



FAIR POLITICAL PRACTICES COMMISSION

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October 6, 2008

R. Zachary Wasserman
Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, California 94607-4036

Re: Your Request for Advice
Our File No. A-08-165

Dear Mr. Wasserman:

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

QUESTION

May funds previously transferred to the "Brown 2010 Committee" (established for 2010 Attorney General reelection campaign) be transferred to a new political committee that may be formed in support of Jerry Brown should he decide to run for Governor in 2010?

CONCLUSION

Yes. Section 85306 permits the transfer of funds from one controlled committee to a controlled committee for elective state office of the same candidate. The transferred funds must be attributed to contributors to the Brown 2010 Committee as required by Section 85306 and Regulation 18536 and are subject to the contribution limits specified in Section 85301(c) and Section 85302(c) and Regulation 18545.

FACTS

You represent the Brown 2010 Committee, a committee formed by Attorney General Jerry Brown to support his reelection in 2010. You wish to know if funds previously

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

transferred to this committee may be transferred to a new political committee that the Attorney General may form, if he decides to run for Governor.

In 2007, funds were transferred from the "Brown for Attorney General Committee," which had been formed to support Jerry Brown's candidacy for Attorney General in the 2006 elections, to the Brown 2010 Committee. Because the funds were designated for the same elective office, no "last in, first out" ("LIFO") or a "first in, first out" ("FIFO") determination for these contributions was made.² However, some of the funds that were transferred to the Brown for Attorney General Committee had previously been designated as "first in, last out" because they were transferred from a Brown for Mayor Committee.

ANALYSIS

Section 85306(a) states:

"(a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office 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."

While it would appear that, under the above section, attribution would be required for all transfers a candidate makes from one of his or her committees to his or her committee for elective state office, Section 85317 eliminates the attribution requirement if the contributions are being carried over between committees for the same elective state office. It states:

"Notwithstanding subdivision (a) of Section 85306, a candidate for elective state office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office."

Therefore, it was not necessary to do the attribution to contributors required under Section 85306 for the transfer of funds from the Brown for Attorney General Committee of 2006 to the Brown 2010 Committee for Attorney General, because the committees are for the same elective state office.

With respect to the potential transfer of funds from Brown 2010 Committee for Attorney General to a committee in support of Jerry Brown's possible run for Governor in

² Your letter indicated that no "last in, first out" or "first in, last out" determination was made for these contributions. We assume you meant no "last in, first out" or a "first in, first out" as there is no "first in, last out" option for candidates for elective state office. (Section 85306(a).)

2010, Section 85306 would apply; the funds may be transferred and are subject to the attribution requirements set forth in that section and in Regulation 18536.

Regulation 18536 (copy enclosed) outlines the Commission's rules pertaining to the transferring and attribution of contributions and provides in pertinent part:

“(a) A committee transferring funds must designate in its record at the time of its first transfer whether it elects the ‘first in, first out’ or a ‘last in, first out’ method of accounting for the current and future transfers. That designation is irrevocable.

(D)

“(3) Campaign funds shall be attributed to contributors in the lesser of the following amount:

“(A) The actual amount of the original contribution from the person to whom the campaign funds are being attributed;”

“(B) The applicable contribution limit under Government Code [S]ection 85301 or 85302; or

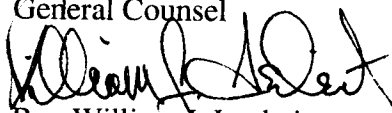
“(C) The amount of campaign funds the committee is seeking to transfer that has not yet been attributed.”

Therefore, the Brown 2010 Attorney General committee may use either the LIFO or FIFO method and transfer funds to a 2010 committee for Governor.³ However, funds may not be transferred, if the funds attributed to a specific contributor exceed the contribution limits of Section 85301 or 85302 when aggregated with all other transfers attributed to, and contributions from, the same contributor.

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
Enclosure

³ The committee does not have to use the same method used when the funds were transferred from the Brown for Mayor Committee to the 2006 Brown for Attorney General Committee.