



## FAIR POLITICAL PRACTICES COMMISSION

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December 13, 2005

Alan J. Smith  
City of Watsonville  
P.O. Box 5000  
Watsonville, CA 95077-5000

**Re: Your Request for Advice**  
**Our File No. A-05-205**

Dear Mr. Smith:

This letter is in response to your request on behalf of two council members, Oscar Rios and Antonio Rivas, of the City of Watsonville for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter should not be construed as assistance on any conduct that may have already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Govt. Code section 83114.)

### QUESTION

Can two members of the city council each solicit and receive contributions into their campaign accounts to reimburse them for their expenses incurred for travel to Pinghu City in the Republic of China for the purpose of exploring the possibility of establishing a sister city relationship between Pinghu City and the City of Watsonville?<sup>2</sup>

### CONCLUSION

Yes. The city council members may solicit and use campaign funds to reimburse them for such expenses if the expenditures are directly related to a legislative or governmental purpose and they follow the procedures set forth in the Act as specified in section 89511.5.

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

<sup>2</sup> Your letter presented three possible scenarios for payment/reimbursement of these travel expenses. In our recent telephone conversation, you requested that we limit our analysis to the most practicable option.

## FACTS

You are writing on behalf of two council members of the City of Watsonville. Both council members have open campaign accounts. The council members are leaving on a trip to Pinghu City, Republic of China. The purpose of the trip is to explore the possibility of establishing a sister city relationship between the City of Watsonville and Pinghu City. The City of Watsonville has other sister city relationships.

No money has yet been formally solicited or received by either council member. Both intend to make the trip and then solicit contributions from the community to reimburse them for the expense of the trip. No city funds are being used for the trip.

## ANALYSIS

The Political Reform Act's provisions concerning the permissible uses of campaign funds are found in sections 89510-89522, copies enclosed. Under these provisions, campaign funds are regarded as totally separate and distinct from a candidate or officeholder's personal funds. (*Kaufman Advice Letter*, No. A-04-055.) The Act's campaign funds provisions are designed to ensure that campaign funds are used for electioneering and officeholder purposes, and are not expended for the candidate or officeholder's personal purposes. (*Kaufman, supra.*)

The Act provides that all contributions deposited into a campaign account are "held in trust for expenses associated with the election of the candidate or for expenses associated with holding office." (Section 89510.) Generally speaking, an expenditure related to seeking or holding office is permissible under the Act if it is "reasonably related" to a political, legislative or governmental purpose. (Section 89512.) Certain uses of campaign funds, including travel, that are considered to confer a "substantial personal benefit"<sup>3</sup> on the candidate must meet a higher standard and be "directly related to a political, legislative, or governmental purpose." (Section 89512.)

With respect to the use of campaign funds for travel, section 89513 states:

"(a) Campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or employees or staff of the committee or the elected officer's governmental agency for travel expenses and necessary accommodations except when these expenditures are *directly related* to a political, legislative, or governmental purpose.

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<sup>3</sup> "Substantial personal benefit is defined as "an expenditure of campaign funds which results in a direct personal benefit of more than two hundred dollars (\$200) to a candidate, elected officer, or any individual or individual with authority to approve the expenditure of campaign funds held by a committee." (Section 89511(b).)

(1) For the purposes of this section, payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.” (Emphasis added.)

Internal Revenue Code section 162(a)(2) sets forth general rules which permit the deduction of all ordinary and necessary expenses while traveling away from home in the pursuit of a trade or business.<sup>4</sup> Under the Act, these rules have been applied to permit the use of campaign funds for only the portions of a trip when political, legislative, or governmental “business” is conducted. To the extent that any day is not a business day (such as days on which there are no meetings or formal activities), campaign funds may not be used. Moreover, personal activities or expenses not related to a governmental purpose may not be paid for with campaign funds, even if those activities occur on a business day. (*Hosterman Advice Letter, No. A-05-044.*)

Finally, your question involves whether each council member may be reimbursed from his or her campaign account after he or she pays for the expenses incurred from personal funds. Government code section 89511.5, subdivision (b) allows an incumbent elected officer to be reimbursed for expenditures of his or her personal funds from a campaign bank account if all of the following conditions are met:

- “(1) The expenditures are not campaign expenses.
- (2) The incumbent elected officer, prior to reimbursement, provides the treasurer of the committee with a dated receipt and written description of each expenditure.
- (3) Reimbursement is paid within 90 days of the expenditure, in the case of a cash expenditure, or within 90 days of the end of the billing period in which it was included, in the case of an expenditure charges to a credit card or charge account.”<sup>5</sup>

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<sup>4</sup> In pertinent part, Internal Revenue Code section 162(a) states that:

“(a) In general. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including –

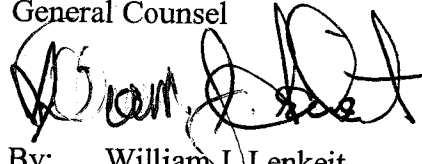
- (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;
- (2) *traveling expenses (including amounts for meals and lodging other than amounts which are lavish or extravagant under the circumstance) while away from home in the pursuit of a trade or business. ...*” (Emphasis added.)

<sup>5</sup> Subdivision (e) of section 89511.5 notes that the section shall not be construed to authorize expenditures other than those associated with holding office, i.e., as in this case, an expenditure directly related to a legislative or governmental purposes.

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, appearing to read "William J. Lenkeit", written over a circular stamp or mark.

By: William J. Lenkeit  
Counsel, Legal Division

Enclosures

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