasurer and legal services to ensure compliance with the Act, as well as Mr. DeRollo (via his association with Saggau & DeRollo, LLC) as a committee campaign consultant. Staton & Hughes are also retained as a committee campaign consultant. Neither Mr. DeRollo, Staton & Hughes nor you have any authority to approve the expenditure of the committee’s funds, absent the express approval of the Measure S Committee members. No vendors participated as members of the committee.

The Measure S voter outreach efforts are intended to make voters of San Jose, on November 2, 2004, support the passage of Measure S in order to continue making San Jose a better city and one of the nation’s most livable communities by ensuring ongoing library services to residents.

ANALYSIS

The Act contains specific provisions governing the use of campaign funds. (Sections 89510-89522.) These sections are generally referred to as the “personal use” provisions. Most of these provisions are applicable to both candidates and committees, including statewide ballot measure committees. (Section 89511.) However, the personal use statutes do not contain a specific provision relating to the permissible disposition of funds held by a ballot measure committee after the election. The only provision which is specifically directed to leftover or “surplus” funds is section 89519, and this section pertains to the disposition of funds held by candidates rather than by ballot measure committees. (See, *Hiltachk* Advice Letter, No. I-90-053.) We have therefore advised that a ballot measure committee may use its funds for any purpose permitted by sections 89510 - 89518.

Generally, this permits the expenditure of campaign funds provided that the expenditure is reasonably related to a political, legislative or governmental purpose. However, the expenditure must be directly related to a political, governmental or legislative purpose if it will confer a substantial personal benefit upon any person who directs or controls the activities of the committee or if it is the type of expenditure for which the personal use provisions specifically require a direct relationship. (*Spain* Advice Letter, No. I-90-410; see, e.g., section 89512.) Regulation 18960 defines a “direct personal benefit” as follows:

“(a) For purposes of Government Code section 89511(b)(3), an expenditure of campaign funds results in a direct personal benefit when, within six months of the expenditure and without the assistance of any intervening influence or interruption, the candidate or elected officer or member of his or her immediate family:

“(1) Realizes an increase in his or her income or assets, or a decrease in his or her expenses or liabilities, of more than \$200 from the expenditure; or

“(2) Actually makes personal use of an asset obtained as a result of the expenditure.

“(b) An expenditure of campaign funds does not result in a prohibited direct personal benefit if otherwise specifically permitted under any other provisions of Article 4 (commencing with Section 89510) of Chapter 9.5 of Title 9 of the Government Code, or interpretative regulations thereto.”

According to your facts, while the two committees have some shared consultants that may benefit from the transfer of the funds in question, none of the shared consultants direct or control the activities of the committee. Therefore, so

long as the transfer does not have a substantial personal benefit on any person who directs or controls the activities of the committee, the transfer would be permissible under the Act.

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

Sincerely,

Luisa Menchaca
General Counsel

By:


Galena West
Counsel, Legal Division

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