



FAIR POLITICAL PRACTICES COMMISSION

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December 21, 2005

The Honorable
Tom Harman
22032 Capistrano Lane
Huntington Beach, CA 92646

**Re: Your Request for Advice
Our File No. A-05-248**

Dear Assembly Member Harman:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTION

May you amend your Candidate Intention Statement (Form 501) filed for the 2008 election for the California Senate seat in the 35th District, thereby recharacterizing your receipt of contributions and expenditures in connection therewith, to be for the 2006 special election for the same office?

CONCLUSION

You may not redesignate your 2008 committee for a 2006 election to the same office. You must file a separate Candidate Intention Statement (Form 501) for the 2006 election, and must establish a separate committee and bank account for that office. Moreover, contributions received and expenditures made for the 2008 election cannot be recharacterized as contributions and expenditures for the 2006 election.

FACTS

You have opened a campaign to run for the California Senate, 35th District, in election year 2008. As a result of a recent special election the 35th Senate seat is now vacant (Senator John Campbell was elected to Congress on December 6th) so there will now be a special election to replace him. This special election will be held in June 2006. Thus, you wish to run for this office in 2006. In order to avoid having to purchase 2006

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

supplies imprinted with a new committee identification number, you would like to redesignate the 2008 committee to be your 2006 election committee.

ANALYSIS

In June 1988, Proposition 73 was approved by the voters as amendments to the Act. Among other things, Proposition 73 enacted section 85201, which required that all contributions or loans made to a candidate, or to the candidate's controlled committee, had to be deposited into a single campaign bank account. This section came to be known as the "one-bank account" rule. Under the one-bank account rule, contributions raised for a specific election must be deposited in the account established for that election, and expenditures cannot be made from the committee to pay the expenses of any other committee.

Proposition 34, passed by the voters in the November 2000 general election, imposed contribution limits on candidates for elective state office. (Sections 85300-85321.) With the passage of Proposition 34, the Commission revisited the scope of the one-bank-account rule in light of contribution and expenditure limits. In March 2002, the Commission adopted regulation 18521, further clarifying the one-bank-account rule under Proposition 34. It provides:

"(a) A candidate who is required to file a statement of organization for a controlled committee pursuant to Government Code section 84101 shall establish a separate controlled committee and campaign bank account for each specific office identified in statements filed by the candidate pursuant to Government Code section 85200 and 2 Cal. Code Regs. section 18520."

The Commission also considered the viability of the redesignation of committees under contribution limits. The July 2, 2001 staff memorandum on "Proposition 34 Regulations: Policy Issues Associated with the Interpretation of Single Bank Account Rule," the benefits of rejecting the "redesignation"² rule in light of the Proposition 34 amendments was discussed. The memorandum stated:

"Although the candidates will be required to formalize the process (creating a new bank account and committee for each election and closing the old one rather than going through the fiction of 'redesignating' the old account), the actual changes required to implement the new procedure will be minor. There will be minor changes required to the form instructions, and instead of amending the Form 410, candidates will file a new one for

² Redesignation is accomplished by amending the 501 and 410 filed for a specific election to run in a different election. Historically, old committees (officeholder committees) were redesignated to be campaign committees for the same office. In some cases, redesignation occurs backward, as you propose here to take an existing campaign committee, and redesignate it to an earlier special election campaign committee for the same seat. (*Sanders Advice Letter*, No. I-91-076.)

the new committee, and will obtain a new identification number. They will have to file separate reports for each open committee, which may encourage candidates to close out old committees in a more timely fashion.

“Further, while the ‘trust’ provision no longer serves as a basis to limit movement of funds between a candidate’s own campaign accounts, requiring separate committees and formal transfer of funds effectuates the ‘one-bank-account’ rule and serves to assist in the enforcement of the new Proposition 34 ‘per election’ contribution limits. (See, Section 83112.)”

In February, 2002, the Commission decided to prohibit redesignation of campaign committees/bank accounts in elections subject to Proposition 34 limits. Redesignation is still permitted in limited circumstances by candidates not subject to Proposition 34 contribution limits as follows:

“(b) Candidates, Other than Candidates for Elective State Office: A controlled committee and campaign bank account established for a specific office may be redesignated as a campaign bank account for a future election if:

“(1) The future election is for the same elective office;

“(2) The funds in the campaign bank account/committee are not considered ‘surplus campaign funds’ as defined in Government Code section 89519;

“(3) The candidate amends the Statement of Organization for the committee to reflect the redesignation for the future election;

“(4) The candidate files a new statement, signed under penalty of perjury, of intention to be a candidate for the specific future election; and

“(5) Redesignation of committees/bank accounts is not otherwise prohibited by law.”

Consequently, you may not redesignate your 2008 committee and bank account for the 2006 election. Similarly, your contributions and expenditures in connection with your 2008 election cannot be recharacterized as 2006 contribution and expenditures.³

³ We also note that allowing the redesignation of the 2008 campaign account to a 2006 election has numerous other ramifications that may be inconsistent with the contribution and expenditure limits of Proposition 34. For example, it may result in the recharacterization of debt in the 2008 election as debt of the 2006 election in violation of 85316. Also, expenditures already made for purposes of the voluntary expenditure limits of 2008 cannot be treated as expenditures for the limits applicable to the 2006 election.

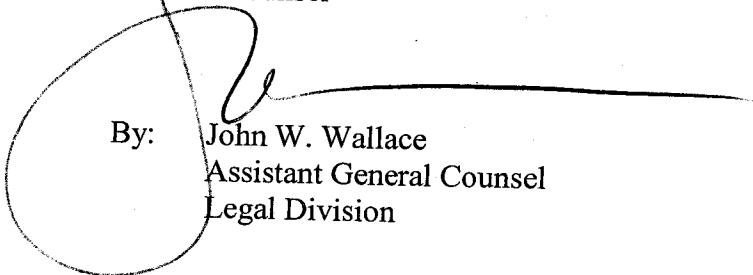
Please note, however, section 85306(a) continues to allow candidates to transfer funds from one controlled committee to another of his or her controlled committees for elective state office under certain circumstances. The funds must be attributed to specific contributors to the committee making the 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).)

Moreover, regulation 18525 addresses incumbent candidates' election expenses and officeholder expenses. Should you be elected to the Senate seat, regulation 18525 sets forth the kinds of expenditures that may be made from either the officeholder account (the 2006 account) or the future election account (2008), such as 2006 officeholder expenses. You may want to request additional advice should you be successful in the 2006 election.

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

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