



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 15, 2023

Peter Sullivan
Executive Vice President
312 Clay Street, Suite 300
Oakland, CA 94607

Re: Your Request for Informal Assistance
Our File No. I-23-163

Dear Mr. Sullivan:

This letter responds to your request for advice on behalf of Senator Mike McGuire regarding the campaign provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the provisions of the Act.

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. Your request for advice is general in nature, and we are treating your request as one for informal assistance.²

QUESTIONS

May Senator Mike McGuire fundraise, or may he make campaign expenditures to fund a celebration related to his swearing-in ceremony as president pro tempore of the State Senate?

CONCLUSIONS

It is permissible for Senator McGuire to make campaign expenditures from his Senate 2022 campaign account for the celebration event under the guidance of Section 89513(f)(3), which states that an election victory celebration or similar campaign event is considered to be directly related to a political, legislative, or governmental purpose. No contributions may be made to his Senate 2022

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

campaign account for this post-election event, as a state candidate may not fundraise after an election unless there are net debts outstanding from the election. A 501(c)(4) nonprofit organization may not be established by Senator McGuire, in lieu of a campaign committee, to raise funds for the event as any donation to the organization controlled by Senator McGuire, or his agent, will be a contribution to Senator McGuire as an elected officer and must be deposited in an appropriately established campaign committee. An independently established 501(c)(4) organization may host a swearing in celebration for Senator McGuire to attend, so long as he does not exercise control over the organization. Any donations to the organization made at the Senator's behest will be subject to behested payment reporting as outlined below.

FACTS AS PRESENTED BY REQUESTER

Your client, State Senator Mike McGuire, will be taking over as president pro tempore of the California State Senate in early 2024 following his selection by the Senate Democratic Caucus. He is planning on having a celebration related to the swearing-in ceremony and requests advice as to what is allowed for fundraising for that celebration. He has three committees: 2022 Senate, 2026 Insurance Commissioner, and a ballot measure committee. You request confirmation on whether the 2022 Senate committee is the only committee that may make expenditures for the event. Also, you ask whether "they are able to fundraise into a separate, non-political entity (i.e. a 501(c)(4)) set up for this purpose."

ANALYSIS

Permissible Use of Campaign Funds

Campaign funds are held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Section 89510.) At a minimum, any expenditure of campaign funds by a candidate must be reasonably related to a political, legislative or governmental purpose associated with the candidate's office. (Section 89512.) Expenditures that confer a "substantial personal benefit" on a candidate must be directly related to a political, legislative, or governmental purpose. (Section 89512(a).)

The Legislature enacted Section 89513 to identify specific prohibited and permissible campaign expenditures. It is the Legislature's stated intent in doing so that Section 89513 will guide the interpretation of the standard imposed by Section 89512 to expenditures not specifically identified. (Section 89513.) Under Section 89513(f)(3), "[a]n election victory celebration or similar campaign event, or gifts with a total cumulative value of less than two hundred fifty dollars (\$250) in a single year made to an individual employee, a committee worker, or an employee of the elected officer's agency" are considered to be directly related to a political, legislative or governmental purpose, and thus a permissible campaign expenditure.

Using Section 89513(f)(3) as a guide, we advise that Senator Mike McGuire's president pro tempore of the State Senate swearing-in celebration event is in the nature of an election victory

celebration and, therefore, a permissible campaign expenditure that is directly related to a political, legislative, and governmental purpose.³

Appropriate Campaign Account for Expenditures

Next, we examine which campaign account may be used for the swearing-in ceremony celebration event expenditures. Senator McGuire has three controlled committees: a Senate 2022 committee, which is for the elective office related to the swearing-in ceremony, a 2026 Insurance Commissioner committee for a future election to a different office, and a ballot measure committee.

As noted above, campaign funds are held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Section 89510.) Regulation 18525(a) mandates that an incumbent elected officer must make certain listed expenditures relating to a future election only from a campaign bank account designated for a future term of office. Officeholder expenses, which are not listed in this subdivision, may be made from either (1) the campaign bank account established for the election to the current term of office or (2) from a bank account established for election to a future term of office. (Regulation 18525(b).) Further, Regulation 18525(b) states, “[t]his section shall not be construed to permit an incumbent elected officer to make expenditures from any campaign bank account for expenses other than those associated with the officer’s election to the specific office for which the account was established and expenses associated with holding that office.”

In regard to ballot measure committees, Regulation 18521(d) similarly requires that committee funds be used for purposes related to a measure, and states:

- (1) Except as permitted under paragraphs (2) and (3) below, committee funds must be used only to make expenditures related to a state or local measure or potential measure anticipated by the committee, or to qualification or pre-qualification activities relating to such measures. Such expenditures include, but are not limited to, payment of the committee's reasonable and ordinary operating costs, administrative overhead, fundraising activities, travel, compliance costs, and attorney's fees incurred as a result of the committee's activities.

Because the swearing-in celebration expenditures relate to his election and holding of his Senate office, if campaign funds are used, they must be expended from leftover funds in the Senate 2022 committee account. Funds may not be expended directly from the 2026 Insurance Commissioner committee and the ballot measure committee for the event because the event is unrelated to his candidacy for Insurance Commissioner or the political purpose of the ballot measure committee.

