

18-009

**Juanita Lira**

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**From:** Advice  
**Sent:** Wednesday, January 10, 2018 4:08 PM  
**To:** Brian Lau; Juanita Lira  
**Subject:** AMR!!  
**Attachments:** 2018-01-10\_Ltr\_to\_FPPC\_RE\_Request\_for\_Advice.pdf

Brian,

Here's the request from Senator Mendoza's office.

Thanks,  
Trish

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**From:** Chacon, Tammy [mailto:tchacon@DowneyBrand.com]  
**Sent:** Wednesday, January 10, 2018 3:59 PM  
**To:** Advice <Advice@fppc.ca.gov>  
**Cc:** Ferrannini, Cassandra <cferrannini@DowneyBrand.com>; Pineda, Patricia <ppineda@DowneyBrand.com>  
**Subject:** Correspondence / Senator Tony Mendoza's Request for Formal Advice

Dear Sir or Madam:

Please find attached a copy of correspondence from Ms. Ferrannini which is also being sent Federal Express.

Should you have any difficulty opening this attachment, please contact me.

Thank you,

Tammy

Tammy Chacon  
Legal Secretary to William R. Warne and  
Alexandra K. LaFountain

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January 10, 2018

**VIA EMAIL AND FEDERAL EXPRESS**

Legal Division  
Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811

**Re: Senator Tony Mendoza's Request for Formal Advice**

Dear FPPC Legal Division:

My firm represents Senator Tony Mendoza ("Senator Mendoza" or "Senator") and requests that the Fair Political Practices Commission ("FPPC") provide formal written advice to Senator Mendoza on the issues presented below. Based upon the significance and urgency of these issues, Senator Mendoza respectfully requests the FPPC's expedited review of this request for advice.

**ISSUES PRESENTED**

1. May Senator Mendoza use campaign funds to hire an attorney to defend himself in administrative, Senate, and civil proceedings that are related to his conduct in office?
2. May Senator Mendoza establish a legal defense fund to defray attorney's fees in connection with these proceedings?

**FACTS**

Former staff members of Senator Mendoza have accused the Senator of sexual harassment. Senator Mendoza fully denies these allegations and any and all wrongdoing. Specifically, it has been alleged that a former Senate fellow, Senate intern, and Senate employee felt uncomfortable based upon interactions they had with the Senator while working for him. There have been no allegations of inappropriate physical contact between the Senator, any of his staff, or anyone else at any time.

In or around December 2017, a former employee of the Senate filed a Complaint with the Department of Fair Employment and Housing (“DFEH”). In her DFEH Complaint, the former employee alleges she was terminated after reporting allegations that the Senator had made a Senate fellow feel “uncomfortable.” The DFEH did not investigate this Complaint and instead issued a Right to Sue Letter to the Senate’s former employee. This former employee has now presented a Claim for Damages to the Senate pursuant to Government Code section 910 *et seq.*, a pre-requisite to filing a civil action.

Based upon the allegations against Senator Mendoza, several senators have called for his resignation, suspension, or expulsion from the Senate. On January 3, 2018, Senate Resolution 69 was formally introduced to expel Senator Mendoza from the Senate. The Senate is also conducting a formal investigation regarding the allegations against Senator Mendoza and has retained two law firms to conduct this investigation.

Senator Mendoza has emphasized his willingness to cooperate with the Senate’s investigation and is eager to clear his name in full. The Senator denies any violation of Senate rules or Senate policy.

## DISCUSSION

### **A. Campaign Funds**

Section 89512(a) provides that candidates and elected officials are permitted to use campaign funds to pay for an expenditure that has a “political, legislative or governmental” purpose. Expenditures that confer a substantial personal benefit on the candidate or elected official must be directly related to a political, legislative, or governmental purpose.

The use of campaign funds for attorney’s fees under these circumstances would fall squarely within the scope of *legislative* matters, since it involves the alleged conduct of a legislator with regard to legislative staff that he supervised. It also falls within the scope of *political* matters, since Senator Mendoza’s alleged conduct is causing some elected officials to call for his resignation, suspension, or even expulsion from office.

### **B. Legal Defense Fund**

Section 85304 provides in relevant part that an elected state officer:

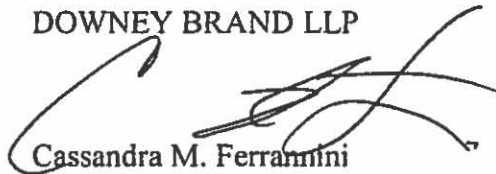
“[M]ay establish a separate account to defray attorney’s fees and other related legal costs incurred for the ... officer’s legal defense if the ... officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the ... performance of the officer’s governmental activities and

duties. These funds may be used only to defray those attorney's fees and other related legal costs."

As set forth above, Senator Mendoza currently is the subject of proceedings that are directly related to his conduct and activities while serving in elective office. Therefore, we believe that he should be allowed to establish a legal defense fund to defray his legal expenses in defending himself against these allegations.

Very truly yours,

DOWNEY BRAND LLP

A handwritten signature in black ink, appearing to read 'Cassandra M. Ferramini', is written over the typed name. The signature is fluid and cursive, with a large initial 'C'.

Cassandra M. Ferramini

CMF  
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