



# California Fair Political Practices Commission

December 16, 1988

Randy Riddle  
Deputy City Attorney  
City and County of San Francisco  
City Hall, Room 206  
San Francisco, CA 94102

Re: Your Request for Advice  
Our File No. A-88-409

Dear Mr. Riddle:

This is in response to your request for advice regarding the effects of Proposition 73<sup>1/</sup> on the San Francisco Municipal Election Campaign Contribution Control Ordinance (the San Francisco ordinance).

Your question regarding application of the Proposition 73 ban on public financing to local elections is being researched by Commission staff. In order to provide a thorough analysis of that complex issue, and still respond to your other questions in a timely manner, we are delaying our response to the public finance question. We trust that the following analysis regarding your other questions is helpful to you.

## QUESTIONS

1. Since the San Francisco ordinance imposes lower contribution limits than those in Proposition 73, do the limits in the San Francisco ordinance control campaign contributions for local offices?

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<sup>1/</sup> Proposition 73, the Campaign Funding; Contribution Limits; Prohibition of Public Funding Initiative Statute, was a statewide ballot measure adopted by the voters in the June 1988 primary election. The provisions of Proposition 73 amend the Political Reform Act (the "Act"), which is comprised of Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2. Does the prohibition on transfer of campaign funds between candidates apply in a city that has a valid campaign contribution limitation ordinance?

3. What is the effect of Proposition 73 on "Friends Committees?"

#### CONCLUSIONS

1. Proposition 73 specifically allows local jurisdictions to establish lower contribution limitations. Since the limitations in the San Francisco ordinance are lower than those of Proposition 73, the local ordinance applies to candidates for local office.

2. The prohibition on transfer of campaign funds between candidates applies to all state and local candidates, regardless of any provisions to the contrary in a local contribution limitation ordinance.

3. Proposition 73 provides that each state and local candidate may have one controlled committee. "Friends Committees" are candidates' controlled committees. Therefore, friends committees must be assimilated into the single controlled committee allowed for each candidacy.

#### FACTS

The San Francisco Municipal Election Campaign Contribution Control Ordinance was adopted in 1976. The ordinance limits contributions from all "persons" in support or opposition to a candidate for local office to \$500 per election, plus a maximum of \$250 for a run-off election. In addition, there is a \$100 contribution limitation for post-election legal proceedings. Exempt from the limitation on campaign contributions are candidates contributing personal funds to their own campaign for public office.

"Persons" is defined in the San Francisco ordinance to mean any individual, partnership, corporation, association, firm, committee, club or other organization or group of persons, however organized. "Election" includes any primary, general or special municipal election held in San Francisco, including an initiative, referendum or recall election. "Contribution" is defined as set forth in Section 82015 of the Act.

The San Francisco ordinance requires that contributions solicited or accepted for one individual shall not be expended for the candidacy of any other individual or in support or

opposition to any measure prior to the date of the election. Unexpended contributions held by a candidate or committee after the date of the election may be used for a variety of purposes, including transfer to a "Friends Committee" of the candidate, or as contributions to any other candidates.

"Friends Committees" are formed for purposes other than supporting the candidacy of the official for public office, and are, therefore, exempt from the contribution limitations of the ordinance. The California Attorney General has advised, however, that contributions to friends committees are contributions within the meaning of the Act. (See 65 Ops. Cal. Atty. Gen. 493 (1982).) In most cases friends committee funds are used to defray the cost of holding office. For example, an official may use the funds to subscribe to local newspapers or to hire a legislative assistant.

#### ANALYSIS

Section 85100, provides:

(a) Nothing in this chapter shall affect the validity of a campaign contribution limitation in effect on the operative date of this chapter which was enacted by a local governmental agency and imposes lower contribution limitations.

(b) Nothing in this chapter shall prohibit a local governmental agency from imposing lower campaign contribution limitations for candidates for elective office in its jurisdiction.

(Emphasis added.)

The rules of statutory construction require that statutes relating to the same subject should be read in harmony wherever possible. (Patterson v. County of Tehama (1987) 190 Cal. App. 3d 1298; Metromedia, Inc. v. City of San Diego (1982) 32 Cal. 3d 180.) To do so, local laws must first be examined on a provision-by-provision basis to ensure that the provisions do not conflict with the state law. Where provisions of local law conflict with the state law, appropriate provisions of state law supersede. (Cohen v. Board of Supervisors (1985) 40 Cal. 3d 277; In re Hubbard (1964) 62 Cal. 2d 119.)

