

June 27, 1994

Mr. Ted Dang
1305 Franklin Street, Suite 510
Oakland, CA 94612

AL #94-4

Re: Response to Questions Pertaining to the Expenditure Ceiling for Mayoral Candidates

Dear Mr. Dang:

This letter is in response to the three questions you raised in your June 17, 1994 request for advice on the Oakland Campaign Reform Act.

ISSUES

1. Whether the expenditure ceiling for a mayoral candidate should take into account the Redevelopment Agency salary for mayor, which the current Mayor has declined to receive?
2. If a candidate spent less than the expenditure ceiling allowed in the primary election, whether that candidate in the general election could spend, in addition to the general election expenditure ceiling amount, the difference between the amount allowed to be spent in the primary and any lesser amount actually spent in the primary?
3. Whether expenses related to fund raising events are "qualified campaign expenditures" subject to the expenditure ceilings of the Act?

SUMMARY CONCLUSIONS

1. The current Mayor declines to receive a salary as member of the Redevelopment Agency, so that amount should not be considered in calculating the expenditure ceilings for a candidate for the office of mayor.

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2. A candidate cannot add to the general election expenditure ceiling the difference between the amount allowed to be spent in the primary and any lesser amount actually spent in the primary.
3. Fund raising activities are conducted "for the purpose of influencing or attempting to influence the actions of the voters" and are made at least in part "for political purposes", so that fund raising expenses are considered to be "qualified campaign expenditures".

DISCUSSION

1. Whether the expenditure ceiling for a mayoral candidate who has accepted expenditure limitations pursuant to section 400 et seq. of the Act should take into account the Redevelopment Agency salary for mayor, which the current mayor has declined to receive?

Section 401(c) of the Act requires that, for primary elections, any candidate for mayor who accepts expenditure ceilings "...shall not make qualified campaign expenditures exceeding 300% of the annual salary for the office of the mayor on the last date for filing for candidacy." For general elections, section 401(c) further requires that a candidate for mayor who accepts expenditure ceilings "...shall not make qualified campaign expenditures exceeding 250% of the annual salary for the office of the mayor on the last date for filing for candidacy."

Section 401(d) of the Act specifically defines annual salary for the office of the mayor as including "...the salary received as a member of the Redevelopment Agency." (Emphasis added.) **The current mayor has declined to receive the salary he is eligible to receive as a member of the Redevelopment Agency. Since he did not receive a Redevelopment Agency salary on the last date for filing for candidacy, the calculation of the expenditure ceiling for the office of the mayor should not include the Redevelopment Agency salary.**

Please note the enclosed June 27, 1994 letter to Oakland candidates and their treasurers regarding reliance on erroneously published expenditure ceiling figures.

2. If a candidate spent less than the expenditure ceiling allowed in the primary election, whether that candidate in the general election could spend, in addition to the general election expenditure ceiling amount, the difference between the amount allowed to be spent in the primary and any lesser amount actually spent in the primary?

Section 401(c) of the Act sets the expenditure ceilings for mayoral candidates by indicating the maximum amount allowed to be spent for the primary election, and the maximum amount allowed to be spent for the general election. The Act contains no express or implied allowance for adding to the general election expenditure ceiling the difference between the amount allowed to be spent in the primary and any lesser amount actually spent in the primary.

3. Whether expenses related to fund raising events (printing, postage, food and materials, plus the cost of retaining a professional fund raiser) are "qualified campaign expenditures" subject to the expenditure ceilings of section 400 et seq. of the Act?

Section 206(a)(1) of the Act defines "qualified campaign expenditures" as expenditures made "... for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for City Office." Section 400 et seq. of the Act holds that a candidate who has accepted expenditure ceilings must count all "qualified campaign expenditures" towards the expenditure ceiling. Section 206(b) of the Act holds that an expenditure is not a "qualified campaign expenditures" only if it is "... clear from the surrounding circumstances that it was not made in any part for political purposes." (Emphasis added.)

Fund raising expenditures which might include printing, postage, food and materials for fund raising events and the cost of retaining a professional fund raiser are "qualified campaign expenditures" to be counted towards a candidate's expenditure ceiling limitation, since such fund raising activities are conducted "for the purpose of influencing or attempting to influence the actions of the voters" and are made at least in part for political purposes.

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CONCLUSION

If you have any questions regarding this advice letter, or any other questions regarding the Oakland Campaign Reform Act, please contact this office at your earliest convenience.

Very truly yours,

JAYNE W. WILLIAMS
City Attorney

By: _____
Joyce M. Hicks
Assistant City Attorney

Attorney Assigned: J. Patrick Tang