



FAIR POLITICAL PRACTICES COMMISSION

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January 27, 2010

Mr. J. J. Jelincic
3828 Hillcrest Lane
Sacramento, CA 95821

Re: Your Request for Advice
Our File No. A-09-274

Dear Mr. Jelincic:

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

FACTS

You were recently elected to the CalPERS Board of Administration – Seat A. J.J. Jelincic for CalPERS (Identification No. 1315960) is the recipient committee for your 2009 election.

QUESTIONS AND ANSWERS

1. *There is money still in the account. You understand that you may use that money for any political, legislative or governmental purposes. The only limit you are aware of is that you may not transfer more than \$3,900 to another candidate controlled committee. Is your understanding correct? Are there other restrictions?*

You ask about the permissible uses of campaign funds remaining in your committee's account. In general, to ensure that campaign funds are not used for personal benefit, the Act requires that the expenditure of campaign funds must be *reasonably*

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.

related to a *political, legislative, or governmental* purpose. Expenditures that confer a personal benefit on any individual with authority to approve expenditures must be *directly* related to a political, legislative, or governmental purpose. The Act's provisions concerning the use of campaign funds are in Sections 89510 – 89522, copy enclosed. These provisions and certain other restrictions are summarized in Chapter 10 of the State Candidate Campaign Manual, which is also enclosed. If you have a question about whether a specific use of campaign funds is permissible, please feel free to contact us.

You are correct that you may not contribute more than \$3,900 to any other candidate for elective state office. Section 85305 provides that a "candidate for elective state office² or committee controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of the limits set forth in subdivision (a) of Section 85301." The contribution limit of Section 85301(a), as adjusted for changes in the consumer price index, is \$3,900 for the 2009-2010 period.

Another restriction on the use of a candidate's funds is contained in Section 85501. A controlled committee of a candidate may not make independent expenditures and may not contribute funds to another committee for the purpose of making independent expenditures to support or oppose other candidates.

2. *Even though the election has passed (although not yet certified) and you have no campaign related debts, but will have office related expenses, may you continue to accept contributions to that account? If so, what limits are imposed?*

The Act contains the following restriction on post-election fundraising:

"(a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for *elective state office* after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election." (Section 85316; See Regulation 18531.61.) (Emphasis added.)

The Commission has advised that the six elected members of the CalPERS Board are subject to all of the Act's statutes using the terms "elective office" or "elective state office," except certain reporting requirements in Chapter 4, Article 2 which they are exempted from by Section 84225(b). (*Gillan Advice Letter, No. A-00-033.*)

² The Act defines "elective state office" to mean "the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, 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.)

You have stated that you have no campaign-related debts from your 2009 CalPERS board election, and therefore under Section 85316 you are not permitted to accept additional contributions to your 2009 committee account after the election.

You state that you will be establishing a new committee for your reelection to the CalPERS Board in 2013. Note that it is permissible to make expenditures of campaign funds for purposes associated with holding office from the funds left over in your 2009 campaign committee bank account, or from funds in a new committee bank account established for your reelection in 2013.

As an alternative, you may set up a new "officeholder account" and raise contributions into it for purposes of officeholder expenditures. Under Section 85316(b), an elected state officer is permitted to accept contributions into a separate account for the purpose of paying officeholder expenses. The officeholder account provision states:

"(b) Notwithstanding subdivision(a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision." (Section 85316(b); See Regulation 81531.62, copy enclosed.)

If you choose to set up a separate "officeholder account," contributions to this account from a person are limited to \$3,200 per calendar year, and the total aggregate amount you may raise for the officeholder account in a calendar year is \$53,800. (Section 85316(b)(1) and (2).)

Be aware, however, that contributions a donor makes to your officeholder account will reduce the amount the donor may contribute to your next campaign for elective state office. Under Section 85316(b)(3), any contribution received to an officeholder account is deemed to be a contribution to the candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, reelection to the office he or she currently holds, and is subject to the applicable contribution limit. (Section 85316(b)(3).)

