STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

February 5, 2025

Amber Maltbie
Nossaman LLP
777 South Figueroa Street, 34th Floor
Los Angeles, CA 90017

Re: Your Request for Advice
Our File No. A-23-175(a)

Dear Ms. Maltbie:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").[1] This letter is being issued to clarify *Maltbie* Advice Letter, No. A-23-175. 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

Under the Act, do campaign funds that were raised while Mr. Buscaino's ballot measure committee was candidate-controlled remain subject to restrictions set forth in Regulation 18521.5(d) after the committee becomes non-candidate-controlled, or can the funds be used pursuant to Section 89512.5 given that 60 days have passed?

CONCLUSION

The Act does not expressly address the topic of expenditure of funds by a candidate-controlled ballot measure committee that becomes non-candidate-controlled in a jurisdiction that imposes contribution limits pursuant to Section 85702.5. However, we can conservatively advise that committee expenditures consistent with the criteria of Regulation 18521.5(d) would not violate the Act, even if made by a local ballot measure committee not subject to default contribution limits. Whether an expenditure *not* consistent with Regulation 18521.5(d) would be permissible is a question that would require case-by-case analysis.

---

[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

The following facts are taken from *Maltbie* Advice Letter, No. A-23-175:

> You are the attorney for Joe Buscaino For Better Communities (the "Committee"). The Committee is currently a state general purpose ballot measure committee, and Ms. Buscaino is the principal officer. While Mr. Buscaino was still in office and a candidate, the Committee was candidate controlled.
>
> Mr. Buscaino was previously a Los Angeles City Councilmember and candidate for Los Angeles Mayor in the March 2022 primary election. He no longer holds elected office and is not a candidate to any office, nor does he intend to be in the foreseeable future. The Committee's Form 410 was amended to reflect that the Committee is no longer candidate controlled and that Mr. Buscaino is now the Committee's principal officer.
>
> You seek advice as to how the Committee is permitted to use funds that were raised while it was still a candidate controlled committee given that it is no longer candidate controlled and more than 60 days have passed since the Committee changed status.

Additionally, your initial request for advice noted that the City of Los Angeles has its own contribution limits.

ANALYSIS

In *Maltbie* Advice Letter, No. A-23-175 (*Maltbie*), we considered the question, "[u]nder the Act, do campaign funds that were raised while a ballot measure committee was candidate controlled remain subject to restrictions set forth in Regulation 18521.5(d) after the committee becomes noncandidate controlled, or can the funds be used pursuant to Section 89512.5 given that 60 days have passed?" We advised:

> Campaign funds raised while a ballot measure committee is candidate controlled must be disbursed pursuant to Regulation 18521.5(d)(1-3) because they were raised for a candidate controlled committee. However, the funds need not be disbursed pursuant to subdivision (d)(3) exclusively as a result of an effective termination when the committee became noncandidate controlled, because Regulation 18521.5(d)(3) is permissive in nature.

We provide the following analysis to clarify the advice provided in *Maltbie* Advice Letter, No. A-23-175.

The Act both protects against the misuse of campaign funds and imposes contribution limits on elected officers. Rules guiding the permissible use of campaign funds are laid out in Sections 89510 through 89522 of the Act. Generally, these rules are guided by the principle that, "[a]ll contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office." (Section 89510(b).) Moreover, all contributions received by a candidate for elective office must be

deposited into a single account for the candidate's committee for elective office. This is generally referred to as the one-bank account rule. (Section 85201(a).)

Section 85301 establishes limits on contributions from persons to candidates for state office and also establishes default contribution limits for candidates running for local office in a jurisdiction that has not adopted its own contribution limits pursuant to Section 85702.5. (Section 85301(a)-(d).) If a jurisdiction has adopted its own contribution limits, the candidate is subject to those limits and not the default limits established under Section 85301(d). As you noted in your initial request for advice, the City of Los Angeles imposes its own contribution limits. Therefore, Section 85301(d) does not apply in that jurisdiction.

