



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 3, 2024

Marissa Russell
River City Business Services
5445 Madison Avenue
Sacramento, CA 95841

Re: Your Request for Advice
Our File No. A-24-056

Dear Ms. Russell:

This letter responds to your request for advice on behalf of state candidate Phil Ting regarding the 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

Is it permissible for Phil Ting, a candidate for state elective office, to transfer campaign funds from his campaign bank account under Regulation 18524(b) to purchase Treasury bills from the U.S. Department of Treasury through a “TreasuryDirect” account?

CONCLUSION

No. This would not be a permissible transfer under Regulation 18524 because a Treasury bill is a type of security, and TreasuryDirect is not a financial institution located in the state.

FACTS AS PRESENTED BY REQUESTER

Treasury bills, also known as “T-Bills” are a type of marketable security that may be purchased directly from the U.S. Department of Treasury through a “TreasuryDirect” account.² You

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 We note: Investors may buy T-bills in electronic form from a brokerage firm, for a small fee, or directly from TreasuryDirect. (See [Treasury Bills \(T-Bills\): What They Are and How To Invest \(investopedia.com\)](https://www.investopedia.com/terms/t/t-bills.html), as viewed 6/20/2024.)

state that you are not familiar with T-Bills, but researched information to provide as background for this request, as follows: TreasuryDirect is the official United States government application in which an individual can buy and hold savings bonds and Treasury marketable securities (including Notes, Bonds, Bills). When purchasing from TreasuryDirect, at the time of purchase, the purchaser specifies the source of funds- a bank account or Certificate of Indebtedness- to be used for the purchase, and a checking or savings account where the payment will be deposited. Following the purchase, TreasuryDirect sends an email with a transaction summary, confirming the purchase. At maturity, the yield from the T-bill is automatically deposited into the linked account.³

You understand that T-Bills are fixed-income investments, similar to certificates of deposit (“CDs”). T-bills do not pay interest, instead, they are auctioned off to investors at a discount of their face value. The return is the difference between the face value and the discounted price initially paid. T-bills have no default risk since they are backed by the U.S. government. The TreasuryDirect website says: “We sell Treasury Bills (Bills) for terms ranging from four weeks to 52 weeks. Bills are sold at a discount or at par (face value). When the bill matures, you are paid its face value. You can hold a bill until it matures or sell it before it matures. The funds would go back to the account originally paid from once paid the face value.”

You note that while Treasury bills are not specifically listed as a permissible type of investment account for which a candidate may transfer funds for investment purposes, the list in Regulation 18524 is not exclusive and allows for “similar accounts.” Also, Regulation 18531.61 lists “treasury bills” in the list of “cash on hand” assets that a candidate’s committee must consider in calculating net debts outstanding under Regulation 18531.61.

ANALYSIS

Candidate’s Campaign Funds and the One Bank Account Rule

The Act requires that a candidate’s campaign funds must be held in one bank account established at a financial institution located in the state. (Section 85201.)⁴ All campaign contributions and loans must be deposited in the account and all expenditures must be made from this account. (*Id.*)

Interpreting and implementing this provision, Regulation 18524, “Investment and Expenditure of Candidates Campaign Funds,” permits that the candidate’s campaign funds may be transferred from the campaign bank account to an investment account. This exception states:

- (b) The candidate may transfer funds from the campaign bank account to certificates of deposit, interest-bearing saving accounts, money market accounts, or similar accounts which shall be established only for funds for the same elective office for which the campaign bank account was established. Prior to

³ *Id.*

⁴ Section 85201 and the One Bank Account Rule was enacted by Proposition 73, of the June 1988 Statewide Primary Elections.

expenditure, the funds shall be redeposited in the candidate's campaign bank account.

(Regulation 18524(b).)

At the time of Regulation 18524's adoption, staff stated that the temporary transfer of campaign funds into higher interest accounts that are then returned to the campaign bank account for expenditures does not interfere with the "audit trail" for the campaign bank account. (Staff's Final Statement of Reasons to adopt Proposed Regulation 18524, Attachment "L," submitted to Office of Administrative Law, March 29, 1989.)

Since its adoption, Commission staff has recognized that Regulation 18524 provides "narrow exceptions" to the One Bank Account Rule. (*Bauer* Advice Letter, No. I-91-181 and *Turner* Advice Letter, No. A-05-020.) Importantly, because Regulation 18524 is constrained by Section 85201's requirements for the underlying bank account – that it be established in a financial institution located in the state- it follows that the "higher interest accounts" must also be with a financial institution located in the state. Adopting the common definition of "financial institution,"⁵ *Bauer* Advice Letter, *supra*, states:

Thus, under Section 85201, and absent any definitional legislation or regulation, we would advise that campaign funds be held only in state and national banks, state and federal savings and loan associations, or state or federal credit unions located in the state. Additionally, under Regulation 18524 campaign funds may be invested in certificates of deposit, interest-bearing savings accounts, money market accounts, or similar accounts in those institutions.

The above-listed institutions are noted as "part of government regulated industries subscribing to strict accounting standards. Such standards ensure that clear and complete records are kept which are accessible under appropriate circumstances to auditing and investigation." (*Bauer* Advice Letter, *supra*.)