With respect to reporting for the officeholder account, Regulation 18531.62(c)(3) states that the "committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office." Thus, if you decide to open a separate officeholder account, you must file Form 900 disclosure statements for the account as required by Section 84225 (discussed below). An

officeholder account committee's name must include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." (Regulation 18531.62(c)(2).)

3. *What are the reporting requirements? Do you continue to use Form 900? If not, what other form should you use?*

Reporting requirements for candidates for CalPERS Board are set forth in Section 84225 and Regulations 18451 and 18452, copies enclosed.

Section 84225 states:

"(a) For the purposes of this section only, 'board' means the Board of Administration of the Public Employees' Retirement System, as established under Article 1 (commencing with Section 20090) of Chapter 2 of Part 3 of Division 5 of Title 2 of the Government Code.

(b) Except as provided in this section, the provisions of this article [Article 2 – Filing of Campaign Statements §§ 84200-84225] do not apply to candidates for the board, including incumbent board members running for reelection, as such candidates are described in subdivision (g) of Section 20090.³

(c) Candidates for board seats described in subdivision (g) of Section 20090, including incumbent board members running for reelection, shall file campaign statements with the Secretary of State no later than two days before the beginning of the ballot period, as determined by the board, for the period ending five days before the beginning of the ballot period, and no later than January 10, for the period ending December 31.

³ Government Code Section 20090 lists the members of the CalPERS Board as follows:

"The Board of Administration of the Public Employees' Retirement System is continued in existence. It consists of:

(a) One member of the State Personnel Board, selected by and serving at the pleasure of the State Personnel Board.

(b) The Director of the Department of Personnel Administration.

(c) The Controller.

(d) The State Treasurer.

(e) An official of a life insurer and an elected official of a contracting agency, appointed by the Governor.

(f) One person representing the public, appointed jointly by the Speaker of the Assembly and the Senate Committee on Rules.

(g) Six members elected under the supervision of the board as follows:

(1) Two members elected by the members of this system from the membership thereof.

(2) A member elected by the active state members of this system from the state membership thereof.

(3) A member elected by and from the active local members of this system who are employees of a school district or a county superintendent of schools.

(4) A member elected by and from the active local members of this system other than those who are employees of a school district or a county superintendent of schools.

(5) A member elected by and from the retired members of this system."

(1) The campaign statements shall contain an itemized report that is prepared on a form prescribed by the Commission, with the assistance of the board, that provides the information contained in campaign statements required under Section 84211 to the extent that the information is applicable to a board election.

(2) The original of a campaign statement shall be filed with the Secretary of State and a copy shall be retained at the board's office in Sacramento and is a public record."

Under Section 84225(b) above, CalPERS board candidates are not currently subject to the full filing requirements of the Act. They are subject to a more limited reporting scheme set forth in Section 84225 and Regulation 18452, copy enclosed. CalPERS board candidates are required to file two disclosure statements, one preelection, and one following the election due on January 10. The filing dates in the case of a runoff or special election are set forth in Regulation 18452.

It is our understanding that legislation may be introduced this session to subject candidates for the CalPERS board to all reporting requirements of the Act contained in Chapter 4, instead of the limited reporting requirements they are now subject to under Section 84225. In this case the conclusions in this letter will change and CalPERS board candidates will be subject to the semi-annual filing requirements, committee termination requirements, and other requirements contained in Sections 84200-84225.

4. *You will be establishing a committee for your reelection in 2013. Does this require the establishment of a new bank account?*

Yes. A candidate for elective state office must form a new committee and open a new bank account for each elective office; they may not redesignate a current committee and bank account for a future elective office. (Section 85201 and Regulation 18521.)

A current elected board member must file a Form 501 – Candidate Intention Statement if the member intends to run in the next election. The member must file this form before soliciting or accepting any contributions, or making any expenditures from personal funds on behalf of his or her candidacy. (Section 85200; *Gillan* Advice Letter, No. A-00-033.)

