



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 1, 2023

The Honorable Michael Caves  
Kern County Superior Court  
1415 Truxtun Ave  
Bakersfield, CA 93301

Re: Your Request for Advice  
**Our File No. A-23-017**

Dear Mr. Caves:

This letter responds to your request for advice regarding the campaign disclosure provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

For purposes of Section 84200(a)(2), will you have a semiannual campaign statement filing obligation (Form 460 or Form 470) where your committee has no other transactions for the six-month reporting period other than the payment of the annual \$50 Secretary of State fee applicable to all open Section 82013(a) committees?

### CONCLUSION

No. For purposes of the narrow exception in Section 84200(a)(2), as well as (a)(3), the committee’s payment of the Secretary of State’s \$50 annual fee will not be deemed an “expenditure” requiring the committee to file a semiannual campaign statement when it is the

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

only payment made during the six-month reporting period. You will not have an obligation to file a semiannual campaign statement for the six month period in which the committee's only activity is the annual fee payment.

### **FACTS AS PRESENTED BY REQUESTER**

You won election to be a judge in June of 2022. Before the remaining money in that campaign account became surplus funds, you opened a new account for re-election to the same seat, transferred the money from the 2022 election account to the re-election account, and then terminated the 2022 account. You took office on January 2, 2023.

You note that for the next six years you will likely not be accepting campaign contributions, nor making campaign expenditures. And, if you do not draw an opponent for the 2028 election, you will not appear on the ballot at that time. You wish to know if you have no activity other than the annual payment of the \$50 fee for the open committee, do you have a requirement to treat the \$50 fee as an expenditure that would require filing a semiannual campaign statement?

### **ANALYSIS**

#### ***Section 82013(a) Committee Requirements***

A. Section 84101.5: \$50 Annual Fee for Section 82013(a) Committees.

A committee that is a committee by virtue of Section 82013(a), i.e., receives \$2,000 or more in contributions in a calendar year, must file a statement of organization and is charged a \$50 annual fee by the Secretary of State until the committee is terminated. (Sections 84101(a) and 84101.5(a).)<sup>2</sup>

B. Section 84200: File Two Semiannual Campaign Statement.

In general, after the election, a successful candidate has the option of maintaining a committee and campaign bank account or terminating the campaign committee and closing the bank account. (Sections 84214, 85201.) An officeholder with an open committee must file two semiannual campaign statements a year, for each designated six month period, unless as discussed below, an exception applies. (Section 84200.)<sup>3</sup> Section 84200 provides, in pertinent part, as follows:

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<sup>2</sup> Note: generally, known as the Act's "filing fee prohibition," no fee is collected for the filing of reports or statements under the Act, unless such fee is specifically provided for in the Act, as is the \$50 annual filing fee mandated in Section 84101.5(a). (Section 81006.)

<sup>3</sup> When an elected officer, candidate or committee is actively involved in an election campaign, additional campaign disclosure requirements apply. (Section 84200.5, 84202.3, 84203 and 84204.)

(a) Except as provided in paragraphs (1), (2), and (3), elected officers, candidates, and committees pursuant to subdivision (a) of Section 82013 shall file semiannual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.

C. Section 84200(a): Exceptions for Filing Semiannual Statement.

Section 84200(a)(2) provides that no semiannual filings are required for elected officers whose salaries are less than \$200 a month or for judges or judicial candidates and their controlled committees where they have received no contributions or made any expenditures in the six-month period. Section 84200(a)(3) provides that no semiannual filing is required if (1) the judge is not listed on the ballot, (2) has not received contributions, and (3) only made expenditures that are personal fund contributions of less than \$1,000 to other candidates or committees during the calendar year. Section 84200(a)(2) and (3) state as follows:

(2) Elected officers whose salaries are less than two hundred dollars (\$200) a month, judges, judicial candidates, and their controlled committees shall not file semiannual statements pursuant to this subdivision for any six-month period in which they have not made or received any contributions or made any expenditures.

(3) A judge who is not listed on the ballot for reelection to, or recall from, any elective office during a calendar year shall not file semiannual statements pursuant to this subdivision for any six-month period in that year if both of the following apply:

(A) The judge has not received any contributions.

(B) The only expenditures made by the judge during the calendar year are contributions from the judge's personal funds to other candidates or committees totaling less than one thousand dollars (\$1,000).

***Expenditures and a Committee's Section 84101.5 Annual Fee***

You were recently elected as a judge, maintain a controlled committee, and thus will be subject to the annual \$50 fee so long as the committee is open. At issue is whether the payment of the mandated \$50 annual fee with the Secretary of State from your controlled committee will meet the definition of an "expenditure" for purposes of the exception in Section 84200(a)(2). We note that this analysis is applicable to the use of the term in the exception in Section 84200(a)(3) as well.

We look first to the definition of an "expenditure" under the Act. Section 82025(a) states:

“Expenditure” 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, unless it is clear from the surrounding circumstances that it is not made for political purposes. “Expenditure” does not include a candidate’s use of the candidate’s own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code.

This section further defines that a “payment is made for political purposes” if it is any of the following:

- (1) For purposes 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.
- (2) Made by any of the following:
  - (A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to the candidate’s candidacy or status as an officeholder.
  - (B) A controlled committee.

In this instance, the \$50 payment would be made from the controlled committee funds and relates to the fact that the committee is open for the annual period. As such, it appears fundamental to the functioning status of the committee which is solely formed for a political purpose. However, it is distinguishable for purposes of the exception in Section 84200(a)(2) and (3) in that this is a fee that applies to all committees, requiring the semiannual disclosure for this payment would have minimum if any public benefit and it would render the exception in 84200 nearly meaningless. Therefore, to harmonize the two provisions, and give reasonable meaning to the exception, the payment of the mandated \$50 annual fee with the Secretary of State from your controlled committee will not meet the definition of an “expenditure” for purposes of the exception in Section 84200(a)(2) and (3). Where this is the committee’s only activity, you will not be required to file a semiannual statement for that period in which the fee was paid from committee funds.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

~~L. Karen Harrison~~

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By: L. Karen Harrison  
Senior Counsel, Legal Division