



California Fair Political Practices Commission

June 5, 1989

Joan Darrah
P. O. Box 7312
Stockton, CA 95209

Re: Your Request for Advice
Our File No. A-89-283

Dear Ms. Darrah:

This is in response to your request for advice concerning the use of pre-1989 campaign contributions under the Political Reform Act (the "Act").^{1/}

On May 19, 1989, I informed you by telephone of the federal court ruling on May 15, 1989 that affects this advice. Set forth below is our analysis of your questions within the context of the federal court ruling.

QUESTIONS

1. Can you use pre-1989 campaign contributions to run for an election that was originally scheduled in 1988 but, due to court order, has been postponed indefinitely?

2. If you cannot use some or all of the pre-1989 campaign contributions to run for office, can you return the unused contributions to your contributors?

ANSWER

1. You may use that portion of the pre-1989 campaign contributions that were within the contribution limits of Proposition 73 to support your candidacy.

^{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. The answer to this question involves an analysis of the prohibition against the personal use of campaign funds contained in Elections Code Section 12400 et seq. The Elections Code is not under the jurisdiction of the Commission. We suggest that you contact the Attorney General's Office if you have additional questions in this regard.

FACTS

You are a candidate for mayor of the City of Stockton. The Stockton mayoral primary election was to be held in June 1988 and the general election in November 1988. In February 1988, a lawsuit was filed in federal court which challenged the structure of Stockton's city government. As a result of the lawsuit, the city was preliminarily enjoined from holding the primary and general elections in 1988. The court, as of this date, has not set a definite date for these elections.

In preparing for the 1988 primary and general elections in Stockton, you raised approximately \$25,000 in contributions. You spent approximately \$11,500 of these funds on the campaign and, as of December 31, 1989, had \$13,429 in unspent campaign contributions.

If you are unable to spend all or part of the \$13,429 in unspent campaign contributions, you desire to return them to your contributors on a pro rata basis based on the percentage your unspent contributions bears to your total contributions (53%).

ANALYSIS

Proposition 73, passed by the voters at the June 7, 1988 primary election, added several campaign reform provisions to the Act.

Among these provisions were limitations upon the amounts that can be contributed to candidates during a fiscal year.^{2/} Persons^{3/} are prohibited from contributing more than \$1,000 to a candidate in a fiscal year. (Section 85301(a).) Political committees^{4/} are prohibited from contributing more than \$2,500 to a candidate in a fiscal year. (Section 85303(a).) Finally, broad

^{2/} Section 85102(a) defines a "fiscal year" as July 1 through June 30.

^{3/} Section 85102(b) defines "person" as "an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization."

^{4/} Section 85102(c) defines a "political committee" as "a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates."

based political committees^{5/} and political parties cannot contribute more than \$5,000 to a candidate in a fiscal year. (Section 85303(b).)

Proposition 73 also included Section 85306, which states:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

In March 1989, a lawsuit entitled Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission, U.S. District Court, Eastern District of California, Case No. CIVS-89-0433 LKK-JFM (hereafter, "SEIU"), was filed. This suit, among other things, challenged the validity of Section 85306.

On May 15, 1989 the court issued a preliminary injunction in SEIU which prevented the Commission from enforcing Section 85306 as it relates to campaign contributions raised prior to January 1, 1989 in amounts within the contribution limits of Proposition 73. The preliminary injunction is effective until the issue of Section 85306's validity is ultimately determined in this case. It appears that the court will make this determination sometime in August of this year.

During the effective period of the SEIU preliminary injunction, you may thus use any portion of the \$13,429 in unspent campaign funds that was given to you within Proposition 73's contribution limits. For example, if an individual contributed \$1,500 to you on June 1, 1988, you may spend \$1,000 of that amount on your candidacy. However, you may not spend the other \$500 or any other amounts contributed by the same individual during the July 1, 1988 through June 30, 1988 fiscal year because Proposition 73 prohibits individuals^{6/} from contributing over \$1,000 to a candidate in a fiscal year. (Section 85301.)

