STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Miadich and Commissioner Cardenas

From: Dave Bainbridge, General Counsel
Erika M. Boyd, Senior Commission Counsel
L. Karen Harrison, Senior Commission Counsel

Subject: Pre-Notice Discussion of Adoption of Regulations Defining Political, Legislative and Governmental Purpose

Date: March 8, 2021

Summary

Staff proposes regulations to define "reasonably related" and "directly related" in the context of the personal use provisions which limit the use of campaign funds to political, legislative and governmental purposes. The regulations would also further define "political purpose," "legislative purpose," and "governmental purpose." The proposed regulations further the aim of the Act through helping to ensure that campaign funds held in the public trust are not used for personal benefit.

Staff submits these draft regulations for pre-notice discussion. The proposed regulations included with this memo are intended to facilitate discussion and allow the Commission to provide guidance and instruction to staff prior to presenting final versions for approval at a subsequent Commission meeting.

Issue

The Act specifies that campaign funds held by candidates and committees are held in trust for certain limited uses. Commonly referred to as the "Personal Use" provisions of the Act (Sections 89510-89522), the Legislative intent in enacting this set of laws was safe-guarding the public's trust in its elected officials and political participants by ensuring that campaign funds were not used for personal benefit.

To these ends, the Act provides that an expenditure must generally bear a reasonable relationship to a political, legislative, or governmental purpose; while certain expenditures, such as those that confer a substantial personal benefit on a candidate, committee, or specified committee officer, must bear a direct relationship to these purposes.

While the terms "reasonably related," "directly related," and "political, legislative or governmental purpose" are used repeatedly throughout the Act, the majority of these terms are

not defined in statute or regulation.[1] As a result, a patchwork of advice issued both through formal advice letters and informal guidance have weighed in on the permissibility of various expenditures as questions have arisen. Further complicating the matter has been the tendency throughout the years to analyze "political, legislative, or governmental purpose" (PLG) as one issue and not distinct categories.

The goal of the proposed regulations is to define each term individually in order to provide more concrete rules to assist in determining if a campaign expenditure has a legitimate purpose. This aim is two-fold: 1) to provide more concrete guidance to candidates and committees alike such that they may be confident in the permissibility of their expenditures; and 2) to assist the Commission with enforcement of the Personal Use provisions thereby reducing instances of the misuse of campaign funds.

Current Law & Prior Advice

All contributions deposited into the campaign account of a candidate are deemed held in trust for expenses associated with the election of the candidate, or for expenses associated with holding office. (Section 89510.) As such, an expenditure in support of seeking office is within the lawful execution of this trust if it is "reasonably related to a political purpose," while an expenditure associated with holding office is permissible where it is "reasonably related to a legislative or governmental purpose." (Section 89512(a).)

Similarly, for committees not controlled by candidates, expenditures must be "reasonably related to a political, legislative, or governmental purpose of the committee." (Section 89512.5(a).)

However, for both types of committees, an expenditure which confers a substantial personal benefit must be "directly related to a political, legislative, or governmental purpose." (Sections 89512(a) & 89512.5(b).) A "substantial personal benefit" is defined as an expenditure of campaign funds which results in a direct personal benefit with a value of more than two hundred dollars ($200) to a candidate, elected officer, or any individual with authority to approve the expenditure of campaign funds held by the committee. (Section 89511(b)(3).) The definition of "direct personal benefit" is further addressed through Regulation 18960.[2]

---

[1]Of these terms, the only one currently defined in statute or regulation is that of "political purpose" found in Section 82025(b). Proposed regulation 18952 would provide definitions of "directly related to a political purpose" and "reasonably related to a political purpose" as well as other guidance for expenditures pertaining to a political purpose.

[2]§ 18960. Direct Personal Benefit Defined.

(a) For purposes of Government Code section 89511(b)(3), an expenditure of campaign funds results in a direct personal benefit when, within six months of the expenditure and without the assistance of any intervening influence or interruption, the candidate or elected officer or member of his or her immediate family:

(1) Realizes an increase in his or her income or assets, or a decrease in his or her expenses or liabilities, of more than $ 200 from the expenditure; or

(2) Actually makes personal use of an asset obtained as a result of the expenditure.

(b) An expenditure of campaign funds does not result in a prohibited direct personal benefit if otherwise specifically permitted under any other provisions of Article 4 (commencing with Section 89510) of Chapter 9.5 of Title 9 of the Government Code, or interpretative regulations thereto.

Sections 89513-89522 provide further guidance related to specific expenditures (e.g., use of funds for attorney's fees, donations and loans, vehicle expenses, real property, etc.), but of course cannot cover the exhaustive list of potential expenditures, and attendant questions which may arise, in the context of a campaign or committee's activity.

