City of
FRESNO

DOUGLAS T. SLOAN
City Attorney

February 11, 2016

MEMORANDUM

RE: Transfer of Campaign Funds to a Candidate for City Office

This memo addresses transfers of campaign funds by an elected official to a candidate for City office.

QUESTION

May a state or local elected official transfer unexpended campaign funds to a candidate for City of Fresno office? If so, what are the limitations?

ANSWER

1. Except for unexpended "surplus" campaign funds, which may not be transferred, transfers of unexpended campaign funds to a candidate for a local elected office may be made. Here is the definition of surplus campaign funds:

> Upon the 90th day after leaving an elective office, or the 90th day following the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds under the control of the former candidate or elected officer shall be considered surplus campaign funds and shall be disclosed pursuant to Chapter 4 (commencing with Section 84100). (Government Code § 89519(a).)

2. The transfer of unexpended campaign funds is subject to compliance with local elections laws. Based on the City of Fresno's election laws, the transfer of unexpended campaign funds may not be made prior to the date for filing of nomination papers or following the year in which the election is held and the transfer is limited to $4,200 per contributor per election.

ANALYSIS

1. Transfers of Campaign Funds

Current FPPC manuals regarding campaigns provide transfers of funds that are not surplus funds are permissible. Campaign Manual 1, Chapter 6.3 regarding State campaigns provides in part: "Candidates may make contributions to other candidates and committees unless prohibited by local rules. The counterpart Manual 2, Chapter 5.3 regarding local campaigns mirrors that language.

2. Surplus Campaign Funds

Government Code § 89519 provides that campaign funds become surplus on the 90th day after the closing date for a candidate's post-election reporting period or upon the

90th day after the date of leaving office, whichever occurs last. Section 89519 also includes language that the funds "shall be used only for [specific] purposes" which are listed. None of the listed purposes includes transfers to another candidate. The Campaign Manuals (1 and 2) referenced above mirror the limitations on surplus funds set forth in § 89519.

3. **Limitations on Amount and Timing of Transfers of Campaign Funds**

A city may by ordinance or resolution limit campaign contributions in city elections. (Elections Code § 10202)

Under FMC § 2-1105 a person "may not make to any candidate for elective City office, and a candidate for elective City office may not accept from a person, any contribution totaling more than $4,200 per election." A candidate may not accept more than $8,500 from a small contributor committee per election. Additionally, FMC § 2-1108 provides: "A candidate for elective office or committee controlled by that candidate may not make any contribution to any candidate for elective city office in excess of the limits for persons set forth in § 2-1105(a)."

Charter § 309 prohibits off-year contributions and delineates when contributions may be accepted. It provides:

> No mayoral candidate, Council candidate, or any committee controlled by such person shall solicit or accept any contribution in support of such candidate's election prior to the date fixed by law for the filing of nomination papers with respect to such election or following the year in which such election is held.

Any unexpended contribution transferred will be attributed to the contributor for the pending City election, subject to the City's limitations on campaign contributions. This is best illustrated by example.

Example 1: John Smith contributed $4,200 to a candidate prior to the current pending election. If those funds were not expended, they may be transferred to the candidate's campaign fund for the current election. However, if the funds were not attributable to a prior City election, John Smith may not contribute additional funds for the candidate's current election.

Example 2: Jane Smith contributed $10,000 to a candidate prior to the current pending election. $4,200 may be transferred to the candidate's campaign fund for the current election (primary and general elections are two separate elections), subject to the limitations in Example 1. If the candidate is successful in the current pending election, another $4,200 may be transferred to the candidate's campaign fund for the next upcoming election so long as the funds have not become "surplus".

Respectfully submitted,

DOUGLAS T. SLOAN
City Attorney

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