



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

May 22, 2013

Thomas A. Willis  
Remcho, Johansen & Purcell  
201 Dolores Avenue  
San Leandro, CA 94577

Re: Your Request for Advice  
**Our File No. A-13-041**

Dear Mr. Willis:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that our advice is limited to the circumstances and facts in this letter.

### QUESTION

Does the Act permit a state political party to purchase real property?

### CONCLUSION

A comprehensive read of the Act's personal use provisions, in context with Federal laws and amendments thereto, leads us to the conclusion that a state political party was not intended to be prohibited from purchasing real property, provided the real property is not held by an individual, and the purchase is reasonably related to a political, governmental, or legislative purpose.

### FACTS

You write on behalf of the California Democratic Party ("CDP"), a political committee that raises money for both state and federal campaigns. CDP would like to purchase an office building in Sacramento using both state committee and federal committee funds. While applicable federal laws do not restrict a party from such a purchase, the Act's personal use

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<sup>1</sup> 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.

provisions, which restrict the use of campaign funds, can be read in a manner that appears to prohibit the purchase.

### ANALYSIS

In 1989, the California legislature added into the Act the "Personal Use" provisions that were previously part of the Elections Code. (*See* Sections 89510-89522.) While little substantive changes were made, the move into the Act allowed the Commission to both advise on and enforce the personal use provisions. These provisions regulate the appropriate use of campaign funds.

Campaign contributions are held by a candidate or committee in trust, to serve the campaign for which the contribution was made. Generally, an expenditure of campaign funds by a committee not controlled by a candidate must at least bear a reasonable relationship to a political, legislative, or governmental purpose. Certain expenditures, such as those that confer a substantial personal benefit on a candidate, committee, or specified committee officer must bear a direct relationship to these purposes. (*See* Section 89512.5)

As adopted in 1989, Section 89517 states:

(a) Campaign funds shall not be used for payment or reimbursement for the lease of real property or for the purchase, lease, or refurbishment of any appliance or equipment, where the lessee or sublessor is, or the legal title resides, in whole or in part, in a candidate, elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds, or member of his or her immediate family.

(b) Campaign funds shall not be used to purchase real property. Except as prohibited by subdivision (a), campaign funds may be used to lease real property for up to one year at a time where the use of that property is directly related to political, legislative, or governmental purposes.

(c) For the purposes of this section, real property, appliance, or equipment is considered to be directly related to a political, legislative, or governmental purpose as long as its use for other purposes is only incidental to its use for political, legislative, or governmental purposes.

The original language, in the Elections Code, was adopted to prevent candidates, officeholders, and treasurers from benefitting from their participation in a campaign. The primary inquiry was whether the expenditure at issue bore at least a reasonable relationship to a political, legislative, or governmental purpose. When the legislature enacted the personal use provisions into the Act in 1989, the same goal was apparent: safe-guarding the public's trust in its elected officials by ensuring that campaign funds were not used for personal benefit.

At the time California's personal use statutes were adopted into the Act, federal law held, as interpreted by the Federal Elections Commission ("FEC"), that a gift, subscription, loan, advance, or deposit of money or anything of value made to a state political party committee that is specifically designated to defray the costs incurred for construction or purchase of an office facility was exempt from the definitions of "contribution" and "expenditure." (See *Wood* Advisory Opinion, AO 1997-14 (1997) *citing* 2 U.S.C. § 431(8)(B)(viii); 11 C.F.R. 100.7(b)(12), 100.8(b)(13), and 114.1(a)(2)(ix).) Under these provisions, the FEC allowed state political parties to accept corporate donations for the purpose of purchasing or constructing an office building as its headquarters. (*Wood* Advisory Opinion, 1997-14, *citing* Advisory Opinions 1996-8, 1993-9, and 1991-5.)