Additionally, "reasonably related to a legislative or governmental purpose" is also used in the travel context whereby payments, advances, or reimbursements for travel that are reasonably related to a legislative or governmental purpose (or to an issue of state, national, or international public policy) are not prohibited, nor subject to the gift limit, should they meet other specifications. (Section 89506.)

For reference, a brief survey of formal advice provided to date includes the following:

Political Purpose

- Payment for legislative monitoring and advocacy services are directly related to a political purpose of a sponsored committee because it enables the committee to further the political interests of its members. (*Brown* Advice Letter I-90-412.)

- Campaign funds used to write and publish an autobiographical manuscript were directly related to a political purpose as the manuscript would "publicize" the official's achievements in public service, aid the official's political career, and enhance the officials name recognition. (*Van Winkle* Advice Letter A-91-032.)

- Candidate committee and general purpose committee could use campaign funds for celebration of life event for political activist, as directly related to political purposes of committees. (*Downing* Advice Letter A-16-177.)

- Use of candidate's controlled committee campaign funds for the candidate's own memorial service did not meet the "directly related" standard, in that it was unrelated to the committee's primary political purpose to re-elect the candidate. (*Abramson* Advice Letter A-09-246.)

Legislative Purpose

- Permissible to use campaign funds for annual legislative delegation trip to Washington D.C., as directly related to a legislative purpose. (*Leidigh* Advice Letter I-97-174.)

- Governor's trips to Sacramento from his residence in Southern California directly related to a legislative and governmental purpose such that campaign funds could be used to pay for hotel accommodations while in Sacramento for up to one year. (*Hiltachk* Advice Letter A-04-006.)

- In the travel context, payment by a 501(c)(3) charitable organization to a guide company for food, housing and guide services benefitting the officeholder in connection with a fundraiser for the charity not reasonably related to a legislative purpose and therefore subject to the gift limit. (*Peterson* Advice Letter I-05-030.)

Governmental Purpose

- Expenditures made to sponsor a conference for local public officials in a senator's district intended to provide information about the lobbying process and to improve the officials' ability to lobby more successfully in the state capitol were directly related to a governmental purpose. (*Braly* Advice Letter A-90-596.)

- Supervisor could attend and speak at a small business conference, because reasonably related to a governmental purpose. (*Maze* Advice Letter A-95-345.)

- A candidate's campaign funds could not be used to purchase copies of a book, written by the candidate regarding grant applications, for the purpose of donating the books to schools, because it would provide him a substantial personal benefit and was not directly related to a governmental purpose. (*Livingston* Advice Letter A-00-280.)

PLG Purpose

- Candidate's payment of $650 for photoshoot for campaign literature was permissible as it directly related to a political, legislative or governmental purpose. (*Kovach* Advice Letter A-19-220.)

- School board member's payment of Harvard summer program permitted as program would assist in performance of governmental duties and was directly related to a political or governmental purpose. (*Weintraub* Advice Letter A-90-210.)

- Candidate may use funds to attend state party convention, as directly related to a political, legislative or governmental purpose. (*Smith* Advice Letter A-96-099.)

- Use of association's PAC funds to join a local economic development advisory board not permissible, as not reasonably related to a political, legislative or governmental purpose. (*Waters* Advice Letter A-96-149.)

- Officeholder funds may not be used to attend partisan political convention as not related to the duties of the public official. (*Bauer* Advice Letter A-07-122.)

- Union PAC funds may not be refunded to the district council to cover general operating expenses, as not reasonably related to a political, legislative or governmental purpose. (*Pappy* Advice Letter A-94-031.)

- Candidate could not use funds to attend a Masters Degree program at Stanford, as provided a substantial personal benefit and was not directly related to a political, legislative or governmental purpose. (*Miller* Advice Letter A-98-229.)

Proposed Regulations

Regulation 18952 – Definition of Political Purpose

Proposed Regulation 18952 specifies that an expenditure by a candidate controlled committee is directly related to a political purpose where the expense is ordinary and necessary in the quest for elective office, would not occur absent the identified campaign, and does not offset regular personal or committee expenses that would occur regardless of the campaign.

An expenditure by a non candidate controlled committee is directly related to a political purpose where it is ordinary and necessary to further the identified primary political objective of the committee, would not occur absent the identified primary political objective of the committee and does not offset regular personal expenses of a member or committee expense that would occur regardless of the committee's political purpose.

Expenditures for both types of committees are reasonably related to a political purpose where they are connected to an identified political purpose so long as the expenditure does not result in a direct personal benefit to the candidate (including family immediate family members) and any individual with authority to approve the expenditure of committee funds.

