

August 15, 2002

CEC Advice No. 2002-08

David L. Gould

Re: Your Request for Advice Dated July 8, 2002

Dear Mr. Gould:

This letter is in response to your letter to the City Ethics Commission of July 8, 2002. In that letter you requested formal advice¹ regarding whether your client, Assemblyman Rod Wright, may re-designate funds raised in connection with his 2003 City candidacy for the 8th Council District seat to be used in a campaign for election in 2003 to the City's 10th Council District. On Assemblyman Wright's behalf, you also asked whether he may maintain his committee name, "Rod Wright for City Council," and the existing bank account opened in connection with his candidacy for the 8th Council District in re-designating his candidacy to the 10th Council District. Your questions and the Commission's response, based on the information you provided in your letter, Nora Pollock's conversations with Michelle Sanders of your office on July 17, 2002, and Assemblyman Wright on that date, and filings received from Assemblyman Wright on August 2 and 9, 2002, are detailed below.

QUESTIONS

May Assemblyman Rod Wright, a candidate for the 8th Council District in the 2003 Los Angeles City elections, re-designate the funds he has raised in connection with that election to be used in a 2003 City campaign to represent the 10th Council District instead? As part of re-designating his campaign funds, may Assemblyman Wright's contributors to his 8th Council District campaign authorize the re-designation of their contributions to his candidacy for the 10th Council District? Finally, may Assemblyman Wright maintain the existing committee name "Rod Wright for City Council" and the bank account established in connection with his 8th Council District candidacy for election in the 10th Council District instead?

¹ Los Angeles Admin. Code § 24.1.1(f) (2) (K) provides that formal written advice provides the requestor with the 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).

RELEVANT FACTS

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

1. Assemblyman Rod Wright was a candidate in the 2003 City elections for the 8th Council District in the City of Los Angeles. He filed a Declaration of Intent to Solicit and Receive Contributions (DOI) in connection with that election with the City Ethics Commission on January 25, 2002. According to that filing, Assemblyman Wright resided in the 8th Council District. On August 9, 2002, a termination of that DOI was filed with the City Ethics Commission.
2. Assemblyman Wright's campaign committee established in connection with the 8th Council District Election, "Rod Wright for City Council," reported receiving \$33,570.00 in contributions for the period January 1, 2002, through June 30, 2002, and reported an ending balance of \$27,213.00 for that period. The committee's funds are held in account at California Bank & Trust.
3. Assemblyman Wright filed a DOI on August 2, 2002, to begin fundraising in connection with a campaign for the 10th Council District seat. According to this filing, he resides in the 10th Council District. Assemblyman Wright wishes to maintain his committee name, "Rod Wright for City Council," and re-designate the funds he has raised in connection with his candidacy for the 8th Council District to his candidacy for the 10th Council District.

RELEVANT LAWS

City Charter Section 470(c)(9) provides that contributions solicited or accepted may be expended only in connection with the candidacy for the office specified in the candidate's Declaration of Intent to Solicit and Receive Contributions (DOI). In addition, Charter Section 470(c)(1) states that a candidate intending to run for any elected City office or a committee acting on that candidate's behalf may not solicit or accept, or cause to be solicited or accepted, any contribution for use in any election for that office unless and until the candidate has filed a DOI for the office sought. A candidate may also not file a DOI for more than one elected City office nor have more than one such declaration on file at the same time. A candidate may, however, file a form canceling one DOI and may thereafter file a new DOI. Contributions to City elections are subject to cumulative limits on the overall amount any contributor may contribute to all candidates in connection with a particular City election.

A copy of the relevant laws discussed in the analysis appears in the attachment.

ANALYSIS & CONCLUSION

Question 1

May Assemblyman Wright re-designate the funds he has raised in connection with his campaign for the 8th Council District for use in a 2003 City campaign to represent the 10th Council District instead?

No. Assemblyman Wright filed a Declaration of Intent to Solicit and Receive Contributions (DOI) in connection with the election for the 8th Council District on January 25, 2002. Contributions to the “Rod Wright for City Council” committee made in connection with the election in the 8th Council District total of \$33,570, as reflected in its report filed with the City Ethics Commission on July 27, 2002. Pursuant to Charter Section 470(c)(9), contributions solicited or accepted may be expended only in connection with the candidacy for the office specified in the candidate’s DOI. Because Assemblyman Wright filed a DOI for the 8th Council District and subsequently solicited and accepted contributions in connection with his campaign for the 8th Council District seat, those contributions may be expended only in connection with that race. Therefore, the contributions may not be re-designated, transferred, or otherwise used in connection with Assemblyman Wright’s campaign for the 10th Council District seat. The Charter provides no exception to this provision, regardless of the fact that Assemblyman Wright terminated his DOI for 8th Council District election and filed another DOI for the 10th Council District election.

