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(213) 978-1960
(213) 978-1988 FAX
<http://ethics.lacity.org>



CITY ETHICS COMMISSION
200 N. SPRING STREET
CITY HALL - 24TH FLOOR
LOS ANGELES, CA 90012

November 30, 2007

Via Facsimile and U. S. Mail

Ronald B. Turovsky
Manatt, Phelps & Phillips LLP
11355 West Olympic Boulevard
Los Angeles CA 90064-1614

Re: CEC Advice No. 2007-04

Dear Mr. Turovsky:

This letter is in response to your request for formal advice dated October 17, 2007, on behalf of Councilmember Jack Weiss, regarding the return of certain contributions received by his 2001 election campaign. Your question and the Commission's response, based on the facts you provided in your letter, are detailed below.

Section 705 of the Los Angeles City Charter (Charter) authorizes the Ethics Commission to provide formal advice regarding the City's campaign finance, ethics, and lobbying laws. When applicable, and with the concurrence of the City Attorney's office, the Commission's written advice may also include an analysis of related provisions of the California Political Reform Act of 1974, when terms used in City law are defined there. However, the Commission does not advise about other City, state, or federal laws, because those laws do not fall within the Commission's jurisdiction.

Formal written advice provides the requestor with the immunity in Charter § 705(b). However, the immunity does not address or apply to any past actions by the requestor. Under Los Angeles Administrative Code (LAAC) § 24.1.1(f)(2)(K), immunity is limited to the requestor and to the specific facts contained in this advice.

QUESTION

Does City law permit Councilmember Weiss to return laundered contributions, through either a closed campaign committee or an officeholder account that has no remaining campaign funds? If so, should the contributions be repaid to the General Fund of California or to the City of Los Angeles?



CONCLUSION

If a civil or criminal court case or an administrative proceeding has been initiated against Councilmember Weiss as a result of laundered contributions received by his 2001 campaign, City law permits him to establish a legal defense fund to defray the attorney's fees and other legal costs incurred in his defense of that action. The state permits him to return the laundered contributions to the General Funds of either the state or the City, and City law does not prohibit Councilmember Weiss from disgorging to the state in response to a state action.

RELEVANT FACTS

You have informed us of the following facts, which we have determined are relevant to your request:

1. Councilmember Jack Weiss formed two committees to support his candidacy for the Los Angeles City Council in 2001—one for the primary election and one for the general election. He opened a 2001 Primary Committee on April 7, 2000, and terminated it on February 6, 2003. He opened a 2001 General Committee on April 12, 2001, and then redesignated it as the “Jack Weiss Officeholder Committee” on August 28, 2001.
2. When the 2001 General Committee was redesignated, \$3,805 in campaign funds was transferred to the officeholder committee. Those funds were used to pay expenses related to the 2001 election cycle and are no longer in the account.
3. During the 2001 campaign, Councilmember Weiss received contributions that were later determined, through Ethics Commission enforcement actions, to have been made by one person in the name of another person (i.e., “assumed name” or “laundered” contributions). Councilmember Weiss was not aware that that he had received laundered contributions until the enforcement actions against the money launderers were resolved and generally reported in 2005 and 2006.
4. On October 3, 2007, Councilmember Weiss received a letter from Michael Salerno, the executive director of the Fair Political Practices Commission (FPPC). The letter asks Councilmember Weiss to voluntarily return the laundered contributions that were made to his 2001 committees to the General Fund of California, if the contributions have not already been disgorged.

APPLICABLE LAW

The California Political Reform Act (PRA) prohibits campaign contributions that are “made, directly or indirectly, by any person in a name other than the name by which such person

is identified for legal purposes.” Cal. Gov’t Code § 84301. A candidate or committee that receives such a laundered contribution is required to return the contribution to the General Fund of California. Cal. Gov’t Code § 85701.

A similar provision exists in Charter § 470(k):

No contribution shall be made, directly or indirectly, by any person or combination of persons, acting jointly in a name other than the name by which they are identified for legal purposes, nor in the name of another person or combination of persons. No person shall make a contribution in his, her or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution.

If a candidate or committee treasurer discovers that a contribution was received in violation of that section, the contribution must be paid to the General Fund of the City. Charter § 470(k).

City law also governs fundraising and expenditures made by candidates and committees: Under Los Angeles Municipal Code (LAMC) § 49.7.7, for example, candidates and their controlled campaign committees are prohibited from soliciting or receiving contributions more than nine months after the election at which the candidate sought office. Contributions received during that time period must be used to retire campaign debt. LAMC § 49.7.7(B).