Given this interpretation, the FEC then analyzed the result if a state's laws prohibited a state political party from purchasing or constructing a building for its headquarters. At the time, the Federal Election Campaign Act ("FECA") provided that its provisions and regulations "supersede and preempt any provision of State law with respect to Federal office." (*Wood* AO, *supra*, *citing* 2 U.S.C. § 453.) Specifically, the federal regulation stated that state law is preempted, "with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitation on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(a) and (b)." (*Wood* AO, *supra*.) Given this, and the legislative history regarding the FEC's regulations, the FEC found that there was an explicit intent to preempt state law with respect to prohibitions on contributions to the state political party building funds. (*Id.*)

In 1992, a district court had occasion to interpret a similar issue, particularly whether federal law preempted an entire body of state campaign reform law. (*Weber v. Heaney*, 793 F. Supp. 1438 (D.Ct. Minn., 1992) (aff'd, 995 F.2d 872 (8th Cir. Minn. 1993).) Specifically, the court gave great deference to the FEC's interpretation in regulations and advisory letters that FECA preempted Minnesota's campaign reform act, and particularly its prohibitions in the area of contributions and expenditures. (*Weber*, 793 F. Supp. at 1451-53.) Additionally, the court found that Congress specifically exempted those areas of state law that FECA did not preempt, such as prohibiting false registration, voter fraud, ballot theft and similar offenses. (*Id.* at 1453.)

In 2002, Congress passed the Bi-Partisan Campaign Reform Act ("BCRA"), which overhauled federal campaign laws. BCRA changed the preemption provision at issue in both the *Wood* Advisory Opinion and *Weber v. Heaney*. The FEC currently allows a state or local party committee to purchase real property with federal funds that are not subject to limitations or other restrictions. (See 2 U.S.C. 453(b) and 11 C.F.R. §300.35.) The regulation states, however, that if the party uses state funds to purchase real property, state law applies. (*Id.* at §300.35(a).) It also explicitly states that the regulation does not preempt state law on this point, thus reversing prior federal law. (*Id.* at §300.35(b)(1).)

Accordingly, federal law no longer preempts state law regarding the issue addressed in the *Wood* Advisory Opinion and your question here: whether a state political party can purchase

a building with a mixture of federal and non-federal funds. Given this current state of federal law, the Act's language in Section 89517 (b) would appear to prohibit such a purchase. However, the history of Section 89517 and the timing of its codification lead us to an alternate reading.

When enacting the personal use statutes into the Act, the California legislature is presumed to have known that federal law preempted certain areas of state campaign reform law, and to have enacted those statutes in light of that fact. (See *People v. Overstreet* 42 Cal.3d 891, 897 (1986).) Notably, from the time voters passed the Act in 1974 and until federal law was amended in 2002, preemption applied and no state could prohibit a state political party from using funds to purchase real property. It follows then that the legislature had no reason to explicitly exempt state political parties from the prohibition in Section 89517, because they were already exempted by operation of federal law. In enacting Section 89517, the California legislature could not have intended it to prohibit state political parties from purchasing real property because federal law expressly allowed such a use of funds and specifically preempted state law in this area.<sup>2</sup>

Additionally, reading the prohibition in Section 89517 (b) broadly to apply to state political parties does not further the purposes of the Act. The express purpose of the personal use statutes is to prevent campaign funds from being used for substantial personal benefit. (See Section 89510.) A state political party, unlike a candidate or ballot measure committee, is a fixture in politics and does not come and go with elections. Additionally, a state political party is not controlled by a particular candidate or officer-holder, but rather serves its members.

A state political party is more analogous to a corporation than a candidate campaign – the assets are held in its name, rather than the name of an individual and if an asset is sold, the profits inure to the benefit of the party. A political party is not tied to an individual election, cannot be termed out, and will consequently not be attempting to sell assets for profit at the end of an election cycle. The political party will survive the foreseeable future. One of the Act's primary purposes is to reinvigorate the public's trust in the political process. Applying restrictions in the personal use provisions to a state party, under the limited facts described above, does not further that purpose.

Therefore, the Act does not prohibit a state political party from using campaign funds to purchase a building, so long as the expenditure is reasonably related to a political, legislative, or governmental purpose and otherwise meets the standards set forth in Section 89512.5.

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<sup>2</sup> In 2002, when the federal law was amended, the legislature did not keep up with this change by expressly creating an exemption in the Act. We find this is an oversight of the legislature rather than evidence of legislative intent.

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

Sincerely,

Zackery P. Morazzini  
General Counsel



By: Heather M. Rowan  
Senior Counsel, Legal Division

HMR:jgl