



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

September 15, 2006

Christopher J. Raymer
Treasurer
Taxpayers for Maldonado
1512 Tanglewood Drive
San Luis Obispo, CA 93401

**RE: Your Request for Advice
Our File No. A-06-160**

Dear Mr. Raymer:

This letter is in response to your request for advice, on behalf of Senator Abel Maldonado, regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May Senator Maldonado use funds raised for the general election prior to the June 6, 2006, primary to pay the fees owed to campaign/fundraising consultants and rent owed for office space for the period of June 7, 2006, through November 2006?
2. Does section 85318 permit the use of either a "last in, first out" or "first in, first out" method to allocate the return of general election funds to the respective contributors?

CONCLUSIONS

1. Since Senator Maldonado accepted the Act's voluntary expenditure ceilings (sections 85400 et seq.), the allocation of expenditures to primary and general election campaigns should be made under the rules set forth in regulation 18540, the same rules Senator Maldonado will have used in filing his primary campaign reports.
2. No. Section 85318 does not permit the use of either a "last in, first out" or a "first in, first out" method to allocate the return of general election funds to the respective

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

contributors, as section 85318's clear purpose is to require an evenhanded refund of all remaining general election funds to all contributors.

FACTS

Senator Maldonado was a candidate for State Controller in the June 6, 2006, primary election, which he lost. In a telephone conversation on September 14, 2006, you indicated that Senator Maldonado had accepted the Act's voluntary expenditure ceilings for the 2006 elections.

Prior to the 2006 primary election, Senator Maldonado entered into agreements with two campaign/fundraising consultants to secure their services through November 2006. Additionally, Senator Maldonado entered into an agreement with the Monterey County Republican Party ("MCRP") to secure office space through November 2006. Specifically, Senator Maldonado agreed to pay the two campaign/fundraising consultants \$9,000 and \$3,750 respectively every month through November. Senator Maldonado also agreed to pay the MCRP \$2,000 per month as rent for the office space.

During the primary election cycle, Senator Maldonado also raised contributions for the general election scheduled for November 7, 2006. Typically, these contributions were from contributors who had already contributed the maximum contribution towards the primary election. Senator Maldonado now wishes to charge the fees owed to the campaign/fundraising consultants and the MCRP, for the period commencing after the primary election, to the remaining general election funds.

ANALYSIS

As pertinent to your question, section 85318 provides:

"A candidate for elective state office may raise contributions for a general election prior to the primary election ... for the same elective state office if the candidate sets aside these contributions and uses these contributions for the general election If the candidate for elective state office is defeated in the primary election ..., the general election ... funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election ... contributions."

This statute governs contributions raised in campaigns for elective state office, providing clear authority for a candidate to raise and set aside funds for the general election *before* the primary contest has been decided. The statute also clearly provides that expenses "associated with the raising and administration of general election contributions" may properly be charged against funds raised for the general election prior to refunding those contributions to their donors.

It is often necessary for candidates to commit funds to goods and services that will be required for the general election campaign, while the primary campaign is still in progress. Candidates who had accepted the Act's voluntary expenditure ceilings allocate these charges against their general election funds on campaign reports filed during the course of the primary, under the allocation rules specified by regulation 18540.

While section 85318 itself does not offer specific instructions on allocating charges against general election funds prior to refunding contributions to their donors, regulation 18540 establishes the rules for allocating and reporting costs attributable to particular elections for candidates, such as Senator Maldonado, who have accepted the Act's voluntary expenditure ceilings. Since Senator Maldonado has accepted the Act's voluntary expenditure ceilings, charges against general election funds must be allocated pursuant to section 18540 to ensure that the calculation of charges against refunds are consistent with the allocations reported during the primary campaign. (See *Boling* Advice Letter, A-06-131.)

Senator Maldonado should therefore allocate the fees owed to the campaign/fundraising consultants and rent for office space pursuant to the rules of regulation 18540, as he allocated the same expenditures in his reports during the primary campaign.

Your second question asks whether Senator Maldonado can use either a "last in, first out" or a "first in, first out" method to allocate the return of general election funds to the respective contributors. Under either a "last in, first out" or a "first in, first out" method, some contributors would receive a full refund of their contribution while other contributors would receive a reduced refund or no refund at all. We find no statutory authority for either the "last in, first out" or the "first in, first out" method.

Section 85318 expressly requires the refund of general election funds "on a pro rata basis," less any expenses associated with the raising and administration of general election contributions.² As we stated in the *Kaufman* Advice Letter, No. A-06-110:

"The term 'pro rata' means 'in proportion, proportionally.' The expression 'on a pro rata basis' is an adverbial phrase equivalent in meaning here to the verb 'prorate' which means 'allocate, distribute or assess (something) proportionally.'"

A "last in, first out" or a "first in, first out" method would not yield the *proportional* distribution that the plain language of the statute requires on its face. Instead of an evenhanded distribution of all remaining general election funds, a "last in,

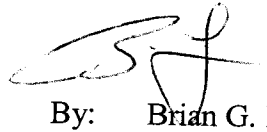
² Section 85319 generally permits candidate to select donors whose contributions he or she will refund. However, section 85318 is a more specific statute governing contributions for an election in which the recipient is not, ultimately, a candidate. The more specific statute controls the outcome in this case.

first out” or a “first in, first out” method would distribute full refunds to some contributors while others would receive a reduced refund or no refund at all.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Brian G. Lau
Counsel, Legal Division

BGL:rd
I:\AdviceLtrs\06-160