Where a state statute contains language indicating that there is no intent on the part of the state to assert exclusive jurisdiction, local laws are appropriate for supplementary regulation. (People ex rel. Deukmejian v. County of Mendocino

(1984) 151 Cal. App. 3d 1076.) Thus, the contribution limitations of local jurisdictions will stand if they do not duplicate or contradict Proposition 73, and if they impose lower contribution limitations on candidates for elective office in the local jurisdiction. (See Commission Memorandum, October 12, 1988, The Effect of Proposition 73 on Local Ordinances, copy enclosed.)

### Limits on Contributions

#### Proposition 73 Limits

The contribution limitations mandated by Proposition 73 are:

1. Contributions from any person<sup>2/</sup> to a candidate or to the candidate's campaign committee are limited to \$1,000 per fiscal year.<sup>3/</sup> (Section 85301.) Contributions from a person to a political committee or political party are limited to \$2,500 per fiscal year. (Section 85302.)

2. Political committees are limited to \$2,500 per fiscal year to a candidate or the candidate's campaign committee. (Section 85303(a).)

3. Broad based political committees and political parties are limited to \$5,000 per fiscal year to a candidate or the candidate's campaign committee. (Section 85303(b).)

The same \$1,000, \$2,500 and \$5,000 limitations are placed on persons, political committees, broad based political committees and political parties for special election cycles which may or may not fall within the same fiscal year as a regularly scheduled election. (Section 85305.)

#### San Francisco Limits

The San Francisco ordinance limits contributions from all "persons" in support of or opposition to a candidate for local office to \$500 per election, plus a maximum of \$250 for a

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<sup>2/</sup> Exempt from the limitation on campaign contributions are candidates contributing their personal funds to their own campaign for public office. The same is true in the San Francisco ordinance.

<sup>3/</sup> Section 85102(a) states that "fiscal year" means July 1 through June 30.

run-off election. In addition, there is a \$100 contribution limitation for post-election legal proceedings. (Sections 16.508, 16.509 and 16.509-1 of the San Francisco ordinance.)

San Francisco's municipal elections are held in November, with run-off elections in December, where necessary. Since both the general and run-off elections are held within the same fiscal year in San Francisco, the maximum contribution from a single contributor in a fiscal year is \$850.

Proposition 73's lowest limitation is \$1,000 per person per fiscal year. Thus, the contribution limitations of the San Francisco ordinance are lower than those of Proposition 73, and are valid. Candidates for public office in San Francisco must comply with the stricter limitations on contributions of the local ordinance.<sup>4/</sup>

#### Transfer Prohibition

Section 85304 provides:

No candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfers of funds between candidates or their controlled committees are prohibited.

The San Francisco ordinance provides that contributions solicited or accepted on behalf of a candidate for municipal office shall not be expended for the candidacy of any other individual or in support of or opposition to any measure, except where such funds are unexpended contributions held by a candidate or committee after the date of the election. (Section 16.510 of the San Francisco Ordinance.)

Thus, although the San Francisco ordinance prohibits the transfer of contributions between candidates during an election, which conforms with the ban on transfers in

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<sup>4/</sup> As we discussed over the telephone, since contribution limitations are based on a per-contributor maximum amount, it is important to keep in mind that the limitations must be read in conjunction with the provisions of the Act regarding aggregation of contributions from a single source. (See In re Lumsdon (1976) 2 FPPC Ops. 140, and In re Kahn (1976) 2 FPPC 151, copies enclosed.)

Proposition 73, the provision allowing unexpended contributions to be contributed to another candidate, or committee acting on behalf of a candidate after the date of the election is in conflict with the Act. The rules of statutory construction require that the transfer prohibition of state law prevail over local law. Thus, contributions held by a candidate and his or her controlled committee after the date of the election can no longer be contributed to any other candidate or committee acting on behalf of a candidate.

### Friends Committees

A "controlled committee" is a committee controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures. A candidate controls a committee if the candidate, or his or her agent, has a significant influence on the actions or decisions of the committee. (Section 82016.)

Prior to the passage of Proposition 73, there was no limit on the number of controlled committees which could be established by or on behalf of candidates for elective office. However, Section 85201 now requires that a candidate shall have only one campaign contribution account, and only one controlled committee for each office for which he or she intends to be a candidate. Further, all contributions deposited in the campaign account are held in trust for expenses associated with the election, or expenses associated with holding the office for which he or she is a candidate. (Section 85202(b).) The restrictions on candidates and the limitations on contributions of Proposition 73 apply to all contributions to all state and local candidates for public office.

Friends committees are one form of controlled committee. In the City of San Francisco, local elected officials form friends committees for purposes other than supporting the candidacy of the official for public office. Since a friends committee is not formed for the purpose of supporting the candidacy of the official forming the committee, contributions to a friends committee have not been subject to the San Francisco ordinance's limitations on contributions. In most cases, friends committee funds are used to defray the cost of holding office.