Promotional items with a per item value in excess of $10 not explicitly supporting the political purpose of the committee are not directly related to a political purpose and may not be made from campaign funds. (For example, a shirt with a slogan supporting the political purpose of the committee which costs more than $10 would be permissible, while giving away gift cards with no reasonable relation to a political purpose which cost more than $10 per item would not be permissible.)

Gifts in excess of $250 are not directly or reasonably related to a political purpose and may not be made from campaign funds.

Examples:

1. Coffee Gift Cards – The Commission received an informal request for advice pertaining to a candidate wanting to provide breakfast to first responders who frequent a local coffee shop. The breakfast would cost at most $10 per person. We advised this would be permissible.

   The draft regulation would help bring further clarity to this area, as there would be a bright line $10 rule for promotion items which do not explicitly support the campaign.

2. Gifts in Excess of $250 – In the *Zimmer* Advice Letter (I-92-617), the FPPC advised that gifts directly related to a political, legislative, or governmental purpose were not subject to the $250 gift limit that would otherwise apply to gifts made to campaign staff.[3]

[3] Under Section 89513(f), gifts with a total cumulative value of less than $250 in a single year made to an individual employee, committee worker, or an employee of the official's agency are expressly permitted as directly related to a political, legislative or governmental purpose.

The draft regulation specifies that gifts in excess of $250 are not directly or reasonably related to a political purpose, such that gifts in excess of $250 would be impermissible under all circumstances.

Regulation 18953 – Definition of Legislative Purpose

Proposed Regulation 18953 defines legislative purpose as expenditures made for the purpose of influencing, facilitating, or monitoring a law-making process.

Expenditures by a candidate controlled committee are directly related to a legislative purpose where the expense is ordinary, necessary for and would not occur absent the officeholder's law-making duties. Such expenditures include payment of costs incurred from a legislative hearing, reimbursement for a hearing witness' travel and lodging, and costs of conducting a constituent town hall on a legislative issue.

Expenditures by a non candidate controlled committee are directly related to a legislative purpose where the expense furthers the committee's identified primary political purpose, does not offset a regular personal expense or regular expense of the committee, and reflects a fair market value. Such expenditures include those for legislative monitoring and advocacy services.

An expenditure is reasonably related to a legislative purpose where it is connected to a law-making activity and does not result in a direct personal benefit to the candidate (including immediate family members) and any individual with authority to approve the expenditure of committee funds.

Example:

1. *Brown* Advice Letter I-90-412– In the *Brown* Advice Letter, the Commission advised that expenditures related to legislative monitoring and advocacy would be directly related to the political purposes of the committee, as this enabled the committee to further the political interests of its members.

   The draft regulation would assist in such instances through specifying that payments for legislative monitoring and advocacy services are directly related to a legislative purpose.

Regulation 18954 – Definition of Governmental Purpose

Proposed Regulation 18954 defines governmental purpose as an expenditure made for the purpose of influencing, facilitating, or monitoring an agency's action.

An expenditure by a candidate controlled committee is directly related to a governmental purpose where the benefit will flow to the officeholder's agency or facilitate the officeholder's agency duties, while not offsetting regular personal or committee expenses. Directly related

expenditures include defraying a budgeted agency cost and expenses for trainings/conferences which facilitate the performance of the officeholder's duties.

Expenditures by non candidate controlled committees are directly related to a governmental purpose where it furthers the identified primary purpose of the committee, would not occur absent the primary purpose, and does not offset personal or regular committee expenses.

An expenditure is reasonably related to a governmental purpose where the benefit flows to the officeholder's agency, or related to his or her official duties, and does not result in a direct personal benefit to the candidate or any individual with authority to approve the expenditure of campaign funds.

Example:

1. Matter of Chris Norby (FPPC Case No. 09/773) – A county supervisor used campaign funds to reimburse himself for a week-long charge at a residential motel he checked into after alleged marital issues. While the candidate in statements to the LA Times following the event admitted his error in using campaign funds, he later asserted that the charges were related to a study of homeless families and those living in motels and was not a misuse of funds. Despite the lack of any evidence showing prior planning for the study, the fact that he stayed at the hotel only three nights out of the week paid for, and made no subsequent recommendations to pursue the issue of homelessness in his jurisdiction after incurring this expense, an ALJ found that the expenditure was directly related to a governmental purpose.

   The proposed regulation would have assisted in this matter through requiring the officeholder to show how the benefit of the expenditure flowed to his agency, or assisted in his agency duties. The lack of any prior planning, budgeted agency resources, or follow-up in regard to official agency action or proposals would support the finding that campaign funds were misused in this instance.

Attachments:
Proposed Regulation 18952
Proposed Regulation 18953
Proposed Regulation 18954