



FAIR POLITICAL PRACTICES COMMISSION

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March 19, 2012

Ms. Ana Maria Quintana
Councilwoman, City of Bell
4300 Walnut St., Apt F
Bell, CA 90201

Re: Your Request for Advice
Our file No. A-12-022

Dear Ms. Quintana:

This letter responds to your request for advice regarding campaign provisions of the Political Reform Act (the "Act").¹ Our advice is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Nothing in this letter should be construed to evaluate any conduct that has already taken place. Finally, our advice is limited to the provisions of the Act. Therefore, we do not offer advice on any restrictions that may exist in any local campaign ordinances.

FACTS

You are inquiring about the following matters: fundraising, redesignating an account, officeholder expenses and clarification on terminology. You were a successful candidate during the election in the City of Bell held this past March 2011, and will hold office until March 2013. Your controlled committee account, which remains open, holds a debt of \$9,000 in loans furnished by yourself.²

QUESTIONS AND ANSWERS

1. *May your controlled committee account continue to collect and/or raise monetary and non-monetary contributions? Are committees that continue to fundraise mandated to first pay off*

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 The facts and questions in this letter are based on your incoming request for advice and our telephone conversation of March 14, 2012.

remaining debt and then redesignate any remaining funds for a future election to the same office? You are the candidate, are now a councilmember, and plan to seek re-election for the same office in 2013.

The Act does not mandate that a local candidate first pay off all debt from a prior election before raising funds for officeholder expenses or for a future term of office.³ Section 85201 requires all campaign expenditures to be made from a campaign account and all contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee are required to be deposited in the account. The Commission has interpreted this to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each specific office to which he or she seeks election. (*Hicks Advice Letter, No. I-99-120.*)

The Commission has consistently advised that a local candidate may redesignate a campaign committee and campaign bank account for reelection to the same office at a future date if the candidate is running for a local office as long as certain conditions are met.⁴ (*Rogers Advice Letter, No. A-08-001.*) In 2002, the Commission codified the applicable conditions in Regulation 18521(b)(1-5):

“Candidates Other than Candidates for Elective State Office: A controlled committee and campaign bank account established for a specific office may be redesignated as a campaign bank account for a future election if:

- (1) The future election is for the same elective office;
- (2) The funds in the campaign account/committee are not considered ‘surplus campaign funds’ as defined in Government Code Section 89519;
- (3) The candidate amends the Statement of Organization for the committee to reflect the redesignation for the future election;
- (4) The candidate files a new statement, signed under penalty of perjury, of intention to be a candidate for the specific future election; and
- (5) Redesignation of committees/bank accounts is not otherwise prohibited by law.”

Therefore, if there are no local restrictions to the contrary, it appears that you may redesignate your 2011 campaign committee for Bell City Council for your 2013 election for city council.⁵ Alternatively, you may choose to open a new committee for the 2013 election, and retain the 2011 committee to use for officeholder expenses as discussed in Question 3.

³ Note that a state candidate may not engage in post-election fundraising into a committee established for the election, except to pay off net debt. (Section 85316.)

⁴ Note that state candidates may not redesignate campaign committees and accounts.

⁵ In your case the requirements for redesignation under Regulation 18521(b) appear to be met as you are running for the same local office and the funds in your 2011 committee have not become surplus campaign funds under Section 89519. To redesignate your committee for the 2013 election, you need to amend the committee's statement of organization on Form 410 and file a new statement of intention to be a candidate on Form 501.

2. *In addition to fundraising to clear up debt, you want to fundraise for community activities (i.e., educational/informative workshops, newsletters, etc.) as the City of Bell has limited resources and cannot incur the cost. Can these expenses be covered by the controlled committee account or must an altogether different account be set up for this purpose? Your intention is to publish quarterly newsletters aimed at providing information to the community and not for campaigning purposes, although you recognize that the act can be deemed as such. To quash that interpretation, you would like to not have to include "Paid for Quintana for Bell City Council 2011."*

In general, expenditures of campaign funds must be reasonably related to a political, legislative, or governmental purpose. (Section 89512.) Expenditures from your campaign funds to publish a newsletter informing residents about the activities of the city council and other city agencies are reasonably related to a governmental purpose. (*Vines* Advice Letter, No. I-95-275, *Pearson* Advice Letter, No. I-91-287; *Olander* Advice Letter, No. A-92-211.) In addition, publication of a newsletter in which you are featured will clearly provide political benefits to you as an elected official and future candidate. You may use campaign funds in your current committee to produce a newsletter or hold workshops for the City of Bell as long as these have a political, legislative or governmental purpose.

The Act requires that any mass mailing (more than 200 substantially similar pieces of mail sent in a calendar month) must contain the name and address of the candidate or committee which has paid the costs of the mailing. (Sections 82041.5 and 84305; Regulation 18435.) The name and address must be printed on the outside of the mailing in no less than 6-point type. Section 84305(a) also provides that a post office box may be stated in lieu of a street address if the sender's address is a matter of public record with the Secretary of State. If you send a newsletter, you will still be required to include your name or the name of your committee on the newsletter.

Donations you receive to help defray the cost of publishing the newsletter would be considered reportable "contributions" to you, and payments made in connection with the newsletter would be considered reportable "expenditures." (Sections 82015 and 82025; Regulations 18215 and 18225.)

