



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 7, 2023

Ashlee N. Titus
Assistant Treasurer, CalTravel PAC
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-23-028

Dear Ms. Titus:

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

Please 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

May CalTravel PAC, a general purpose recipient committee, transfer “all purpose” account funds to a separate interest-bearing account, such as a certificate of deposit account, and then transfer the funds back to the “all purpose” account?

CONCLUSION

Yes. For purposes of Regulation 18534 governing a PAC’s “all purpose” accounts, to the extent that a PAC places only “all purpose” account funds in a higher interest-bearing account, maintains and designates this interest-bearing account as an “all purpose” committee account, appropriately labels it as such with the financial services company, does not comingle “all purpose” and “restricted use” account funds, and then returns those funds to the “all purpose” account prior to making any expenditures or contributions, this will not be considered an impermissible transfer under Regulation 18534.

¹ 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.

FACTS AS PRESENTED BY REQUESTER

CalTravel PAC is a state general purpose recipient committee that is sponsored by the California Travel Association. CalTravel PAC files campaign finance reports with the Secretary of State. As of December 31, 2022, CalTravel PAC's ending cash balance (Form 460, line 16) was \$582,599.65.

CalTravel PAC has a "restricted use" account and an "all purpose" account. Almost all contributions received by the PAC are designated as "all purpose" and deposited into the "all purpose" account after being received through intermediary California Travel Association. (For example, of the \$192,705.75 received in 2022, only \$1,750, which is less than 1% of the total amount received in 2022, was designated for the "restricted use" account.) The campaign finance reports reflect this information on Schedule A, and expenditures are likewise listed as "all purpose" account or "restricted use" account on Schedule E as required by Regulation 18534.

CalTravel PAC would like to open an interest-bearing account with a commercial financial services company and fund the account exclusively with "all purpose" account funds. For example, CalTravel PAC would like to deposit a portion of its "all purpose" account funds into an FDIC-insured savings account or certificate of deposit (CD) to earn interest while not in use.

CalTravel PAC proposes it would maintain and designate this interest-bearing account as an "all purpose" committee account, and appropriately label it as such with the financial services company. CalTravel PAC would then return those funds to the "all purpose" account prior to making any expenditures or contributions. You state that the purpose of opening the interest-bearing account is to avoid prohibited commingling of "all purpose" and "restricted use" funds.

CalTravel PAC proposes that it would continue to maintain the "restricted use" account separate from "all purpose" account funds and continue to report all activity on its campaign finance reports.

ANALYSIS

PAC and Political Parties: Contributions for Candidates for Elective State Office Limitations

Section 85303 contains the California state contribution limits for committees active in state candidate elections, including political action committees ("PACs") and political parties. Relevant to these facts, Section 85303(a) states the limitation for PACs as follows:

- (a) A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than five thousand dollars (\$5,000)² per

² Note: The committee contribution limits set forth in Section 85303(a) above are subject to cost-of-living adjustments.

calendar year for the purpose of making contributions to candidates for elective state office.

Section 85303(c), however, allows that a person's contributions to a PAC cannot otherwise be limited, except in regard to communications identifying state candidates.

(c) Except as provided in Section 85310, nothing in this chapter shall limit a person's contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office.

Therefore, Section 85303 creates a situation where a PAC must track and limit contributions related to candidates for elective office but may accept other contributions that are not subject to these limits.

All Purpose and Restricted Use Bank Accounts

A PAC may comply with the limitations in Section 85303 by following the contribution, deposit, and expenditure requirements set forth in Regulation 18534. This regulation requires that PACs set up two separate bank accounts, to keep the limited and unlimited funds separate. All contributions for the purpose of making contributions to state candidates must be within the calendar year limit amount for the contributor and deposited into the committee's "all purpose" bank account. All state candidate contributions made by the committee must be from this bank account and checks drawn on the account must show "all purpose" in the title of the account. (Regulation 18534(b).)

All contributions received by the PAC that exceed the aggregate limits in Section 85303(a) must be returned or deposited into a committee bank account designated as a "restricted use" account or split between the "all purpose" and "restricted use" accounts so long as the limit for that contributor is not exceeded in the deposit to the "all purpose" account. (Regulation 18534 (c).)³

Regulation 18534(c) provides that a PAC may transfer any portion of an original contribution from the committee's "restricted use" account to the "all purpose" account, provided that the transfer is done within 14 days of receipt, records are kept, and the total amount deposited into the "all purpose" account does not exceed the contributor's limit under Section 85303.

Checks drawn on any "restricted use account" must include the words "restricted use" in the title of the account appearing on the checks. Except by means of the transfer within 14 days described above, funds from a "restricted use" account may not be used to make contributions to candidates for elective state office, or to make contributions to other committees for the purpose of making contributions to candidates for elective state office. (Regulation 18534(d).)

³ This account is also appropriate for contributions that are not subject to the limits of Section 85303 because they were not made, and will not be used, for the purpose of making contributions to candidates for elective state office. (Guravitz Advice Letter No. A-07-087, [PAC may deposit a grant check contribution that was not made for making contributions to candidates for elective state office in its restricted use bank account.])

Transfers and the All Purpose Account

In addition to the 14 day transfer limitation, Regulation 18534 specifies the limited types of transfers that may be made between a PAC's "all purpose" and "restricted use" accounts. Regulation 18534(e) states:

(e) A committee described in subdivision (a) of this regulation may transfer funds from its "all purpose" account to any other account. Any such transfers, however, need not be considered in determining whether any person contributing to the committee has or has not exceeded annual contribution limits for that person under subdivisions (a) or (b) of Government Code section 85303. Except as set forth in subdivision (c) above, a committee may not transfer funds to an "all purpose" account from any "restricted use" or other committee account.

Interest-Bearing Account or Certificate of Deposit Account

CalTravel PAC proposes taking contributions deposited into its "all purpose" account and transferring these funds, or a portion of the funds, into a higher interest-bearing account, such as a certificate of deposit account. These funds would then be returned to the "all-purpose" account. The interest-bearing account would be labeled "all purpose" with the financial institution. There is no express provision that addresses this type of transfer.

However, this is similar to the procedure by which a candidate may transfer funds from a campaign bank account to a certificates of deposit, interest-bearing saving accounts, money market accounts, or similar accounts established only for funds for the same elective office for which the campaign bank account was established, and then redeposits the funds into the candidate's campaign bank account prior to expenditures. (Regulation 18524(b).) A candidate's campaign funds must be held in one account established at a financial institution located in the state and all campaign expenditures must be made from that account. (Section 85201(a) and (e).) In Regulation 18524, the Commission has recognized a narrow exception to the one bank account rule. (*Bauer* Advice Letter, No. I-91-181.) This type of transfer allows for a higher interest rate on the funds, so long as there is no comingling with other campaign funds, and the funds are returned to the campaign account prior to expenditures.

The reasoning for allowing the narrow exception in the candidate campaign bank account context is applicable here, so long as the "all purpose" account is otherwise in compliance with the requirements of Section 85303 and Regulation 18534. Therefore, to the extent that CalTravel PAC establishes such a higher interest interest-bearing account for investment management, places only "all purpose" account funds in the "all purpose" interest-bearing account (appropriately labeled), then returns the funds to the all-purpose account for making contributions or expenditures and does not comingle "all purpose" and "restricted use" funds, this will not be considered a transfer from another committee account under Regulation 18534.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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