As stated in Charter Section 470(a), the purpose of the provisions on limitations to campaign contributions in City elections is to “encourage broader participation in the political process by placing limits on the amount any person may contribute or otherwise cause to be available to candidates for election” to City office. By declaring his or her intent to solicit and receive campaign contributions in connection with a certain office, a candidate raises these funds from persons who wish to support his or her candidacy in that particular race and understand that those contributions will be used only for expenditures made only in connection with the candidate’s seeking election to that office.

Because contributions accepted and received by the “Rod Wright for City Council” committee in connection with Assemblyman Wright’s campaign for the 8th Council District seat may not be re-designated to his 10th Council District campaign committee, Assemblyman Wright may choose to return contributions received in connection with his candidacy for the 8th Council District to contributors to that campaign on a pro-rata basis. Should he choose to do so, those contributions will still count toward the contributors’ aggregate limit for the 2003 election cycle, but they will not count toward the \$500 limit for any contribution they may choose to give to his 10th Council District campaign.²

² Pursuant to City Charter Section 470(c)(6), contributors to City elections are subject to cumulative limits on the overall amount they may contribute to all candidates for City elections. The City Ethics Commission has advised that contributions made to a candidate’s committee at the time that candidate was soliciting and receiving contributions in connection with a City election must be included in the cumulative contribution limit for an election, even if the candidate’s name did not ultimately appear on the ballot and those contributions were returned to the contributors (CEC Advice Letter Nos. 2001-05 and 2001-06).

Question 2

May Assemblyman Wright's contributors to his 8th Council District campaign committee authorize the re-designation of their contributions to his campaign committee for the 10th Council District?

No. As discussed in our response to Question 1, contributions solicited and accepted in pursuant to Assemblyman Wright's DOI for the 8th Council District election may not be expended in connection his campaign for the 10th Council District seat. Therefore, the contributors may not simply redesignate the use of those contributions. The contributors may, if they choose, contribute to his campaign for the 10th Council District. Contributions made to Assemblyman Wright's 10th Council District campaign are considered separate from those made to his 8th Council District campaign. Therefore, contributions made to Assemblyman Wright's 8th Council District campaign do not count toward the \$500 per contributor limit for his 10th Council District campaign, but are subject to cumulative contribution limits as noted in Footnote 2.

Question 3

May Assemblyman Wright maintain the existing committee name "Rod Wright for City Council" and use the bank account established in connection with his 8th Council District candidacy for his campaign in the 10th Council District?

No. If Assemblyman Wright wishes to use a committee name similar to that established for his campaign for the 8th Council District ("Rod Wright for City Council") in his campaign for the 10th Council District, we advise that the new committee name reflect his candidacy for the 10th Council District seat, e.g., "Rod Wright for City Council, Tenth District." Doing so will also help reduce confusion for contributors and will ensure appropriate recordkeeping for auditing purposes.

Pursuant to Charter Section 470(g), contributions received in connection with a City election must be deposited to, and campaign expenditures made from, the account established by a candidate in connection with the elected office sought. Because funds raised and received in connection with Assemblyman Wright's campaign for the 8th Council District may not be re-designated or otherwise transferred to his campaign for the 10th Council District, and because account #3240076521 at California Bank & Trust was established in connection with Assemblyman Wright's 8th Council District campaign, that account may not be used to receive or expend funds in connection with his 10th District campaign. A new account must be opened for the deposit of contributions and the making of campaign expenditures in connection with Assemblyman Wright's campaign for the 10th Council District. In addition, state law requires a candidate to file a statement of organization and establish a separate controlled committee and campaign bank account for each specific office. 2 C.C.R. § 18521. State law also provides that the Secretary of State not issue an identification number to any committee with the same name as an existing committee. 2 C.C.R. § 18404(b). Consequently, a different name for the 10th Council District Committee is required.

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Thank you for contacting the City Ethics Commission about this matter. Please find attached a copy of the City laws and previously issued formal advice letters that apply to your question. If you have any questions regarding this letter, please do not hesitate to contact Nora Pollock or me at (213) 978-1960.

Sincerely,

LeeAnn M. Pelham
Executive Director

Attachment

ATTACHMENT

California Government Code Section 82007. Candidate.

“Candidate” means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. “Candidate” also includes any officeholder who is the subject of a recall election. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. “Candidate” does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971.

California Government Code Section 82015. Contribution, in pertinent part, states,

(a) “Contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

...