3. *Officeholder Expense. Is an officeholder expense any governmental, legislative or politically related expenditure? Are these accounts available for municipal offices? Are they limited to state offices? If available for municipal offices, would a newsletter from the councilmember classify as an officeholder expense?*

An officeholder expense is any expense related to a *legislative* or *governmental* purpose. The Act has specific provisions concerning officeholder accounts applicable to state candidates. The Act does not contain contribution limits or specific officeholder account provisions for local candidates. Some local jurisdictions have campaign finance ordinances in effect with officeholder account provisions.

With respect to officeholder accounts for local candidates, we have advised that consistent with the one bank account rule, a local elected official may maintain a campaign committee and bank account from his or her most recent election (the 2011 election) to use for officeholder expenses, and may establish a new campaign committee and bank account to use for campaign expenses for their upcoming election (e.g., the 2013 election).

Regulation 18525(b), copy enclosed, states that an incumbent elected officer may make officeholder expenses "from either the campaign bank account established pursuant to Government Code Section 85201 for election to the incumbent term of office or from a campaign bank account established pursuant to Government Code Section 85201 for election to a future term of office."

Unless a local ordinance provides otherwise, you may use your campaign committee bank account established for the incumbent term of office for officeholder expenses. (Regulation 18525(b).) The committee needs to keep a reference to the 2011 election in its name. (Regulation 18402(a)(2).) However, you could change the name of the committee from "Quintana for Bell City Council 2011" to something such as "Councilmember Quintana Officeholder Account 2011." Regulation 18525, copy enclosed, describes which expenditures must be made from a campaign account for a future election and which expenditures may be made from an officeholder account.

4. Loans. Can additional loans be made to the controlled committee campaign account? If so, can funds from these loans also be used to finance officeholder expenses and/or non-campaign related expenses?

Subject to any local contribution limits or restrictions, additional loans may be made to your campaign committee for a future election or officeholder expenses. As discussed above, campaign funds may be spent for a political, legislative or governmental purpose. Campaign Manual 2 for Local Candidates, available on the FPPC's website under at <http://www.fppc.ca.gov/index.php?id=633>, discusses the permissible uses of campaign funds in Chapter 9.

5. Form 700/Jurisdiction. Employment and sources of income are amongst the various reporting requirements for Form 700. According to Form 700 Reference Pamphlet, for city offices, the jurisdiction is the city.⁶ When reporting previous sources of income, should that jurisdiction criteria be solely used to evaluate inclusion of any single employment? In other words, should employment performed within the City of Bell be the only employment included? You did consulting work outside the City limits.

⁶ The reference pamphlet states as follows: "Jurisdiction: Report discloseable investments and sources of income (including loans, gifts, and travel payments) that are located in or doing business in your agency's jurisdiction, are planning to do business in your agency's jurisdiction, or have done business during the previous two years in your agency's jurisdiction, and interests in real property located in your agency's jurisdiction."

Lastly, is there a threshold amount for employment compensation that must be reported for work performed outside of the jurisdiction? If so, what is this threshold minimum/maximum amount in earnings that must be reported?

As an elected city councilmember, you are required to file statements of economic interest (“SEI”) under Section 87200, disclosing certain income you earned during the period covered by the SEI. You are required to report sources of income that are located in or doing business in your agency’s jurisdiction. Under Section 82035, the jurisdiction of a local government agency is the region, county, city, district, or other geographical area in which it has jurisdiction.

Section 82030 defines “income.” That definition provides that “[i]ncome, other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.” (Section 82030(a).)

Regulation 18230 defines doing business in the jurisdiction as:

“A person is ‘doing business in the jurisdiction’ if that person has business contacts on a regular or substantial basis with a person who maintains a physical presence in the jurisdiction of a public official. ‘Business contacts’ include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. ‘Business contacts’ do not include marketing via the Internet, telephone, television, radio, or printed media.”

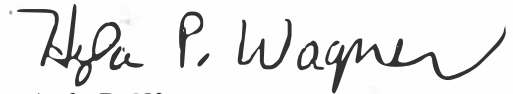
Therefore, if the businesses or organizations that you consulted for are located in or doing business in the City of Bell, planning to do business in the City of Bell, or have done business in the city of Bell in the previous two years, you report the income from that consulting work if the amount totals over \$500 to you in a calendar year.

Under the definition of “business contacts,” we have advised that the mere hiring of someone who lives in a particular jurisdiction is not sufficient to establish a “business contact” in that jurisdiction. (*Jordan Advice Letter, No. A-09-083.*) Because if this was the case, all filers who live in the jurisdiction they represent would have to report any source of income to them simply based on the filer’s home address, and none of the other “business contacts” listed would matter. Therefore, if the only contact that an entity for which you did consulting work has had in your jurisdiction is that it hired you, that entity would not be considered to be doing business in the City of Bell. On the other hand, if an entity you worked for has clients in the City of Bell or other business contacts with the City of Bell, you will need to report income of \$500 or more from this entity on your SEI.

Campaign Manual 2 for local candidates, on the FPPC's website, may be a helpful reference for you. In addition, the FPPC has a toll-free advice line at 1-866-FPPC that will be able to answer many of your campaign questions. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl

Enclosure