Section 85301 was amended in 2019, effective 2021, to establish default contribution limits in the estimated seventy-plus percent of local jurisdictions that imposed no contribution limits. (See Senate Floor Analysis for Assembly Bill 571, Senate Rules Committee, Sep. 1, 2019.) In amending the statute, the Legislature noted that "campaign ordinances adopted by local governments in California vary significantly in terms of their scope," with some jurisdictions having limited ordinances and others having much more extensive ordinances. (*Ibid.*) The legislation was noted as taking "an important step in establishing a more widespread application of campaign contribution limit[s] to prevent undue influence in local elections." (*Ibid.*)

Consistent with the legislative intent in establishing default local contribution limits while permitting jurisdictions to adopt their own limits, in the case of a ballot measure controlled by a candidate for elected office, parameters must be imposed to ensure that funds are used for permissible purposes and that contributions and campaign activities are not intermingled to circumvent applicable contribution limits. To this end, there must be adequate safeguards to ensure that contributions received by a candidate-controlled ballot measure committee are not impermissibly used for the candidate's current or future election to office and that all contributions received for the purpose of seeking elective office are deposited into the candidate's committee for elective office under any applicable contribution limit. For state officials and local officials subject to default limits, these safeguards are provided in Regulation 18521.5(d)(1-3).

The Act does not expressly address expenditures by a local candidate controlled ballot measure committee subject to locally-imposed contribution limits in the same way that it does for those that are subject to the Act's default limits. To the extent local ordinances are also silent, the questions you have posed require that we consider what expenditures would be generally permissible and not violate either the trust imposed under Section 89510 or the one-bank account rule. In the absence of controlling authority, we are generally required to consider each expenditure on a case-by-case basis.

However, Regulation 18521.5(d)(1)-(3) was adopted to clarify the applicable safeguards for purposes of any candidate-controlled ballot measure committee other than one subject to a local contribution limit. As initially adopted in 2008, Regulation 18521.5 applied specifically to candidates for elective state office and was intended to:

> ensure that ballot measure committees controlled by candidates for elective state office are formed to support or oppose real ballot measures likely to be presented to the electorate in the foreseeable future, that contribution limits are observed where applicable to such committees, and that contributions to support or oppose ballot

> measure campaigns are not diverted to unrelated purposes, such as campaigns for elective office.

(Staff Memorandum to Commission Re: Adoption of Regulation 18521.5, Nov. 13, 2008.) Moreover, to the extent expenditures are permissible for a candidate-controlled ballot measure committee other than one subject to a local contribution limit, there is no reason, in the absence of any provision of the Act or local ordinance to the contrary, that expenditures meeting the criteria of Regulation 18521.5(d)(1)-(3) would be deemed impermissible. Likewise, there is no indication that the Legislature, in amending Section 85301, intended to create a scenario in which candidate-controlled committees in jurisdictions with locally-imposed limits would have no guidance with respect to permissible expenditures.

For these reasons, we can advise that any expenditures by a ballot measure committee consistent with 18521.5(d)(1)-(3) would be permissible under the Act even if made by a candidate-controlled ballot measure subject to local limits. While Regulation 18521.5(d) does not strictly apply to such committees, we believe that committee expenditures made consistent with that subdivision would similarly be permissible. Nonetheless, as Regulation 18521.5 does not apply to these committees on its face, it cannot be interpreted as a determinative restriction on the use of funds by these committees. Accordingly, while we can generally and conservatively advise that using expenditures of the funds consistent with Regulation 18521.5 would be permissible, any other use of the funds would require a case-by-case analysis, which we can do only if the desired use is identified.

Additionally, and consistent with the above discussion of the trust in which campaign contributions are held, we highlight Elections Code Section 18680. That statute similarly imposes certain restrictions on expenditures and duties on those individuals who are entrusted with funds for the promotion or defeat of ballot measures. Section 89522 of the Act states that "[this] chapter shall not be construed to permit an expenditure of campaign funds prohibited by Section 18680 of the Elections Code." Because we cannot render advice regarding the interpretation of the Elections Code (Regulation 18329(b)(6)(D)), Mr. Buscaino may wish to seek advice from the Secretary of State, Elections Division, on the appropriate use of these funds.

Finally, Mr. Buscaino and his ballot measure committee must comply with any applicable local rules regarding ballot measure committees. He will need to consult the relevant local ordinances or the jurisdiction regarding applying such local laws.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Kevin Cornwall
Senior Counsel, Legal Division

KMC:aja