



FAIR POLITICAL PRACTICES COMMISSION

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August 18, 2011

Jill Broadhurst
6708 Liggett Drive
Oakland, CA 94611

Re: Your Request for Informal Assistance
Our File No. I-11-120

Dear Ms. Broadhurst:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Because your questions seek general guidance, we are treating your request as one for informal assistance.² In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of local laws including local contribution limits that may apply.

QUESTIONS

1. In light of an open committee for an unsuccessful campaign for the Oakland City Council in 2010, does the Act place any restrictions on your ability to serve as the president of a political action committee?

2. If you serve as the president of a political action committee, may the committee contribute to your open 2010 Oakland City Council Committee for the purposes of paying down the debt of the committee, which consists of a \$16,000 personal loan you made to the committee?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed.)

CONCLUSIONS

1. Should you serve as the president (or any other voting officer) of a political action committee, it is presumed that the committee would be a controlled committee pursuant to Section 82016. Accordingly, if the committee supports or opposes candidates for elective office or makes contributions to support or oppose candidates for elective office, serving as the president (or any other voting officer) of the committee is prohibited under the one bank account rule so long as you control another open committee for elective office such as your committee for the 2010 Oakland City Council.

2. In light of the conclusion that you are prohibited from serving as the president (or any other voting officer) of a committee, which supports or opposes candidates for elective office or makes contributions to support candidates for elective office, while simultaneously maintaining a candidate controlled committee for elective office, it is unnecessary for us to address your second question.

FACTS

You have an open committee from an unsuccessful campaign for the Oakland City Council in 2010. While the committee has no remaining cash, the committee remains open in case you receive contributions to help pay down the committee's existing debt, which includes a \$16,000 personal loan you made to the committee.

Currently, you have been asked to chair a Latin Political Action Committee (the "Latin PAC") in the City of Oakland. If you accept, you will be serving as the president, a voting officer, of this committee. As proposed, there will be five officers of the Latin PAC including one-president, two vice-presidents, a secretary, and a controller. The Latin PAC will consist of several standing committees including an executive committee, endorsement committee, public relations/education committee, public policy committee, and finance committee. The president will be the chair of the executive committee. The chairs of the remaining standing committees will be nominated by the president and ratified by the executive committee. The executive committee will consist of the five officers and the chairs of each of the standing committees.

ANALYSIS

In pertinent part, Section 82007 defines a "candidate" as an individual who is listed on the ballot for elective office. An individual who becomes a candidate retains his or her status as a candidate until such time as that status is terminated. Pursuant to the facts you have provided, you were a candidate for the 2010 Oakland City Council and are considered a candidate until the campaign committee formed for this election is terminated. (Section 84214.) To terminate a committee, a recipient committee such as your campaign committee must complete the termination section on the Form 410 (Statement of Organization) declaring, under penalty of perjury, that the committee:

“(1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

“(2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

“(3) Has no surplus funds; and

“(4) Has filed all required campaign statements disclosing all reportable transactions.” (Regulation 18404(b).)

Under the Act’s “one bank account rule,” a candidate for elective office may have only one campaign bank account and one controlled committee for each specific election. (Section 85201.) While a candidate may have a separate controlled committee solely to support or oppose ballot measures and may have multiple campaign committees open simultaneously (if the candidate maintains a committee from a previous election and also establishes committees for future elections (see *Lujan* Advice Letter, No. I-08-010), the one bank account rule does not permit a candidate to simultaneously control a committee for elective office and a second committee that supports or opposes candidates for elective office or makes contributions to support or oppose candidates for elective office.

The Act defines a controlled committee as “a committee that is controlled directly or indirectly by a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she control has a significant influence on the actions or decisions of the committee.” (Section 82016(a).) The Commission has, in past letters, interpreted “controlled committee” broadly to include any significant participation by a candidate, his or her agent, or representatives of any other committee he or she controls. (See *Kopp* Advice Letter, No. A-97-108 and *Higdon* Advice Letter, No. I-94-189.) Where a candidate is a voting member of a committee’s leadership, such as the board of directors, he or she is presumed to be a controlling candidate because the candidate probably exercises significant influence on the actions or decisions of the committee. (*Leidigh* Advice Letter, I-92-547 and *Ferguson* Advice Letter, No. A-86-044.)

You have asked whether you may serve as the president, a voting officer, of the Latin PAC. However, because you would be a voting officer of the Latin PAC, the committee would be presumed to be a candidate “controlled committee.” Furthermore, unless the Latin PAC strictly limits its campaign activities to ballot measures, we must assume for the purposes of this analysis that the committee will be supporting or opposing candidates for elective office or making contributions to support or oppose candidates for elective office. If that is the case, the one bank account rule prohibits your from serving as the president of the Latin PAC while simultaneously maintaining your committee for the 2010 Oakland City Council.

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

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink, appearing to read "Brian G. Lau", with a long horizontal flourish extending to the right.

By: Brian G. Lau
Counsel, Legal Division

BGL:jgl

Enclosure