

June 22, 2001

**CEC Advice No. 2001-08**

**Advice Provided to Mr. Stephen J. Kaufman**  
**Smith Kaufman LLP**

This letter is a response to your June 14, 2001, request for formal advice<sup>1</sup> on behalf of Councilmember-elect Jan Perry, regarding campaign committee expenditures for transition and inaugural costs. Our advice is based on the facts provided in your letter.

**QUESTION**

Do campaign committee expenditures made for transition costs and events conducted in connection with taking office constitute “qualified campaign expenditures?” If so, do those expenditures count toward the expenditure limits applicable to City Council candidates who participate in the City’s matching funds program?

**RELEVANT FACTS**

We have determined that the following facts are relevant to your inquiry:

1. Councilmember-elect Perry has established and currently maintains two campaign committee accounts, one for the 2001 primary election and one for the general election.
2. Councilmember-elect Perry participated in the City’s matching funds program, thereby agreeing to limit her spending to \$330,000 in the primary election and \$275,000 in the general election.

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<sup>1</sup> Los Angeles Admin. Code §24.1.1(f)(2)(K) provides that formal written advice provides the requestor with immunity set forth in Los Angeles City Charter §705. This formal advice does not address or apply to any past actions by the requestor(s).

3. Councilmember-elect Perry will be expending funds for a variety of transition activities in anticipation of taking office in July. Those activities include speaking at and attending community events, being contacted by residents and others interested in matters pending before the City Council, and receiving resumes and evaluating staffing needs. Expenses associated with these enumerated activities include office rent, office operations expenses, staff, telephones and postage.
4. Councilmember-elect Perry also expects to incur expenses for inaugural events including invitation printing and postage, planning, catering, insurance and other similar items.
5. Councilmember-elect Perry would like to use funds from one or both of her campaign accounts to pay for these events and activities.

### **ANALYSIS AND CONCLUSION**

Candidates for City Council who participate in the City's matching funds program agree, among other things, to limit their "qualified campaign expenditures" in return for receiving limited public funds for qualified contributions. The spending limit for a City Council candidate and his or her controlled committee is \$330,000 in the primary election and \$275,000 in the general election. LAMC § 49.7.13A. A "qualified campaign expenditure" includes any expenditure made by a City candidate or his or her controlled committee for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any City candidate. LAMC § 49.7.13F.

In the facts provided, the Councilmember-elect would like to use either her primary or general election campaign accounts for certain transitional or inaugural activities. California Government Code § 89512 provides that candidate controlled campaign committee funds may be used for expenditures to seek office that are reasonably related to a political purpose and for expenditures associated with holding office that are reasonably related to a legislative or governmental purpose.

Assuming the expenses the Councilmember-elect seeks to make fall within those restrictions, the central question is whether those expenditures will count toward the Councilmember-elect's spending limits for the primary and general elections. The list of activities for which the expenses are involved appear to relate to preparations to take office and not to "influence the actions of voters in an election." Therefore, those expenditures are not "qualified campaign expenditures" that count toward the \$330,000 primary election and the \$275,000 general election spending limits. If the expenditures solely relate to preparations for assuming office, they may be paid out of either account.

Please note that this is not the case with regard to all expenditures incurred following an election campaign. For example, fundraising costs to retire debt of the

campaign, though incurred following the election, are “qualified campaign expenditures.” Additionally, if an expense is incurred for an activity that in part relates to the election campaign and in part for preparations for taking office, the committee must retain sufficient records to show that the expense was proportionally attributed to “qualified campaign expenditures,” which cannot exceed the spending limits, and other allowable expenditures, which do not fall into that category.

The same analysis is applicable for inaugural activity expenses. So long as the printing of invitations, postage, planning, catering, and insurance are solely related to inaugural activities, they are not “qualified campaign expenditures” subject to the spending limit. However, if a portion of the expense relates to an election activity, such as retiring campaign debt, the committee must retain specific records to clearly distinguish what is a qualified campaign expenditure and an inaugural activity expenditure.

In addition, to the extent that the campaign accounts contain public matching funds, those funds cannot be used for transition or inaugural purposes. In order to determine whether the Councilmember-elect still has public matching funds in her general election campaign account, a FIFO (First-In, First-Out) analysis should be employed.<sup>2</sup> Using that accounting method, she should determine the extent to which the campaign account includes both public matching funds and other funds on the day after the election. Only funds that are not public matching funds may be used for transition and inaugural purposes. In addition to non-public funds in the account on the day after the election, she may receive contributions for the purpose of transition and inaugural expenses. In allocating expenditures incurred after the election, she need not use the FIFO accounting method.

Additionally, we note that any fundraising done after the election with regard to the primary and general election campaign accounts must cease within 90 days of the election unless the City Ethics Commission grants an extension.

Thank you for contacting the City Ethics Commission about this matter.

Attachment

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<sup>2</sup> We do not address this issue with regard to the primary election account, since all surplus public matching funds must be returned to the Public Matching Funds Trust Fund within 30 days following the election. LAAC § 24.5(r).

## APPLICABLE CITY LAW ATTACHMENT

### **California Government Code Section 89512. Expenditures Associated with Holding Office.**

An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.

### **Los Angeles Municipal Code Section 49.7.13. Expenditure Ceilings.**

A. No candidate for City Council who files a statement of acceptance of matching funds, nor any controlled committee of such candidate, shall make qualified campaign expenditures above the following amounts: \$330,000 per primary election and \$275,000 per general election.

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F. "Qualified campaign expenditure" means:

(1) Any expenditure made by a candidate for elective City office, or by a committee controlled by such a candidate, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any City candidate.

(2) A non-monetary contribution provided at the request of or with the approval of the candidate, officeholder or committee controlled by the candidate or officeholder.

(3) "**Qualified campaign expenditure**" does not include any payment if it is clear from the surrounding circumstances that it was not made in any part for political purposes.

### **Los Angeles Administrative Code Section 24.5**

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#### **(m) Improper Use of Public Matching Funds.**

The expenditure of public matching funds on other than qualified campaign expenditures shall constitute a misappropriation of these funds and shall constitute a violation of this section.

...

**(r) Surplus Public Funds.**

(1) A participant must pay to the Commission any surplus public matching funds remaining in the participant's possession no later than 30 days after the election or, if the candidate withdraws from the election, no later than 10 days after the participant withdraws his or her candidacy.