



FAIR POLITICAL PRACTICES COMMISSION

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December 9, 2009

Daniel Abramson
Reed & Davidson, LLP
3699 Wilshire Blvd., Suite 1290
Los Angeles, CA 90010-2732

Re: Your Request for Advice
Our File No. A-09-246

Dear Mr. Abramson:

This letter is in response to your request on behalf of Roy Wilson for Supervisor, 2010, a primarily formed recipient committee that seeks advice regarding provisions of the Political Reform Act (the "Act") relating to the permissible use of campaign funds.¹ This letter is based solely on the facts presented; the Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

May Roy Wilson's campaign committee pay the full cost of Supervisor Wilson's memorial service, or a portion of the total consisting of those costs that would not exist but for the presence of some 1,000 supporters, constituents, and media representatives whose attendance is attributable to Mr. Wilson's candidacy?

CONCLUSION

No. The Act does not permit the use of a candidate's campaign funds to pay the costs of his memorial service after the candidate's untimely death during the campaign.

¹The 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.

FACTS

Roy Wilson was a candidate for re-election as a Riverside County Supervisor. Accordingly, he formed a campaign committee, "Roy Wilson for Supervisor 2010" (hereafter "the Committee"). Supervisor Wilson died unexpectedly on August 26, 2009. On September 2, approximately 1,000 supporters and constituents of Supervisor Wilson attended his memorial service, which was also attended by members of the media, along with video and camera crews. The cost of the service was \$18,039.95. That amount is directly attributable to the large number of persons attending the service, which in turn is due to Supervisor Wilson's prominence as a well-respected public official.

ANALYSIS

Rules limiting "personal use" of campaign funds are designed to prevent candidates, elected officials, and others who control the expenditure of campaign funds from using money contributed for political purposes to confer financial benefit on themselves or other persons. The general rule is that an expenditure of campaign funds must be reasonably related to a political, legislative or governmental purpose. However, where an expenditure of campaign funds confers a substantial personal benefit on any individual or individuals with authority to approve the expenditure of campaign funds held by the committee, the expenditure must be *directly* related to a political, legislative, or governmental purpose. (Sections 89510(b); 89512.5.)

Similarly, Section 89513(b) provides that campaign funds may not be used to reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose. We have long advised that campaign funds may be used to defray costs incurred for professional services directly related to activities of the committee which are consistent with the committee's primary objectives. (See, e.g. the *Murphy* Advice Letter, No. A-92-455.)

We have not previously had occasion to consider the use campaign funds to defray the cost of a candidate's funeral or memorial service. We begin our analysis by noting that the cost of a funeral or memorial service in our society is normally borne by the family or estate of the deceased, as a personal expense. This norm is clearly reflected in the federal regulation that defines "personal use" of campaign funds under the Federal Election Campaigns Act, the federal counterpart of our own Act. Specifically, 11 CFR Section 113.1(g) provides, in pertinent part:

"(g) Personal use. Personal use means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a federal officeholder.

"(1) Personal use includes but is not limited to the use of funds in a campaign account for any item listed in paragraphs (g)(1)(A) through (J) of this section:

"(A) Household food items or supplies.

“(B) Funeral, cremation or burial expenses except those incurred by a candidate (as defined in 11 CFR 100.3) or an employee or volunteer of an authorized committee whose death arises out of, or in the course of, campaign activity.”

Sections 89510 through 89522 the Act describes permissible uses of campaign funds, which are made subject at the outset to a trust described by Section 89510(b):

“(b) All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office.”

The Act does not expressly permit use of a candidate’s campaign funds to defray expenses of a candidate’s funeral or memorial service. But unlike its federal counterpart, the Act does not offer a full, itemized list of prohibited uses. We therefore ask whether the committee’s payment towards the cost of Supervisor Wilson’s memorial service would be an expenditure associated with seeking or holding office, as defined by Section 89512:

“An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.”²

As noted above, we have advised that campaign funds may be used to pay for professional services directly related to activities (whether “political,” “legislative,” or “governmental”) of the committee which are consistent with the committee’s primary objectives. But we cannot conclude that a payment for the memorial service is related to the committee’s primary objective – securing the Supervisor’s re-election. Nor can we conclude that such a payment might be classified as an expenditure associated with holding that office after the election.³ Given the cost of the memorial service, payment by the committee would confer a

² Section 89511(b)(3) defines “substantial personal benefit” as an expenditure of campaign funds resulting in a direct personal benefit of more than \$200 to the candidate, elected officer, or any individual with authority to approve expenditure of the committee’s campaign funds. Regulation 18960(a)(1) further explains that an expenditure of campaign funds results in a direct personal benefit when, within six months of the expenditure, the candidate, elected officer, or a member of his or her immediate family realizes an increase or decrease in income or assets, or a decrease in expenses or liabilities, of more than \$200. The term “immediate family” is defined at Section 82029 to include a spouse or a dependant child.

³ You correctly observe that the Act expressly creates exceptions at Section 89513(f)(3) which deem certain campaign expenditures to be directly related to a political, legislative, or governmental purpose. But we are constrained by settled principles of statutory construction, and by Section 81003, to construe exceptions to the “personal use” statutes narrowly. Without direction by the Commission, we cannot advise that it is possible to

personal benefit on any person or persons otherwise liable to pay for it, but it would not be an expenditure within the lawful execution of the trust imposed by Section 89510(b) on the use of campaign funds.

We recognize that this advice may seem harsh under circumstances already tragic. But our reading of the law is that it simply does not contemplate the substitution of campaign funds for the personal funds ordinarily used to defray the costs of a candidate's funeral or memorial service. This is the rule expressly provided by parallel federal law, and is the rule evidently presumed throughout the Act's long history.

Pursuant to Regulation 18951(a)(3), funds in the committee become "surplus funds" on December 31, 2009. As pertinent here, surplus campaign funds may be spent by the committee as provided by Section 89519(b):

"(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."

extend so broadly exceptions limited to the funding of campaign celebrations and similar campaign events, or the purchase of relatively small gifts for campaign workers.

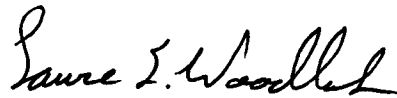
We do not see any basis in Section 89519 for concluding that campaign funds may be used after December 31 to pay costs of the memorial service which they could not have lawfully paid before becoming "surplus."

We understand and accept your point that the costs of the memorial service are attributable, at least in part, to the esteem that Supervisor Wilson had earned from his constituents by years of exemplary public service. But this fact does not entitle us to read the Act in a manner that would permit campaign funds to subsidize expenses ordinarily borne by personal resources.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

LTW:jgl