



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 27, 2020

Bianca Pirayou
Pirayou Law Office
6469 Almaden Expressway #80-125
San Jose, CA 95120

Re: Your Request for Advice
Our File No. A-20-003

Dear Ms. Pirayou:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Please note that we only advise on provisions of the Act. Therefore, we offer no opinion on the application, if any, of Elections Code Section 18680 or any other law outside of the Act to your questions. Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Do the campaign provisions of the Act prohibit former Senator Dr. Ed Hernandez from contributing the balances of both his candidate controlled committee for election to office and his candidate controlled ballot measure committee to a 501(c)(3) nonprofit graduate school to fund scholarships and a mentoring/leadership program?

CONCLUSION

No. Under the circumstances described below, the Act does not prohibit Dr. Hernandez from contributing the balances from both of his candidate controlled committees to the graduate school.

FACTS AS PRESENTED BY REQUESTER

You seek advice on behalf of Dr. Hernandez and his candidate controlled ballot measure committee (Senator Ed Hernandez Ballot Measure Committee) as well as his candidate controlled committee for election to office (Ed Hernandez for Lieutenant Governor 2018). His last day in

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.

elective office as a Senator was November 30, 2018. Dr. Hernandez ran unsuccessfully for Lt. Governor in the November 2018 General Election. The committee for election to office remains active with a cash balance of approximately \$55,000. The ballot measure committee is a state general purpose ballot measure committee in support of healthcare issues with a cash balance of approximately \$60,000.

Dr. Hernandez would like to contribute the balance of both committees' funds to Western University of Health Sciences, which is a 501(c)(3) nonprofit graduate school for health professions. He would like to direct proceeds from both committees to two programs.

Scholarship Funds

Part of the proceeds will be used to finance the "Dr. Ed Hernandez Scholarship Fund" in the College of Optometry to provide scholarships to students in financial need. Dr. Hernandez will not be involved in decisions regarding the establishment of qualifications for scholarship recipients or the granting of scholarship funds. The scholarship fund will be exclusively administered by Western University in accordance with its established standards and practices. Proceeds will be donated with restrictions prohibiting the granting of scholarship funds to any members of Dr. Hernandez's immediate family, the campaign treasurer of both committees and any individual with authority to approve the expenditure of the committees' funds.

Mentoring Funds

The remaining part of the proceeds will be used by Western University College of Optometry to establish a mentoring and leadership development program for first, second, and third year Latino optometry students. Funds will be used to administer this program under which Dr. Hernandez will provide quarterly mentoring seminars. Dr. Hernandez is not currently employed by Western University of Health Sciences and he does not currently have plans to be employed by Western in the near future. He will volunteer his time to provide the quarterly mentoring sessions. The portion of the contribution to Western to be allocated to the mentoring/leadership program will pay for the administrative costs associated with the program. No portion of the proceeds will be used to compensate or benefit Dr. Hernandez, his immediate family, the campaign treasurer of either committee, or any individual with authority to approve the expenditure of the committees' funds. Both committees will terminate once the balance of funds are contributed.

ANALYSIS

Section 89519 provides that "[u]pon leaving any elected office, or at the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds ... under the control of the former candidate or elected officer shall be considered surplus campaign funds" and may only be used for certain restricted purposes. Under Section 89519, a candidate may only spend surplus funds on specified expenses, including:

Donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the candidate,

any member of his or her immediate family, or the campaign treasurer.

(Section 89519(b)(3).)

In addition, Regulation 18521.5(d)(3) provides for the permissible uses of campaign funds held by a candidate controlled ballot measure committee that is preparing to terminate its status as a committee:

(3) A committee that is preparing to terminate its status as a committee may, at any time within 60 days prior to the effective date of its termination, disburse some or all of its leftover funds in either of the following ways:

(A) Pursuant to subdivision (b)(3) of Section 89519.

(B) To a political party committee, so long as the funds are not used for a contribution as defined in Section 82015 to a candidate, or for a communication which expressly advocates the nomination, election or defeat of a clearly identified candidate as defined in Section 82031.

According to the facts, Dr. Hernandez would like to contribute the balance of funds from his two committees to Western University of Health Sciences, a 501(c)(3) nonprofit graduate school, to fund scholarships and a mentoring/leadership program. His candidate controlled committee for election to office currently has a cash balance of approximately \$55,000. Section 89519(b)(3) permits him to make a charitable donation of those remaining funds to the graduate school where, as here, no substantial part of the proceeds will have a material financial effect² on him, any member of his immediate family, or on the campaign treasurer. Likewise, under the same conditions, Regulation 18521.5(d)(3) permits Dr. Hernandez to contribute the balance of funds from his candidate controlled ballot measure committee to the graduate school.

² With respect to the mentoring/leadership program, you stated that Dr. Hernandez, who is not employed by or have plans to be employed by the graduate school, will volunteer his time to provide the quarterly mentoring sessions, and that the portion of the contribution to be allocated to that program will pay for the administrative costs associated with the program. Under these circumstances, the contributions from his two committees would not have a material financial effect on him.

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

Sincerely,

Dave Bainbridge
General Counsel

By:  Jack Woodside
Senior Counsel, Legal Division

JW:aja