Regardless of the ruling in the SEIU case, there remains the issue of whether the unique circumstances surrounding the Stockton city elections creates an exception to the prohibition set forth in Section 85306. The Commission sympathizes with the campaign funding predicament in which candidates were placed by the federal

^{5/} Section 85102(d) defines a "broad based political committee" as "a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates."

^{6/} An individual is a "person" under Section 85102(b). See footnote 3 above.

Joan Darrah
Our File No. A-89-283
Page 4

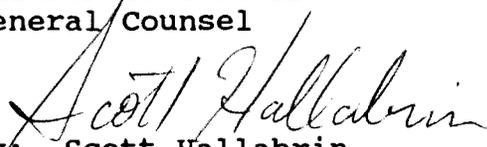
court ruling concerning the Stockton city elections. However, neither Section 85306 nor any other provision of the Act gives the Commission the authority to make an exception for these candidates. Only the ruling in the SEIU case permits the expenditure of pre-1989 contributions at this time.

Finally, you have asked whether you can return contributions to contributors from those contributions you cannot use under Section 85306. This question involves an analysis of the prohibition against the personal use of campaign funds contained in Elections Code Sections 12400 et seq. The Election Code is under the jurisdiction of the Attorney General's Office and not the Commission. You indicate in your letter that you have already contacted the Attorney General's Office and been told that your contribution return plan is permissible. We suggest that you again contact the Attorney General if you have further questions in this regard.

I hope that this letter has been of assistance. However, if you have any questions, please contact me at (916) 322-5901.

Sincerely,

KATHRYN E. DONOVAN
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

KED:SH:ld

cc: Nora Keating
Stockton City Clerk's Office
425 North El Dorado
Stockton, CA 95202

JOAN DARRAH FOR MAYOR

FPPC

APR 28 7 24 AM '89

April 26, 1989

P.O. BOX 7312
STOCKTON, CA 95209
(209) 477-7488

Ms. Kathryn Donovan, General Council
California Fair Political Practices Commission
428 J Street, Ste. 800
Sacramento, CA 95804-0807

SPONSORS

E. Elizabeth Aghbashian
Jose Alva
Judy Alva
Dean Andal
Kari Andal
Theresa Austin
Robert Austin, M.D.
Darrell Burns, M.D.
Jeannine Burns
Gary Christopherson
Linda Christopherson
Catie Conklin
Jim Conklin
Dean A. Cortopassi
Joan Cortopassi
Al Davidson
Marcia Davidson
Dominica Diangson
Bill Fortman
Jean Fortman
Barbara Foy
Bob Foy
Pam Graetz
Ray Graetz
Patty Gutierrez
Tony Gutierrez
Nancy Holtrop
H. Robert Holtrop, M.D.
Nick Huerta
Bob Kastner
Helen Kastner
Janine LaMaie
Agler Louie
Celeste Malott
Rex Malott
Jackie Morse
Bryan Morse
Susan Rafalski
David K. Rea
Elizabeth Rea
Donna Stein
Jeanette Taft
Bert Villalpando
Ben Wallace
Bing Wallace
Jennifer Weber
Doug Wilhoit
Judith Williams
Diana Williams
Roy Williams
Creighton Younell
Treasurer: Bune Primack

Dear Ms. Donovan:

At the suggestion of Ms. Carla Wardlaw, political reform consultant, I am writing to request that two items be reviewed at the FPPC hearing on May 2.

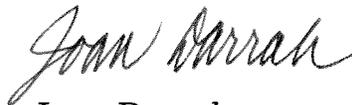
The first is the very special situation of elections in Stockton. Our city was scheduled to have its primary election in June, 1988, and the final election in November, 1988. However, in February, 1988, Federal Judge Edward Garcia placed an injunction on our elections. This action was done because of a lawsuit filed against the City of Stockton claiming that our new form of government dilutes minority voting rights. Judge Garcia accepted the case and put a hold on the election until the trial could be held and the decision made. Judge Garcia is scheduled to hear the case on June 5, 1989. He has indicated a strong desire to allow Stockton to hold elections in November, 1989.