California Code of Regulations, Title II, Section 18215, in pertinent part, states:

(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or made at the behest of the following or any agent thereof:

(A) A candidate;

(B) A controlled committee;

...

Los Angeles City Charter Section 470(c)(9)

Any contributions solicited or accepted pursuant to this section shall be expended only in connection with the candidacy for the office specified in the candidate's Declaration of Intent to Solicit and Receive Contributions. Contributions solicited or accepted pursuant to this section for one individual shall not be expended for the candidacy of any other individual seeking City office or in support of or in opposition to any City ballot measure. No candidate, committee controlled by a candidate, or elected City officer shall use contributed funds to make any contribution to any other candidate running for office or to any committee supporting or opposing a candidate for office. Provided, however, a candidate shall not be prohibited from making a contribution from his or her own personal funds to his or her own candidacy, to the candidacy of any other candidate for elected City office or in support of or in opposition to any City ballot measure.

Los Angeles City Charter Section 470(c)(1)

No intended candidate for any elected City office, and no committee acting on behalf of such candidate, shall solicit or accept, or cause to be solicited or accepted, any contribution for use in any election for such office unless and until such candidate shall have filed a Declaration of Intent to Solicit and Receive Contributions in connection with candidacy for a specific elected City office. That declaration shall be filed with the City Ethics Commission on a form prescribed by the City Ethics Commission. Once the election takes place, the declaration is thereafter void. No person may file such declaration for more than one elected City office nor have more than one such declaration on file at the same time. A candidate may, however, file a form canceling one declaration and may thereafter file a new declaration.

Los Angeles City Charter Section 470(c)(6)

No person shall make a contribution in connection with a single election for an elected City office which would cause the aggregate amount of such contributions by that person to exceed a sum equal to five hundred dollars (\$500) multiplied by the number of City Council offices appearing on the ballot at that election plus one thousand dollars (\$1,000) multiplied by the number of City-wide offices appearing on the ballot at that election, but in no case less than one thousand dollars (\$1,000), in connection with all candidates in that election seeking election to all elected City offices; provided, however, that a candidate shall not be limited by this Subsection (6) in the amount he or she may contribute or expend in connection with his or her own campaign, subject to the provisions of Subsection (c)(10) of this section.

Los Angeles City Charter Section 470(g), in pertinent part, states,

No more than one campaign contribution checking account shall be established by each candidate for elected City office, and by each committee supporting or opposing such candidate. The account shall be established at an office of a bank or savings and loan institution located in the City of Los Angeles. Upon opening such account, the candidate shall file with the City Ethics Commission within ten days of opening the campaign bank account, the name of the bank or savings and loan institution and the account number. Funds shall only be disbursed from such account by checks signed by the candidate, treasurer or designated agent of the treasurer. A candidate, treasurer or designated agent of the treasurer shall deposit into the campaign checking account all contributions received in connection with a City election. A candidate, treasurer or designated agent of the treasurer shall pay all campaign expenditures for a City election with monies from this campaign checking account.

If a candidate has other controlled committees and such committees have checking accounts, the candidate shall notify the City Ethics Commission in writing of these committees and the names and addresses of the banks or savings and loan institutions and the account numbers of any such accounts. A candidate shall notify the City Ethics Commission of these committees, the banks or savings and loan institutions, and the account numbers concurrent with the filing of the Declaration of Intent to Solicit and Receive Contributions. If committees are thereafter formed or accounts thereafter opened, then the candidate shall notify the City Ethics Commission on the next regular business day on which the office is open. No contribution shall be commingled with the personal funds of the candidate or any other person.

Los Angeles City Charter Section 470(a)

The purpose of this section is to encourage a broader participation in the political process by placing limits on the amount any person may contribute or otherwise cause to be available to candidates for election to the offices of Mayor, City Attorney, Controller and City Council of the City of Los Angeles and by regulating the disposition of unexpended contributions received by or on behalf of such candidates.

Los Angeles Municipal Code Section 49.7.4. Return of Contributions.

A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and is returned to the donor within 14 days of receipt.

2 Cal. Code Regs. Section 18521. Establishment of Separate Controlled Committee for Each Campaign Account.

(a) A candidate who is required to file a statement of organization for a controlled committee pursuant to Government Code section 84101 shall establish a separate controlled committee and

campaign bank account for each specific office identified in statements filed by the candidate pursuant to Government Code section 85200 and 2 Cal. Code Regs. section 18520.

(b) 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 bank 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.

2 Cal. Code Regs. Section 18404. Termination of Candidate and Committee Filing Requirements, in pertinent part, states:

(b) Recipient Committees. A treasurer of a committee which qualifies pursuant to Government Code Section 82013(a) may terminate the committee's status as a committee, only by completing 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.