



## FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

November 22, 2006

Henry T. Perea  
Acting Council President  
City of Fresno  
Fresno City Hall  
2600 Fresno Street  
Fresno, CA 93721

**RE: Your Request for Advice  
Our File No. A-06-186**

Dear Mr. Perea:

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

### QUESTION

May funds received into your city council campaign account be transferred to your state assembly account?

### CONCLUSION

Yes. However, there may be restrictions on the amount you may transfer, depending upon the amount of contributions received from single contributors and the contribution limits in place at the time of the transfer. In addition, before any funds are transferred, or any other funds are raised by you to run for the assembly, you must file a Statement of Intention (Form 501) with the Secretary of State's Political Reform Division.

### FACTS

You are a city council member and acting Council President for the city of Fresno. During our telephone conversation on October 19, 2006, you stated that you

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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.

intend to run for state Assembly in 2010 and, toward that goal, have established a campaign account into which you will place contributions received. In addition, you would like to transfer funds from your city council campaign account to your newly-established state Assembly account. You request information regarding your ability to move campaign funds from one campaign account to another; e.g., moving campaign funds received for a city council race to an account for a state Assembly race. It does not appear, however, that you have filed a Statement of Intention to be a candidate for Assembly.

### ANALYSIS

Section 85306(a) states:

“(a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office<sup>2</sup> of the same candidate. Contributions transferred shall be attributed to specific contributors using a ‘last in, first out’ or ‘first in, first out’ accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302.” (Footnote added.)

This intra-candidate transfer provision of the Act permits a candidate to transfer funds between his or her “controlled committees.” A “controlled committee” is defined in section 82016(a) as follows:

“‘Controlled committee’ means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.”

We assume that both your city council committee and assembly committee are controlled by you.

Regulation 18536 requires that:

“(a) A committee transferring funds must designate in its records at the time of its first transfer whether it elects the ‘first in, first out’ or a ‘last in, first

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<sup>2</sup> “‘Elective state office’ means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees’ Retirement System, and member of the State Board of Equalization.” (Section 82024.)

out' method of accounting for the current and future transfers. That designation is irrevocable.

“(1) ‘First in, first out’ means that campaign funds being transferred are attributed to the transferring committee’s contributors in chronological order beginning with the earliest of its contributors or, if there has been a prior transfer, beginning with the earliest contributor for which unattributed contributions remain.

“(2) ‘Last in, first out’ means that campaign funds being transferred are attributed to the transferring committee’s contributors in reverse chronological order beginning with the most recent of its contributors or, if there has been a prior transfer, beginning with the most recent contributor for which unattributed contributions remain.”

Thus, your city council committee must keep in its records the method of transfer chosen, whether that is “first in, first out” or “last in, first out.”

Section 85301 establishes contribution limits to candidates for elective state office. These limits are reviewed by the Commission and may be changed every odd-numbered year to reflect changes in the Consumer Price Index. (Section 83124.) Currently, an Assembly candidate may not receive more than \$3,300 from any one person, other than a small contributor committee or political party, per election. (Regulation 18545(a)(1).) A small contributor committee, as defined in section 85203, may not contribute more than \$6,700 to an Assembly candidate per election. (Regulation 18545(a)(4).) There is no limit on contributions received from a political party. A political party is defined in section 85205 as “the state central committee or county central committee of an organization that meets the requirements as a political party pursuant to Section 5100 of the Elections Code.”

Your Assembly committee may not receive more than the limit from any one source, including any funds transferred from your city council committee. (Section 85306.) Under the current contribution limits, if your Assembly committee has received an individual’s contribution(s) transferred from your city council committee that totals \$3,300 for the primary election, your Assembly committee may not receive additional contributions from that individual for the primary election.

An election means:

“... any primary, general, special or recall election held in this state. The primary and general or special elections are separate elections for purposes of this title.”  
(Section 82022.)

The primary and general elections are considered different elections for purposes of the contribution limits. An individual whose contributions to your Assembly committee have

met the contribution limit for the primary election may also contribute up to the contribution limit for the general election.

In addition, your Assembly committee may receive contributions for the general election prior to the primary election. However, if you are unsuccessful in the primary election, general election contributions must be refunded to your contributors on a pro rata basis, less any expenses associated with the raising and administration of the general election contributions. (Section 85318.)

Section 85200 requires that a Statement of Intention be filed by a candidate "prior to the solicitation or receipt of any contribution or loan." You may obtain this form, 501, on our website at [www.fppc.ca.gov](http://www.fppc.ca.gov) under "Forms."

Enclosed is a copy of the FPPC Campaign Disclosure Manual 1 for state candidates. The manual contains a detailed explanation and examples of the procedures for transferring contributions to a committee for elective state office, as well as other important information. Also, please note that if your campaign funds become surplus under the provisions of section 89519, you will not be able to accomplish the transfer. Section 89519 provides:

"(a) Upon leaving any elected office, or at the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds raised after January 1, 1989, under the control of the former candidate or elected officer shall be considered surplus campaign funds and shall be disclosed pursuant to Chapter 4 (commencing with Section 84100).

"(b) Surplus campaign funds shall be used only for the following purposes:

"(1) The payment of outstanding campaign debts or elected officer's expenses.

"(2) The repayment of contributions.

"(3) Donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.

"(4) Contributions to a political party committee, provided the campaign funds are not used to support or oppose candidates for elective office. However, the campaign funds may be used by a political party committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers as that term is defined in Section 82048.3.

“(5) Contributions to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot measure.

“(6) The payment for professional services reasonably required by the committee to assist in the performance of its administrative functions, including payment for attorney’s fees for litigation which arises directly out of a candidate’s or elected officer’s activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action brought of a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

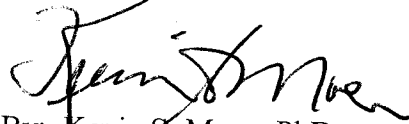
“(c) For purposes of this section, the payment for, or the reimbursement to the state of, the costs of installing and monitoring an electronic security system in the home or office, or both, of a candidate or elected officer who has received threats to his or her physical safety shall be deemed an outstanding campaign debt or elected officer’s expense, provided that the threats arise from his or her activities, duties, or status as a candidate or elected officer and that the threats have been reported to and verified by an appropriate law enforcement agency. Verification shall be determined solely by the law enforcement agency to which the threat was reported. The candidate or elected officer shall report any expenditure of campaign funds made pursuant to this section to the commission. The report to the commission shall include the date that the candidate or elected officer informed the law enforcement agency of the threat, the name and the telephone number of the law enforcement agency, and a brief description of the threat. No more than five thousand dollars (\$5,000) in surplus campaign funds may be used, cumulatively, by a candidate or elected officer pursuant to this subdivision. Payments made pursuant to this subdivision shall be made during the two years immediately following the date upon which the campaign funds become surplus campaign funds. The candidate or elected officer shall reimburse the surplus fund account for the fair market value of the security system no later than two years immediately following the date upon which the campaign funds became surplus campaign funds. The campaign funds become surplus campaign funds upon sale of the property on which the system is installed, or prior to the closing of the surplus campaign fund account, whichever comes first. The electronic security system shall be the property of the campaign committee of the candidate or elected officer.”

In addition, if your jurisdiction has a local campaign ordinance, you should consult with your city attorney or private counsel about any limitations resulting from local rules. The Commission does not advise regarding the validity of local ordinances.

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

Sincerely,

Luisa Menchaca  
General Counsel



By: Kevin S. Moen, PhD  
Political Reform Consultant  
Technical Assistance Division

Enclosure

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