There is no question that the funds collected by friends committees are contributions within the meaning of the Act. (See 65 Ops. Cal. Atty. Gen. 493 (1982).) Still, The San Francisco ordinance limits only those contributions "in support of or opposition to" a candidate.

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Even though the contributions received by friends committees are not for the purpose of supporting the candidacy of the elected official, these contributions fall within the restrictions of Proposition 73. (Section 85202(b).) Every contribution to a candidate for public office must be in compliance with the monetary limitations imposed by the new law.

Moreover, each candidate may have only one controlled committee for each candidacy. (Section 85202(b).) The friends committees previously established by elected officials in San Francisco must now be absorbed into the candidate's single controlled committee. The expenses associated with holding the office sought, which were previously paid for with the funds in the friends committee, must now be paid through that single controlled committee as provided in Section 85202(b).

I trust this responds to your questions regarding the effect of Proposition 73 on the San Francisco ordinance. If you would like clarification, or have any questions, please contact me at (916)322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Lilly Spitz  
Counsel, Legal Division

DMG:LS:plh

Enclosures

88-409

City and County of San Francisco:

Office of City Attorney



Louise H. Renne,  
City Attorney

FPPC

Oct 25 3 16 PM '88

October 24, 1988

Lillie Spitz  
Fair Political Practices Commission  
Legal Division  
428 J Street, Suite 800  
Sacramento, California 95814

Dear Ms. Spitz:

We are writing to seek advice concerning the effect of Proposition 73, adopted by the voters at the June 1988 election, on the San Francisco Municipal Election Campaign Contribution Control Ordinance (San Francisco Administrative Code Sections 16.501 et seq.; "the Ordinance.")<sup>1/</sup> We have enclosed a copy of the Ordinance with this letter. We are particularly interested in obtaining this advice because the Ordinance requires the City Attorney to provide advice regarding the Ordinance. We will include your advice letter with copies of the opinions of this office that are maintained in the office of the Registrar of Voters.

The Ordinance limits contributions in support of or in opposition to candidates for local office to \$500. Section 16.508. The Ordinance contains a separate contribution limit of \$250 for runoff elections. It is our understanding that since the Ordinance imposes lower contribution limits than Proposition 73, the Ordinance continues to control campaign contributions for local offices. Our first question is whether this conclusion is correct, and whether Proposition 73's provisions regarding transferring campaign funds apply in a city that has adopted an ordinance imposing lower limits on campaign contributions than Proposition 73.

Our second question concerns the application of Proposition 73 to "Friends Committees." Local elected officials form Friends Committees for purposes other than supporting the candidacy of the official for public office. In most cases, Friends Committee funds are used to defray the cost of holding office. For example, an official may use the monies to subscribe to local newspaper or to hire a legislative assistant. Since a Friends Committee is not formed for the purpose of supporting the

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<sup>1/</sup> All statutory references in this letter shall be to the San Francisco Administrative Code unless otherwise indicated.

candidacy of the official forming the committee, contributions to a Friends committee is not subject to the Ordinance's \$500 limit. However, the California Attorney General has advised that contributions to Friends Committees are contributions within the meaning of the Political Reform Act (Government Code Sections 81000 et seq.) See 65 Ops.Cal.Atty.Gen 493 (1982).

Our question is what effect Proposition 73 will have on Friends Committees. A member of your staff questioned whether Friends Committees may continue to exist after the adoption of Proposition 73. Does Proposition 73 prohibit the formation or continuation of Friends committees? Does it make any difference whether the Friends committee refrains from making contributions to candidates other than the official who controls the Friends Committees? If Friends committees may continue to exist, are contributions to Friends Committees subject to all of the provisions of Proposition 73, including its limits on campaign contributions and the use of funds held after January 1, 1989?

Third, a member of the Board of Supervisors has requested that this office draft an ordinance establishing a public financing scheme for local elections. Does Proposition 73's prohibition on using public monies for seeking elective office apply to local public financing ordinances?

Please feel free to contact me if you have any further questions concerning this matter.

Very truly yours,

LOUISE H. RENNE  
City Attorney



RANDY RIDDLE  
Deputy City Attorney



# California Fair Political Practices Commission

October 27, 1988

Randy Riddle  
Deputy City Attorney  
214 Van Ness Avenue  
San Francisco, CA 94102-4574

Re: 88-409

Dear Mr. Riddle:

Your letter requesting advice under the Political Reform Act was received on October 25, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*  
Diane M. Griffiths  
General Counsel *for*

DMG:plh