



California Fair Political Practices Commission

May 3, 1989

Anthony Saul Alperin
Assistant City Attorney
City of Los Angeles
1800 City Hall East
Los Angeles, CA 90012

Re: Your Request for Informal Advice
Our File No. I-89-091

Dear Mr. Alperin

This is in response to your request for advice relative to the newly enacted provisions of the Political Reform Act (the "Act")^{1/} limiting campaign contributions. Since your advice request is based on a hypothetical situation, we are treating your question as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

This letter addresses significant policy questions more appropriate for a decision by the Commission than for staff advice. Accordingly, we will refer this letter to the Commission for consideration at its next meeting. Meanwhile, we will provide you with interim advice.

QUESTION

1. A candidate for city-wide office ceases to be a candidate, and returns a \$1,000 contribution received from a person for the city-wide office. If the candidate declares his or her candidacy for a different office, may the candidate solicit and receive additional contributions from the same contributor?

2.(a) Would the conclusion be different if a local ordinance requires candidates for city offices to dispose of surplus contributions either by returning them to contributors, donating

^{1/} 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/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c) (3).)

them to a charitable organization or depositing them into the city's general fund?

(b) Would the conclusion be different if the candidate had been running for elective office outside the jurisdiction of the city ordinance and returned the contributions voluntarily, rather than pursuant to a legal requirement?

CONCLUSIONS

1. All contributions from a single contributor to an individual who has declared his or her candidacy for more than one office must be cumulated on a fiscal year basis for purposes of the contribution limitations. Thus, where a person has made a contribution of \$1,000 to a candidate for a particular office he or she has reached the limit for contributions from "persons" under the Act. That same person may not be solicited for additional contributions in the same fiscal year should the candidate choose to run for another office.

2. The conclusion is no different if the candidate returns the surplus funds either under compulsion of a local ordinance or voluntarily.³

Please keep in mind that the disposition of surplus campaign funds is governed by Elections Code Section 12400 et seq., which is enforced by the Attorney General's Office. We make no comment regarding application of this law.

FACTS

The Los Angeles City Charter, Section 312, places limits on the amounts of contributions which candidates for city council and city-wide offices may receive from a single source in connection with a single election. The Commission has previously concluded that candidates must comply with the requirements of both Proposition 73 and Charter Section 312. (Commission Memorandum, The Effect of Proposition 73 on Local Ordinances, 1988.)

As part of the city's regulatory scheme, a candidate may receive contributions for only one office at a time. As well, Section 312K provides:

"If a candidate cancels his or her Declaration of Intent to Solicit and Receive contributions for

³ This conclusion presents new and significant policy questions and therefore will be provided to the Commission for consideration at its next meeting. We will inform you if the Commission directs us to change our advice. In the meantime, we have provided a conservative and cautious interpretation of the Act.

a particular office, ceases to be a candidate or fails to qualify under the provisions of the Charter for an office for which contributions have been solicited or accepted, or if there remains a balance in the campaign checking account of the candidate or committee after the date of the election in which said candidate appeared on the ballot, all unexpended funds in excess of \$5,000 remaining in the account shall be returned on a pro rata basis to those who have made said contributions, or shall be paid promptly to the City Treasurer for deposit to the General Fund of the City, or be donated to one or more charitable organizations qualifying for federal income tax exemption. A maximum of \$5,000 in unexpended funds may be retained by a candidate or committee and may be used for any political purpose or other lawful use, but may not be used in connection with any future election for elective City office."

(Emphasis added.)

Assume, pursuant to subsection K, that a candidate returns all or a portion of a \$1,000 contribution received from a person because the candidate has decided not to pursue that candidacy. The candidate then declares for a different city office and would like to solicit funds from the same contributor for the new candidacy.

ANALYSIS

Section 85301(a) provides:

(a) No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution or loan which would cause the total amount contributed or loaned by that person to that candidate, including contributions or loans to all committees controlled by the candidate, to exceed one thousand dollars (\$1,000) in any fiscal year.

Section 85301(a) (emphasis added).

Under the Act, a candidate may have only one controlled committee per specific candidacy. A candidate may, however, declare his or her intent to run for more than one office. Where a candidate declares an intent to run for more than one office, he or she must establish a controlled committee for each specific office sought. (Section 85201; Regulation 18521, copy enclosed.) Only under such circumstances may a candidate have more than one controlled committee.

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Under the city's charter provision a candidate may declare for only one city office at a time. (Section 312(C)(1).) However, a candidate for city office may file a statement of intent to run for a state or county office at the same time he or she is running for city office. In addition, a candidate for one city office may choose to terminate that candidacy and run for another city office in the same election.

In each of these situations, the candidate has more than one controlled committee in operation during a given fiscal year. The candidate may receive a total of \$1,000 in contributions from one person, whether that person makes a \$1,000 contribution to one committee, \$500 contributions to two of the committees, etc.

Your facts provide that a candidate has received a contribution of \$1,000 from a person. The candidate has decided to withdraw from the race, and, pursuant to the local charter, has decided to return the entire contribution to that person.