A current elected board member must open a campaign bank account after he or she files a form 501 and before making any expenditures. (Section 85201; *Gillan* Advice Letter, *supra*.) Section 85201 requires an individual, who intends to be a "candidate for elective office," to establish a campaign bank account. As a prospective "candidate for elective office," current members of CalPERS who intend to run in the next election are subject to this requirement. To comply, the candidate must establish a campaign bank account after filing a statement of intention, but before making an expenditure. In addition, all monetary contributions or loans made to the candidate must be deposited in

the account. (Section 85201(c).) Any personal funds that the candidate intends to use for his or her election must also be deposited in the campaign bank account prior to expenditure. (Section 84201(d).)⁴

In addition, under Sections 84101-84103 your committee will be required to file a statement of organization (Form 410) with the Secretary of State within 10 days after it has qualified as a committee, by receiving contributions of \$1,000 or more in a calendar year. (Section 82013(a).) The name of a candidate's controlled election committee must include the candidate's name, the office sought, and the year of the election. (Regulation 18402(c)(2).)

5. You believe the contribution limits for the 2013 committee would be \$3,900/\$7,800 (which could change between now and 2013). It appears that the first required report of that committee is the pre-election Form 900 in 2013. Any contributions prior to January 1, 2013 would have a reported date of January 1, 2013. Are those understandings correct? If not, what are the reporting requirements and the proper forms? What would be the effective date of any expenditure for reporting purposes?

The current contribution limits applicable to a candidate for the CalPERS board for the period 2009-2010 is \$3,900 from a person and \$7,800 from a small contributor committee. These amounts shall be adjusted for 2011-2012, and again for 2013-2014, to reflect increases or decreases in the consumer price index. (Section 83124; Regulation 18544.)

Under Section 84225, you are correct that the first required report of a new committee created for your reelection to the CalPERS board in the 2013 election would be the preelection Form 900 in 2013.

As to contributions received by a new committee for your reelection to the CalPERS board in 2013, the "date received" for contributions that the committee receives prior to January 1, 2013, is deemed to be January 1, 2013.

Regulation 18452(b)(1) states that the preelection statement filed by PERS candidates shall "cover the period beginning January 1 of the election year and ending five days before the beginning of the ballot period." To ensure that any contributions that may have been received before the election year are reported, Regulation 18452(f)(1) provides that "any contribution received by a candidate before January 1 of an election

⁴ Section 85201, however, does not require a prospective candidate to open a campaign bank account if he or she only receives nonmonetary contributions. In addition, Section 85201 does not apply to candidates who will not receive contributions from others, and will make expenditures of personal funds of less than \$1,000. (Section 85201(g).)

year which has not previously been reported is deemed received on January 1 of the election year and is reportable” pursuant to the requirements of this regulation.

For example, if you started receiving contributions to your 2013 reelection committee during the year 2012, under Section 84225, those contributions would be reported on the preelection Form 900 in 2013, with a “date received” of “January 1, 2013.” For recordkeeping and for auditing and accounting purposes, however, your committee should also maintain a record of the actual date each contribution was received. (Regulations 18401 and 18453, copies enclosed.)

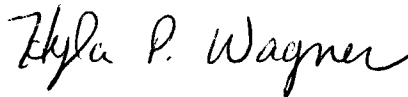
As to expenditures, Regulation 18452 requires that you report the date and amount of expenditures made during the period covered by the campaign statement. (Regulation 18452(d)(9)(C).) However, neither the regulation nor the Form 900 contain any special instructions about reporting the date of expenditures made before January 1 of the election year. Therefore, in the event that you have expenditures from your 2013 reelection committee before January 1, 2013, we advise that you report the actual date the expenditure is made. As to the expenditure date, Form 900 notes that “an expenditure is made on the date the payment is made or the date the goods or services purchased were received, whichever is earlier.”

In addition, note that you will be required to file your campaign reports electronically with the Secretary of State once committees controlled by you reach the cumulative threshold of \$50,000 in contributions or expenditures. (Section 84605.)

If you have other questions on this matter, please contact me at (916) 322-5660. In addition, if you have other campaign or reporting questions, you may reach a Commission consultant and receive telephone advice by calling 866-ASK-FPPC.

Sincerely,

Scott Hallabrin
General Counsel



By: Hyla P. Wagner
Counsel, Legal Division

Enclosures

HPW:jgl