



FAIR POLITICAL PRACTICES COMMISSION

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October 6, 2006

John Alden
790 Mission Avenue
San Rafael, CA 94901

**RE: Your Request for Advice
Our File No. A-06-187**

Dear Mr. Alden:

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

QUESTION

Is it permissible, under the circumstances you describe, to reopen your campaign account for the purpose of receiving contributions needed to pay a bill received from the Sonoma County Registrar of Voters after your committee had been closed?

CONCLUSION

The Executive Director of this Commission has authority to permit you to reopen your campaign committee for the purposes you describe. As explained below, it is also permissible for you to pay the Registrar's bill from your own personal funds, without any need to reopen your campaign account.

FACTS

You are a former candidate for the Democratic nomination for the 6th Assembly District. You lost in the June 2006 primary, and you closed your campaign committee ("Friends of John Alden") with its associated bank account on August 1, 2006, believing that all debts from the campaign had been paid or otherwise discharged.

After the bank account was closed, you received a bill from the Sonoma County Registrar of Voters dated August 22, 2006, stating that the campaign still owed \$1,357.10 for a ballot statement printed in the voter guides for that election.

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

You are eager to pay this bill, but are unclear on the proper method for payment, and for reporting the payment. Your preference would be to reopen the committee bank account, accept contributions of your own funds and those of others, and pay the bill from those campaign funds, reporting the payment under the rules that would have applied to the committee had the committee not been closed. The Registrar suggests, however, that you are required to pay the bill from personal funds, and threatens a collection action against you personally if the bill is not paid forthwith. But you are also concerned that such a payment from personal funds may be impermissible under the Act.

ANALYSIS

The Act requires generally that all of a candidate's campaign expenditures be paid from a single bank account maintained for that purpose. (Section 85201, copy enclosed). But section 85201(f) and (g) expressly states that a candidate's campaign bank account need not be employed when the candidate uses his or her personal funds for the kind of payment you describe. Section 82025 likewise exempts payments for ballot pamphlet statements from classification as campaign expenditures, if the payment is made from a candidate's personal funds. The position taken by the Sonoma County Registrar, that the cost of your ballot pamphlet statement need not be paid from your campaign account, is consistent with the Act's treatment of such payments, when the candidate chooses to use his or her personal funds. However, the Act contains no provision *requiring* payment of such a cost from a candidate's personal funds. Rather, the Act permits such costs to be paid *either* from personal funds *or* from a campaign bank account.

However, if you wish to receive contributions to assist in paying the cost of your ballot pamphlet statement, you must reopen your committee to receive the contributions and make the payment. Regulation 18404.1 (copy enclosed) states the rules under which committees are terminated and may be reopened. With one exception that does not seem relevant here, these rules apply to committees for state elective office, and do not apply to committees formed for local election campaigns. Since the committee you describe was a committee for state elective office, Regulation 18404.1 governs the process you must use to reopen your committee, if you choose to make this payment with the assistance of contributions.

As pertinent here, regulation 18404.1(i) provides as follows:

“(i) Reopening of Terminated Committees. A committee subject to the requirements of this regulation may submit a request to the Executive Director to reopen for any of the following reasons:

- (1) To receive a refund or similar payment received after termination of the committee;
- (2) To pay a fine as permitted under Government Code section 89513(c);

- (3) To pay expenses incurred in connection with an audit or investigation of the committee under this title;
- (4) To pay litigation expenses as permitted under Government Code sections 89513 and 89514, other than expenses subject to Government Code section 85304 and 2 Cal. Code Regs. section 18530.4; or
- (5) For any other good cause shown that would further the disclosure requirements or contribution limits of this title.

Assuming that leave is granted, subdivisions (k) and (l) state the required procedures for reopening the committee:

“(k) Procedures for Reopening Terminated Committees.

In order for the committee’s reopening to be effective, the committee must:

- (1) Request and receive approval to reopen the committee from the Executive Director of the Fair Political Practices Commission as specified in this subdivision. The purpose(s) for requesting the reopening of the committee must be included in the request. Within 15 days after a request is received by the Executive Director, the requestor shall be notified in writing of the decision of the Executive Director. In denying or granting the request, the Executive Director shall consider whether the proposed purpose(s) for reopening the committee are as specified in subdivision (i) of this regulation, and specify the purpose(s) for reopening the committee in the notification if the request is granted. If the request is denied, the notification shall state the reason for the denial and advise the requestor of the right to appeal the decision to the Chairman within 10 days after the date of the transmittal of the denial notification. Any such appeal shall:
 - (A) Be submitted to the Commission Offices either in person, by fax, or by overnight delivery service;
 - (B) Include all material, if any, submitted with the original request to reopen supporting any of the permissible reasons for reopening as set forth in subdivision (i) of this regulation upon which the committee is basing its request; and
 - (C) Directly address the reasons for the denial of the request stated in the Executive Director’s notification to the committee.

The Chairman’s decision shall be final, and may not be appealed to the Commission.

- (2) File an amendment to Form 410 (Statement of Organization) declaring the committee's reopening with the Secretary of State along with written authorization from the Executive Director granting the reopening of the committee;
 - (3) Mark "Amendment" on the Form 410 and list the committee's original identification number and name;
 - (4) Include the word "Reopened" in parentheses after the committee name on the Form 410; and
 - (5) File a copy of the amended statement of organization with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Government Code section 84215.
- (l) Filing Requirements. A reopened committee is subject to all of the committee filing requirements of this title including those specified in subdivision (k) of this regulation."

Because the cost of the ballot pamphlet statement is not an expenditure under the Act when paid from a candidate's personal funds, you may find it more convenient to pay the outstanding charge with personal funds, which you may do without need of reopening the committee or indeed for further reporting. If you do wish to reopen the committee, you must direct that request as specified in regulation 18404.1, to the Commission's Executive Director, Mark Krausse, at the Commission's address.

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

Sincerely,

John W. Wallace
Acting General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

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