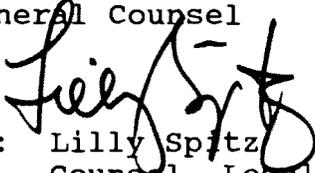
The contributor has made a "contribution" within the meaning of the Act. (Section 82015.) There is no provision, under the Act, for the contributor or the candidate to nullify or erase the contribution. Thus, since the contribution meets the limit allowed in Section 85301 for contributions from a person to a candidate, the contributor cannot give to the candidate or any committee controlled by the candidate, and the candidate cannot receive from the contributor, any additional contributions within the same fiscal year.

This conclusion is no different if the local ordinance requires a candidate for city office to dispose of surplus contributions in specified ways, one of which is to return the funds to contributors. Such an ordinance is simply a stricter application of current law (Elections Code Section 12404) regarding disposition of surplus campaign funds. Nor is the conclusion different if the candidate returns the contributions voluntarily, as he or she may do under current law. (See Section 84211(q).) Neither hypothetical affects application of the new contribution limitations law.

If you have any questions regarding this assistance, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Lilly Spitz
Counsel, Legal Division

KED:LS:plh
Enclosures



JAMES K. HAHN
CITY ATTORNEY

FPPC
Feb 3 2 14 PM '89
Office of the City Attorney
Los Angeles, California

February 1, 1989

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(213) 480-3634

John Larson, Chairman
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95804

Dear Mr. Larson:

The purpose of this letter is to seek the advice of the Commission pursuant to Government Code Sections 83113(c) and 83114(b) in order that we may better respond to expected questions about the relationship between Proposition 73 Los Angeles and City Charter Section 312. Specifically, our question is whether a candidate who has raised \$1,000 from an individual during a fiscal year for the purpose of seeking a citywide office, and who, upon deciding to seek a different office, is required by City law to return the contribution, may do so and then receive \$500 from the same individual during the same fiscal year for the purpose of seeking a different City office? Would it make any difference that the initial contributions were raised for an office other than a City office and returned voluntarily rather than pursuant to a legal requirement?

Government Code Section 85301(a) imposes a \$1,000 limit on contributions to a candidate from a "person" (including an individual) during a fiscal year. (Section 85303 imposes higher limits on contributions by political committees, broad based political committees and political parties. Our inquiry is relevant as well to these limitations.)

The regulations adopted to implement Proposition 73 allow a candidate to raise contributions for more than one office at a time, 2 Cal. Code of Regs. Section 18520(c), but require contributions for each to be deposited in separate accounts established for controlled committees supporting the candidate for each particular office, 2 Cal. Code of Regs. Section 18521. Funds may not be transferred between such accounts. Government Code Sections 85202 and 85304. State law does not, however, require a candidate to return contributions in the event he or she ceases to be a candidate for a particular office. Neither the Government Code nor the Commission's regulations expressly state whether a contribution received and later returned will count against the limit which may be received from the same source during one fiscal year.

Los Angeles City Charter Section 312 places limits on the amounts of contributions which candidates for City Council (\$500) and citywide offices (\$1,000) may receive from a single source in connection with a single election. The Commission has previously concluded that candidates must comply with the requirements of both Proposition 73 and Charter Section 312.

As part of the City's regulatory scheme, a candidate may receive contributions for only one office at a time. See Charter Section 312 C 1. As well, Section 312 K provides:

"If a candidate cancels his or her Declaration of Intent to Solicit and Receive Contributions for a particular office, ceases to be a candidate or fails to qualify under the provisions of the Charter for an office for which contributions have been solicited or accepted, or if there remains a balance in the campaign checking account of the candidate or committee after the date of the election in which said candidate appeared on the ballot, all unexpended funds in excess of \$5,000 remaining in the account shall be returned on a pro rata basis to those who have made said contributions, or shall be paid promptly to the City Treasurer for deposit to the General Fund of the City, or be donated to one or more charitable organizations qualifying for federal income tax exemption. A maximum of \$5,000 in unexpended funds may be retained by a candidate or committee and may be used for any political purpose or other lawful use, but may not be used in connection with any future election for elective City office."
(Emphasis added.)

If, pursuant to Subsection K, the candidate returns all or a portion of a contribution received from a particular source, to the extent that the contribution was returned the candidate no longer has such funds available for use in connection with an election. Under those circumstances, should the candidate be prevented from raising contributions from the same source to the extent of the funds returned? Should it matter whether the contributions were returned as a result of a legal requirement as opposed to a voluntary return?

John Larson, Chairman
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We may receive inquiries relating to this subject in the near future and would appreciate as prompt a response as you are able to provide.

Very truly yours,

JAMES K. HAHN, City Attorney

By



ANTHONY SAUL ALPERIN
Assistant City Attorney

ASA:vf
(213) 485-5440



California Fair Political Practices Commission

February 10, 1989

Anthony S. Alperin
Office of the City Attorney
1800 City Hall East
Los Angeles, CA 90012

Re: Letter No. 89-091

Dear Mr. Alperin:

Your letter requesting advice under the Political Reform Act was received on February 3, 1989 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,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

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