



FAIR POLITICAL PRACTICES COMMISSION

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July 17, 2007

Robert R. Rios
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555 Capitol Mall, Suite 1425
Sacramento, CA 95814-4602

**RE: Your Request for Advice
Our File No. A-07-107**

Dear: Mr. Rios:

This letter responds to your request for advice on behalf of State Senator Michael Machado regarding the campaign reporting provisions of the Political Reform Act (the "Act").¹

QUESTIONS

May Senator Machado open a campaign committee and bank account for the purpose of soliciting and accepting campaign contributions in a bid for reelection to his termed-out senate seat in anticipation of a modification of the term limits provisions that would allow him to seek reelection?

CONCLUSION

No. A candidate must be eligible for the office which he or she seeks in order to run for that office and to thereby solicit and accept contributions for that purpose.

FACTS

Senator Machado is now serving his second term as a California State Senator. Under Article IV, Section 2 of the California Constitution, he is ineligible to seek reelection to the Senate. However, ballot measure proponents are currently seeking to qualify a measure for the presidential primary ballot in February that would modify the term limits provision and allow Senator Machado to seek another term. Should the

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

measure pass, Senator Machado would like to run for another term in next June's primary election.

ANALYSIS

Government Code Section 85200 provides, in part:

“Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective state office, pursuant to Section 82024, shall file with the Secretary of State an original statement, signed under penalty of perjury, of intention to be a candidate for a specific office.”

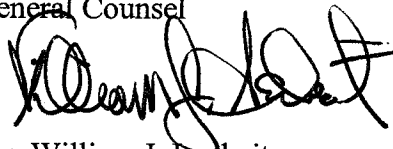
Implicit within this provision is the requirement that the individual must be eligible to run for the specific office indicated. If a candidate does not meet the minimum eligibility prerequisites to hold the office, the candidate cannot form the necessary intent under the statute to seek that office.

Because Senator Machado is, under current law, prohibited from seeking reelection to his Senate seat, he may not declare his intent to seek that office and open a campaign account soliciting or accepting contributions for that purpose.

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

Sincerely,

Scott Hallabrin
General Counsel



By: William J. Lenkeit
Senior Counsel, Legal Division

WJL:jgl