

MEMORANDUM

Department of the City Attorney



To: Honorable Mayor and City Council

From: Michael Ogaz, City Attorney

Subject: Officeholder Accounts

Date: October 29, 2007

Question: Council Person Armando Gomez has asked whether an elected official can maintain an officeholder account and, if allowed, has inquired about the laws regulating them.

Summary Answer: An elected official of a local entity such as the City of Milpitas can maintain one campaign contribution account. No separate officeholder account is permitted. Funds within the campaign account are held in trust for election expenses or for certain expenses of holding office. The general categories of allowable office expenditures made from a campaign account are expenses incurred for political, legislative, or governmental purposes. The rules and regulations governing contributions, including those regulating reporting, disclosure, and contribution limits apply to the one permissible campaign account; the ordinances of the City of Milpitas limiting contributions and requiring disclosures apply. In order to properly evaluate whether a proposed expenditure from a legal campaign account meets the allowable officeholder categories set out in the statutes, it is necessary to know the proposed expenditure. Depending upon the complexity and/or ambiguity of the proposed specific expenditure, it may be necessary to discuss the matter with the Fair Political Practices Commission (FPPC) staff.

Discussion: The Political Reform Act of the California Government Code regulates the right of a local elected official to maintain campaign and other accounts. Unlike the right of an elected State officer to maintain an "officeholder account" (Government Code Section 85316(b), FPPC Regulation 18531.62), there is no authority within the statute for a local

official to maintain a so-called officeholder account. There is authority, however, for a local official to maintain one campaign account. Government Code Section 85201. Funds within the campaign account are held "in trust for expenses associated with the election..or for expenses associated with holding office." Government Code Section 89510(b).

The Political Reform Act also sets forth a statutory scheme that specifies the use that an elected official can make of the campaign account. (Government Code Sections 89510-89522. See also FPPC Regulations 18524, 18525.) Campaign expenses expressly include the following: "payments for fundraising and campaign strategy..."; "payments for mass mailings, political advertising..."; payments for services and actual expenses of political consultants..."; vehicle expenses; property leases; etc. (See FPPC Regulation 18525; Government Code Sections 89516-89522.) Government Code Sections 89513-89522 also expressly limit the use of campaign funds for matters such as travel and travel accommodations, for payment of fines and penalties, for clothing, for entertainment tickets, etc. The above listing of permitted and prohibited/limited uses for campaign funds is not intended to be a complete list but acts only to illustrate some of those expenditures addressed by the statutes and regulations.

Allowable expenditures by a local elected official from the campaign account expressly include the following categories of expenses: "An expenditure associated with holding office is within the lawful execution of the trust imposed...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." Government Code Section 89512, underlining added. The application of the concepts "political, legislative, and governmental purpose" are left generally undefined, anticipating no doubt that the unlimited myriad of proposed expenditures will be analyzed on a case-by-case basis for compliance with the designated general purposes.

A recent 2007 advice letter from the FPPC does give certain insight into how the FPPC analyzes the validity of officeholder expenditures. The advice letter (A-07-122, August 15, 2007, David Bauer) concerned expenditures by Bill Leonard, a member of the State Board of Equalization. Mr. Leonard had expenses for his cell phone, a website to communicate with his constituency, and certain computer supplies associated with a periodic electronic newsletter. The FPPC applied what it called a two-tiered approach to deciding the validity of the expenditures. It first evaluated whether the expenditures were associated with holding office and reasonably related to a political, legislative, or governmental purpose. As step two of its analysis, it then evaluated whether the expenditures were allowable within the personal use provisions of the Government Code. If the expenditure provided a personal benefit to the officeholder or family, it

must be directly—not merely reasonably—related to a political, legislative, or governmental purpose. Thus, a personal benefit expenditure is burdened with a higher, more restrictive test. The FPPC concluded that the phone, website, and supplies expenditures met both tests and thus were ok.

At this point I note that no specific expenditures have been referred to. I will await further inquiry if it is desired that a specific proposed expenditure be reviewed and analyzed.

Given that the officeholder account about which inquiry was made is really a campaign account at the local government level, the rules for filing reports that are applicable to campaign accounts will apply.

The Open Government Ordinance of the City of Milpitas is applicable to limit contributions to a campaign account (whether the contribution is used for campaign or office expenses) and to require disclosure. Specifically, Municipal Code Title 1, Chapter 210 “Regulation of Campaign Contributions” limits contributions to \$350.00 per election. Section 1-210-5.10 also requires disclosure of any contribution over \$100.00.

In preparing this memorandum telephone consultation was had with the Technical Advisory staff of the FPPC who confirmed the conclusions that are provided above concerning the prohibition on a local elected official maintaining a separate officeholder account and the limited general uses for campaign funds.

I hope this information is helpful to you. Please contact me if you should have any questions or wish to discuss.

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cc: Tom Williams, City Manager