



California Fair Political Practices Commission

October 2, 1989

Honorable Sherman W. Smith, Jr.
Judge of the Municipal Court
Los Angeles Judicial District
110 North Grand Avenue
Los Angeles, CA 90012-3055

Re: Your Request for Advice
Our File No. A-88-415

Dear Judge Smith:

In October 1988, you first wrote to us concerning the effect of Government Code Section 85306, as added by Proposition 73,^{1/} on the use of campaign funds received prior to January 1, 1989. This topic has been the subject of litigation for the last several months. We have included your name on our mailing list for Propositions 68 and 73, and thereby attempted to keep you informed of the Commission's interpretation of the law during this time period. The purpose of this letter is to inform you of the most recent development on this issue.

On September 14, 1989, a federal court ruled that Section 85306 is unconstitutional and enjoined the Fair Political Practices Commission from enforcing that law. (Service Employees International Union v. Fair Political Practices Commission, Case No. CIVS 89-0433 LKK-JFM, U.S. District Court, Eastern District of California.) A copy of the court order is enclosed.

Accordingly, campaign funds received prior to January 1, 1989 may now be used to support or oppose a candidacy for elective office. We caution that candidates and elected officers who possess those funds may not use them to make contributions to any other candidate for elective office. (Section 85304.) We also caution that these funds may not be used for personal expenditures, as defined in Elections Code Sections 12400-12407.

Attached is a Commission advice letter which explains the procedures for transferring these funds to a current campaign account.

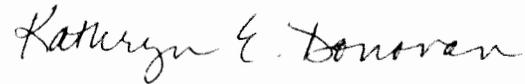
^{1/} Proposition 73 was adopted by the voters in June 1988. It amended the Political Reform Act (Government Code Sections 81000-91015.) All references are to the Government Code unless otherwise indicated.

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If you have any questions concerning this letter, please contact the Commission's Technical Assistance and Analysis Division at (916) 322-5662.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel



IN CHAMBERS
MUNICIPAL COURT
LOS ANGELES JUDICIAL DISTRICT
110 NORTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90012-3055
SHERMAN W. SMITH, JR., JUDGE

FPPC
Oct 26 3 57 PM '88

TELEPHONE
(213) 974-6111

October 24, 1988

Scott Hallabrin
Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Dear Mr. Hallabrin:

Please find enclosed a letter from Judge Brian Carter concerning the implementation of Proposition 73. I, as chair of the California Judges Association Committee on Judicial Elections, am asking your assistance in answering the questions put forth in Judge Carter's letter. I hope your response will not only address Judge Carter's particular problem but will also be broad enough to answer other questions that judges may have concerning Proposition 73.

Also, if your time permits, it may be opportune for your office to write a short summary of what Proposition 73 means and its proscription. Such a writing may be appropriate for inclusion in C.J.A.'s monthly newsletter.

I appreciate your response to my requests and your willingness to assist the California Judges Association.

Yours truly,

SHERMAN W. SMITH, JR.

SWS:ms

Enclosure

cc: Honorable Brian R. Carter
Harbor Municipal Court
4601 Jamboree Road
Newport Beach, CA 92660

Constance Dove
Executive Director, C.J.A.
Fox Plaza, Ste 208
1390 Market Street
San Francisco, CA 94102



BRIAN R. CARTER
JUDGE

COUNTY OF ORANGE
Municipal Court

HARBOR JUDICIAL DISTRICT
4601 JAMBOREE ROAD
NEWPORT BEACH, CALIFORNIA 92660

JUN 16 1988

TELEPHONE
(714) 476-4789

June 13, 1988

Ms. Constance Dove
Executive Director
California Judges Association
Fox Plaza, Suite 208
1390 Market Street
San Francisco, CA 94102

Dear Ms. Dove:

This will confirm our telephone conversation earlier today wherein I requested assistance of the California Judges Association in clarifying the impact of Proposition 73 on Judicial Election Campaigns. This seems to require coordination (and expedited) with the Fair Political Practices Commission.

Our situation probably is not unique. We have a "solidarity fund" which is part of a controlled committee formed by two of our seven judges for the June 1988 election. Neither was challenged and the fund (about \$42,000) remains unspent.

A problem arises because the funds were raised mostly through the efforts of the other five judges, all of whom will be candidates in 1992. The great majority of the contributors expressed the preference at the time of donation that:

(a) They did not want the funds returned, and

(b) That the funds should be used for the other judges in their subsequent election campaigns if the two candidates in 1988 were not challenged.