Campaign contributions received by a candidate may be used only in connection with the candidacy for the office specified in the candidate’s Declaration of Intent to Solicit and Receive Contributions. Charter § 470(c)(9).

Candidates who are elected to office may create officeholder accounts, to pay for expenses related to carrying out the duties associated with holding City office. LAMC § 49.7.12. Officeholder account funds may be used only for specific purposes, which are identified in the ordinance. LAMC § 49.7.12(A)(2).

LAMC § 49.7.12 also permits officeholders and candidates to establish legal defense funds. Contributions may be solicited to a legal defense fund and may be used “solely to defray attorney’s fees and other legal costs incurred in the . . . legal defense to one or more civil or criminal court cases, or administrative proceedings, arising directly out of the conduct of an election campaign, the electoral process or the performance of . . . governmental activities and duties.” LAMC § 49.7.12(B)(2).

A legal defense fund is established by filing a “Statement of Purpose” and identifying the specific case or proceeding for which the fund is created. LAMC § 49.7.12(B)(3). Contributions to the fund may not be solicited or accepted until after the statement of purpose is filed and may not exceed \$1,000 per person per fiscal year. LAMC §§ 49.7.12(B)(3) & (4).

ANALYSIS & CONCLUSION

During his candidacy for the Los Angeles City Council in 2001, Councilmember Weiss opened one committee for the primary election and another committee for the general election. Also during that campaign, Councilmember Weiss received contributions that were later determined by the Ethics Commission to have been laundered. You have indicated that Councilmember Weiss did not discover that his 2001 campaign had received laundered contributions until 2005 or 2006, following Ethics Commission enforcement actions. The FPPC is now asking Councilmember Weiss to disgorge the laundered contributions from the 2001 election to the state's general fund. However, Councilmember Weiss does not have City campaign or officeholder funds that can be used for disgorgement.

There are timing and fundraising restrictions under City law that affect a candidate's or a committee's ability to return laundered funds pursuant to Charter sec. 470(k) when there is no evidence that the recipient discovered or should have discovered that the contribution was laundered. Councilmember Weiss faces those timing and fundraising restrictions in this case.

His 2001 Primary Committee has been closed for nearly five years—well beyond the nine months during which he could have raised funds to return the laundered contributions. His 2001 General Committee was redesignated as an officeholder account slightly more than four years ago, and no funds currently in that account may be used to disgorge contributions related to a previous election. While this agency has advised in the past that funds transferred from an officeholder's preexisting campaign committee to his or her officeholder account may be used in certain limited situations to make payments in connection with that preexisting campaign, in this case those transferred campaign funds have already been spent. Disgorging laundered contributions is not among the permissible officeholder expenditures in LAMC § 49.7.12(A)(2).

The FPPC has made a "voluntary request" of Councilmember Weiss to return the laundered contributions to the General Fund of California, if the funds have not already been disgorged. It is not clear from the request whether the FPPC has instituted any action in connection with that request that would be considered a civil or criminal court case or an administrative proceeding involving Councilmember Weiss. If the FPPC confirms that its request stems from any such proceeding, then City law would permit Councilmember Weiss to establish a legal defense fund under LAMC § 49.7.12(B) and to solicit contributions to defray attorney's fees and other legal costs incurred as a result of that proceeding. We advise Councilmember Weiss to seek further clarification from the state regarding this point.

Your letter also asks, if Councilmember Weiss were to disgorge laundered funds under these circumstances, whether those funds should be paid to the General Fund of the City or the state. We note that the FPPC has opined that the state's "primary goal . . . is that the recipient of a laundered contribution must disgorge the funds received." *In re Pelham* (2001) 15 FPPC Ops. 1, 11. It has concluded that "[w]hether . . . disgorgement is to a local or state general fund, we believe that once the recipient has returned the funds pursuant to either law, he or she has complied with the Act." *Id.* Under the circumstances you cite, City law neither requires

Councilmember Weiss to disgorge to the City's General Fund nor prevents him from making a payment to the state's General Fund in this instance.

Thank you for requesting advice from the Ethics Commission. If you have any questions regarding this matter, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "LeeAnn M. Pelham", with a horizontal line extending to the right.

LeeAnn M. Pelham
Executive Director

cc: The Honorable Jack Weiss