³ This is consistent with previous advice that a night of the election “thank you” event for campaign workers and staff and a swearing-in ceremony for an elected state senator is in the nature of “an election victory or similar campaign event” and is a permissible use of campaign funds. (*Murphy* Advice Letter, No. A-92-116 and *Demers* Advice Letter No. A-92-586, regarding campaign staff events, and *Borgeas* Advice Letter, No. A-18-222, regarding a state senator’s swearing-in ceremony.)

Accepting Contributions Post-Election

Under Section 85316, unless there are net debts outstanding from the election, a candidate [a term which includes an elected officer]⁴ may not accept contributions for an election after the date of the election. (Section 85316(a), Regulation 18531.61.) However, an elected state officer may accept contributions post-election to an officeholder account, for the purpose of paying expenses associated with holding the office. (Section 85316(b), Regulation 18531.62.) Senator McGuire may not fundraise or accept contributions to the Senate 2022 campaign account for the post-election swearing-in ceremony event; however, subject to contribution limits, he may accept contributions to fund the event into a separate officeholder account established for his current elective office.⁵

Funding by a 501(c)(4) Nonprofit Organization Not Controlled by the Candidate

You wish to know if Senator McGuire's staff may fundraise into a 501(c)(4) nonprofit organization⁶ set up to fund the swearing-in celebration event. At this time, you have no additional details on the formation of this type of organization for the event, or the elected officer's involvement in the organization. We provide the following as general information.

It is permissible for a candidate to establish or be involved in a nonprofit organization so long as these actions do not rise to the level of the organization qualifying as a "controlled committee" under Regulation 18217. Specifically, we have advised that a 501(c)(4) nonprofit organization may be a source of funding for an inaugural celebration event, so long as (1) the candidate does not "control" the organization, and (2) the organization does not qualify as a committee under Section 82013 and the organization is not "operated for a political purpose" in that it does not make contributions or expenditures for any candidate or ballot measure in accordance with Regulation 18217. (*Sutton* Advice Letter A-05-256 and *Bell* Advice Letter, No. A-94-376.)

We caution that if the organization is set up by the Senator or his staff or otherwise controlled by him under Regulation 18217, the payments will be deemed contributions to the candidate, and the organization will qualify as a Section 82013(a) committee "operated for a political purpose" because the payments in this situation are for a purpose related to Senator McGuire's candidacy or status as an officeholder, as discussed above. The organization would be an impermissible controlled committee because the Act prohibits a candidate from having more than one controlled committee for election to office. (Section 85201.)⁷

⁴ Under the Act, an incumbent elected officer is considered a "candidate." (Section 82007.)

⁵ Note: a contribution to an officeholder account will be considered a contribution to all campaign committees for future elective state office the officeholder seeks during their current term of office. (Regulation 18531.62(e).)

⁶ We express no opinion on the requirements for establishing a 501(c)(4) organization or permissible political activity by a 501(c)(4) committee under applicable nonprofit laws.

⁷ The Commission has consistently interpreted Section 85201 to prevent a candidate from controlling any committee other than the candidate's committee for election to a specific office, except a candidate may also control a ballot measure committee and committees for other previous or future elections. (See *Stone* Advice Letter, No. I-21-099.)

As to whether the Senator may ask for donations to an independent 501(c)(4) nonprofit organization for the swearing-in celebration event hosted by the organization, please see the discussion on behested payments below.

Behested Payments: Payments Made to a Third-Party Entity Event Host

Private funding for an election celebration event may involve the elected officer or their agents making “behests” for payments to be made to a third-party entity event host, which may include a 501(c)(4) nonprofit organization, that is not candidate-controlled. A “behested payment” is a payment made principally for a charitable, legislative, or governmental purpose under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the elected officer. (See Sections 82004.5 and 82041.3.) An elected officer must report behested payments from a single source when that source makes payments that aggregate \$5,000 or more in a calendar year. (Section 84224 and Regulations 18424-18424.3.)

Under these circumstances, the payments made to an independent third-party event host to fund the swearing-in celebration event are made principally for a legislative or governmental purpose,⁸ and Senator McGuire or his agents may solicit donations to be made to a third-party entity to pay the event expenses. Senator McGuire will have behested payment reporting duties for any such payment. If a third-party entity coordinates with Senator McGuire or his agents on the event’s details, all payments for the event will be “behested payments” subject to the behested payment reporting requirements.

Gifts

Please note that for attendance at invitation-only events, the tickets to an invitation-only event would be a reportable gift, and the gift is subject to the gift limit of \$590. Regulation 18946.2 provides the Commission’s rules for determining the gift value of an invitation-only event. Under this regulation, the admission value of the benefit received by an official and one guest of the official attending the event is the official and the guest’s pro rata share of the cost of the food, catering services, entertainment, and any item provided to the official and the guest that is provided to all attendees. (See Regulation 18946.2(b).) Any other specific benefit provided to the official and the official’s guest is valued at a fair market value. (*Ibid.*) Please contact our office if you have additional questions regarding reportable gifts for this event.

⁸ We have previously advised that payments for a candidate’s inaugural event made to an independent 501(c)(4) nonprofit organization are principally for a governmental purpose. (See *Sutton* Advice Letter, *supra*.)

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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