The facts state that a T-bill is a marketable security, and the candidate would purchase it from TreasuryDirect, a part of the U.S. Treasury Department. Relevant to the question of whether this is a permissible transfer of campaign funds, Commission staff has advised that a candidate is not permitted to invest in auction rate preferred securities⁶ produced by a brokerage firm. (*Brown* Advice Letter, No. A-04-214.) First, Commission staff advised that the particular securities were "stocks backed by municipal bonds" and "neither stocks nor bonds fit within the exception to the bank account rules articulated in regulation 18524 and prior Commission advice." (*Id.*)⁷ Second, the

⁵ Staff looked to the definition used in the California Right to Financial Privacy Act, Section 7460, *et seq*, specifically Section 7465.

⁶ The *Brown* Advice Letter, *supra*, states, "a description of auction rate securities issued by Douglas Skarr, "Auction Rate Securities," California Debt and Investment Advisory Commission August 2004 (Issue Brief) describes these securities as long-term, variable-rate bonds tied to short-term interest rates."

⁷ See for example, *Sutton* Advice Letter, No. I-96-228, stating: "Note that candidate-controlled committees are not permitted to invest campaign funds in common or preferred stock. (Regulation 18524.)"

facts did not show that the investment account would be held in “an appropriate institution,” *i.e.*, a financial institution located in the state. For these reasons, an investment in auction rate securities was not deemed to be a “similar account” comparable to the permissible accounts listed in Regulation 18524. (*Id.*)

Consistent with the advice in letters *Bauer* and *Brown* and the narrow nature of the exceptions in Regulation 18524, we advise that it is not permissible for a candidate to transfer campaign funds to TreasuryDirect for the purchase of T-bills. It is not a “state and national bank, state and federal savings and loan association, or state or federal credit union.” Further, the U.S. Treasury Department and TreasuryDirect are not “located in the state.” This latter fact is significant because Section 85201’s requirement to maintain a campaign bank account “at an office of a financial institution located in the state” is necessary for the Commission’s ability to conduct audits, which may involve legal filings and a court ordered subpoena from the appropriate jurisdiction. The U.S. Treasury Department is a federal agency. As a part of the federal government, the federal agency can claim sovereign immunity from state court orders, including a subpoena. Sovereign immunity is an ancient doctrine, that prohibits a court from compelling the action of the United States or entertaining an action against the United States, without the “sovereign’s” consent. Federal agencies have “Touhy regulations” (named after a court case on the subject) that govern their response to a state agency’s subpoena, require certain steps be followed, and the process exhausted before the agency can be challenged in court.⁸

We note that so long as the T-bill is purchased from TreasuryDirect using the campaign’s bank account, it is held with TreasuryDirect, and upon maturity, the funds are deposited back into the campaign account, the campaign bank records and the campaign’s TreasuryDirect email documenting the transactions would provide a record of the funds’ transfer, use and interest earned. However, T-bills are a security investment and can be sold on a secondary market, unlike a money market account or high-interest savings account. These secondary market transactions would require TreasuryDirect records for an audit trail. It is unclear how such transactions may be documented by TreasuryDirect or where the funds would be transferred. On the basis that Regulation 18524’s intent was to allow for temporary transfers of campaign funds for investment purposes to higher interest accounts that “would not interfere with the audit trail” to comply with Section 85201’s requirements, we conclude that T-bills purchased from TreasuryDirect would not meet the requirements in Regulation 18524.

Regulation 18531.61

In the context of calculating a committee’s net debts outstanding under Section 85316(a), you note that Regulation 18531.61, “Treatment of Debts Outstanding After an Election,” includes “treasury bills” in the following language (emphasis added) regarding a committee’s assets:

(3) “Net debts outstanding” means the total of a committee's outstanding debts minus its assets.

(B) For purposes of calculating net debts outstanding, “assets” include:

⁸ [Terrible Touhy: Navigating Judicial Review of an Agency’s Response to Third-Party Subpoenas | Cardozo Law Review](#), “1.The Circuit Split-A Question of Sovereign Immunity.” As viewed 6/20/2024.

(i) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; *treasury bills*; and any other committee investments valued at fair market value;

You inquire if this language implies that T-bills are a permissible committee investment. We have reviewed this matter and determined that this is not a list of permissible committee investments, it is a list of cash assets a committee may be holding. For example, the list includes traveler's checks, which are a type of cash asset and not a type of "investment."⁹ In this context, traveler's checks refers to a contribution in the form of a traveler's check held by the committee. Similarly, "treasury bills and any other committee investments" listed as a cash on hand asset refers to in-kind contributions. While a candidate may not transfer campaign funds into securities as a type of investment, it is established that a candidate may receive securities as a type of in-kind or nonmonetary contribution.¹⁰

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel



For

By: L. Karen Harrison
Senior Counsel, Legal Division

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⁹ Importantly any use of traveler's checks would be limited by the petty cash limitations of \$100. Regulation 18524(d) provides that a "candidate may establish, for the campaign bank account, one petty cash fund at each campaign office. No more than \$100 may be deposited in the petty cash fund at any time, and no expenditure totaling \$100 or more may be made from the petty cash fund."

¹⁰ See *Sutton* Advice Letter, *supra*, which states that the funds must be converted to cash and deposited in the candidate's campaign bank account before expenditure.