

July 7, 2006

Ralph Grant
Grant and Smith, LLP
505 14th Street
Oakland, CA 94612

RE: Request For Written Advice

Dear Mr. Grant:

This is in response to your email requesting an interpretation from this office of several provisions of the Oakland Campaign Reform Act (OCRA).

The interpretation below constitutes the opinions and analysis of the Executive Director of the Commission based on a given set of facts. The interpretation does not reflect or bind in any way any future action, opinion or decision of the Commission, the Executive Director or the City Attorney's office, nor does it provide any immunity against administrative action by the Commission or any other action by other enforcement agencies. For legal advice you should consult an attorney. Should you object to the following interpretation, or if you desire the Commission to adopt the following opinions or analysis as its own, please contact me to discuss having all or part of the following placed before the Commission at a regularly noticed meeting.

Question

Can the campaign committee for Mayor-elect Ron Dellums continue to receive contributions and use the funds to pay for "transition and inaugural activity expenses" even when the committee has expended up to the voluntary expenditure ceiling for the June, 2006, election?

Answer

Yes, provided that contributions to the campaign committee continue to meet limitations of OCRA Sections 3.12.050(B) and 3.12.060(B), and that the contemplated expenditures relate solely to preparations for assuming office and Mr. Dellums' inauguration in January, 2007.

Relevant Facts

You have provided me with the following relevant facts:

- 1) The Oakland Mayoral Committee has expended up to the primary-election \$343,000 limit.
- 2) Mr. Dellums was successful in winning the primary election.
- 3) Surplus funds remain in the bank account of the Committee.
- 4) The Committee would like to use the surplus funds and additional contributions to pay headquarter operating expenses and consultants during the seven (7) month transition period starting the day after the primary election date and ending on the inauguration date. The Committee also would like to use the surplus (and future) campaign funds to pay for pre-inaugural and inaugural activities.

Analysis

OCRA Section 3.12.200 provides that a candidate for the office of Mayor who voluntarily agrees to expenditure ceilings shall not make qualified [campaign] expenditures exceeding the calculated expenditure ceiling for the election in which the candidate is seeking office. You have previously advised this office that Mr. Dellums executed and filed OCRA Form 301 in which he agreed to accept the calculated expenditure ceiling for the June, 2006, primary election for the office of Mayor. The calculated expenditure ceiling for that election was \$343,000.

OCRA Section 3.12.040 defines a "qualified campaign expenditure" as including "[a]ny expenditure made by a candidate, officeholder or committee controlled by the candidate or officeholder, 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." A qualified campaign expenditure does not include any payment "if it is clear from the surrounding circumstances that it was not made in any part for political purposes."

California Governmental Code Section 89512 provides in relevant part that expenditures used for seeking office are proper if they are "reasonably related to a political purpose." Expenditures associated with holding office are proper if they are "reasonably related to a legislative or governmental purpose."

The question presented is whether payments related to so-called transitional and inaugural activities constitute qualified campaign expenditures and therefore count towards the \$343,000 voluntary expenditure ceiling. If the contemplated expenditures for transitional and inaugural activities relate to preparations for taking and holding office and are not for the political purpose of influencing the actions of voters in the June, 2006, election, the payments for transitional and inaugural activities would not appear to

constitute qualified campaign expenditures that would count towards OCRA's voluntary expenditure ceiling.

Please be advised that the general characterization of payments for "transitional and inaugural activities" alone does not determine whether any contemplated payments will count towards the voluntary expenditure ceiling. Payments that can be related to the political purpose of seeking office, even if made after the election, can constitute a qualified campaign expenditure subject to the voluntary expenditure ceiling. For example, if payments are made to persons for transitional or inaugural services and those same persons also served as consultants during the election campaign, you could be required to demonstrate that the contemplated payments were for services exclusively related to the transition or inauguration, and not in any part for the election campaign. Similarly, contemplated payments for "headquarter operating expenses" do not automatically become attributable to "transitional and inaugural activities" the day after the election: It would be the use to which the facility is put that would determine whether the payments constitute qualified campaign expenditures or not.

This office strongly encourages you to maintain clear records and documentation for all transition and inaugural expenses paid from committee funds, and to designate whenever possible such expenditures on future campaign statements.

I hope the above discussion has been helpful. Please feel free to call me if you have any further questions.

Very truly yours,

Daniel D. Purnell
Executive Director

cc: Mark Morodomi
J. Patrick Tang