We might add that most of the donors took an appropriate tax deduction in their 1987 tax years. A refund will muddy their waters. They don't want it.

Some of the questions we believe require immediate

resolutions are:

1. Does Prop. 73 apply to Judicial office (we think "yes").
2. Does the pre Jan. 1, 1989 "Solidarity Fund" represent a pervasive problem among California courts such as to warrant CJA taking on a leadership role?
3. Is there anything that can or should be done prior to the January 1, 1989 implementation date of most of the Prop. 73 provisions which would avoid adverse impact on existing funds?
4. What can be done within ethical and moral constraints to preserve or re-assign unused funds on hand for use in the next election campaign (years hence) by the judges who assisted in raising funds for their colleagues who then went unchallenged?
5. Some detailed questions arise regarding interpretation of wording of the Proposition.
 - (a) What is a "declaration of candidacy"? The formal Declaration filed with the County/State, or identification of an Office in the Candidates Controlled Committee application?
 - (b) Is the Controlled Committee a "political Committee" which can give up to \$2,500 per year to another candidate?
 - (c) Can a candidate give up to \$1,000 from his own Controlled Committee, or is this considered a forbidden "transfer"?
 - (d) Can a Controlled Committee be a joint committee composed of several prospective candidates announcing for several offices (i.e. 5 judges forming "Court Re-election Committee" for 5 judicial offices in the same court at the same election)?
 - (e) Can a Controlled Committee collect a \$1,000 gift (\$2,500 from a small political committee) from the same donor each year that the Candidates controlled committee is in existence (1989, et seq. for the 1992 election)?
6. Are there any possible exceptions to Prop. 73:
 - (a) Funds raised prior to June 7, 1988 which were obtained in conformance with Prop. 73 constraints (i.e. less than \$1,000 from a donor in any one year)
 - (b) Funds subject to a pre-existing agreement with the donor as to how they should be spent (i.e. This money is for Judge A in

BRIAN R. CARTER
JUDGE

1988, but if he doesn't use it, spend it on Judge B in 1992.) Does this raise Ex Post Facto or contractual interference issues?

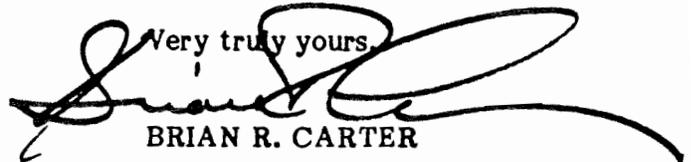
(c) Any theory by which all funds collected prior to June 7, 1988 would be exempt from application of the Proposition passed on that date?

I believe we should also consider that the problem facing us is exactly the same (but of lesser magnitude) as the one facing the Governor, Van de Camp, Willie Brown, and almost all of our legislators. This alone will probably insure an early clarification of the impact of Prop. 73. But we need interpretation tailored to the smaller Controlled Committee for a non partisan office, controlled by the prospective candidate himself.

We probably shouldn't look to the Legislature for solutions. Perhaps the campaign consultants have the most to gain or lose by resolving the problem of use of existing funds. But, the Fair Political Practices Commission is charged by law with implementing Prop. 73. Thus, I believe they form the most meaningful source for rules under which we may utilize existing funds.

I look forward to your early response. My Court has authorized me to act as the contact point for activity in this regard. If a CJA member meeting would be productive, I would be pleased to attend.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Brian R. Carter', with a long, sweeping underline that extends to the right.

BRIAN R. CARTER

BRC:gem



California Fair Political Practices Commission

October 31, 1988

Honorable Sherman W. Smith, Jr.
Municipal Court
Los Angeles Judicial District
110 North Grand Avenue
Los Angeles, CA 90012-3055

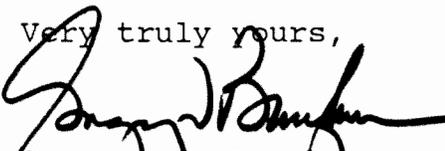
Re: Your Request for Advice
Our File No. 88-415

Dear Judge Smith:

Your letter requesting advice concerning the recently enacted campaign finance reform initiatives (Government Code Section 85100, et seq.) was received on October 27, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

Because of the delayed operative date of most of the provisions of these initiatives, and the numerous inquiries we are receiving relative to implementation, we are attempting to respond to questions regarding interpretation in an organized and efficient fashion. Due to the volume of requests and complexity of the issues involved, we will answer your question in a timely manner, but not within the usual twenty-one working days. (Government Code Section 83114(b).)

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. 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,

Gregory W. Baugher
Executive Director

GWB:plh:73FORM3