As a candidate for mayor preparing for the 1988 election, I raised approximately \$25,000, spent \$11,500, and now have \$13,429 in a certificate of deposit. **My question: Is the circumstance of the Stockton election--that we were not able to go ahead with a scheduled 1988 election because of a court order--distinctive enough that I, as a candidate, can be exempted from Government Code Section 85306 and use campaign funds, collected before January 1, 1989, to support my candidacy for elective office?**

Secondly, when the Commission does review regulation 18536.2 on May 2, I request that the Commission reviews the question: if I am not able to use the above \$13,429, can I return these restricted funds to my donors? My plan is to return to every donor the percentage of his/her donation that my campaign did not spend (53%). Ted Prim, Deputy Attorney General, felt that returning the funds did not violate the personal use law of campaign funds.

I plan to be at the May 2 hearing, where I can answer any questions. Thank you for your kind attention to these matters.

Very sincerely yours,


Joan Darrah



California Fair Political Practices Commission

May 11, 1989

Joan Darrah
Joan Darrah for Mayor
P.O. Box 7312
Stockton, CA 95209

Re: Letter No. 89-283

Dear Ms. Darrah:

Your letter requesting advice under the Political Reform Act was received on May 10, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin 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
General Counsel

KED:plh

JOAN DARRAH

FOR MAYOR

FPPC

Apr 28 7 24 AM '89

April 26, 1989

PO. BOX 7312
STOCKTON, CA 95209
(209) 477-7488

Ms. Kathryn Donovan, General Council
California Fair Political Practices Commission
428 J Street, Ste. 800
Sacramento, CA 95804-0807

SPONSORS

E. Elizabeth Aghbashian
Jose Alva
Judy Alva
Dean Andal
Kari Andal
Theresa Austin
Robert Austin, M.D.
Darrell Burns, M.D.
Jeannine Burns
Gary Christopherson
Linda Christopherson
Catie Conklin
Jim Conklin
Dean A. Cortopassi
Joan Cortopassi
Al Davidson
Marcia Davidson
Dominica Diangson
Bill Fortman
Jean Fortman
Barbara Foy
Bob Foy
Pam Graetz
Ray Graetz
Patty Gutierrez
Tony Gutierrez
Nancy Holtrop
H. Robert Holtrop, M.D.
Nick Huerta
Bob Kastner
Helen Kastner
Janine LaMaie
Agler Louie
Celeste Malott
Rex Malott
Jackie Morse
Bryan Morse
Susan Rafalski
David K. Rea
Elizabeth Rea
Donna Stein
Jeanette Taft
Bert Villalpando
Ben Wallace
Bing Wallace
Jennifer Weber
Doug Wilhoit
Judith Williams
Diana Williams
Roy Williams
Creighton Younel
Treasurer: Bune Primack

Dear Ms. Donovan:

At the suggestion of Ms. Carla Wardlaw, political reform consultant, I am writing to request that two items be reviewed at the FPPC hearing on May 2.

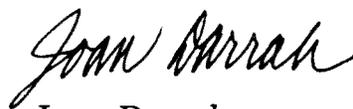
The first is the very special situation of elections in Stockton. Our city was scheduled to have its primary election in June, 1988, and the final election in November, 1988. However, in February, 1988, Federal Judge Edward Garcia placed an injunction on our elections. This action was done because of a lawsuit filed against the City of Stockton claiming that our new form of government dilutes minority voting rights. Judge Garcia accepted the case and put a hold on the election until the trial could be held and the decision made. Judge Garcia is scheduled to hear the case on June 5, 1989. He has indicated a strong desire to allow Stockton to hold elections in November, 1989.

As a candidate for mayor preparing for the 1988 election, I raised approximately \$25,000, spent \$11,500, and now have \$13,429 in a certificate of deposit. **My question: Is the circumstance of the Stockton election—that we were not able to go ahead with a scheduled 1988 election because of a court order—distinctive enough that I, as a candidate, can be exempted from Government Code Section 85306 and use campaign funds, collected before January 1, 1989, to support my candidacy for elective office?**

Secondly, when the Commission does review regulation 18536.2 on May 2, I request that the Commission reviews the question: if I am not able to use the above \$13,429, can I return these restricted funds to my donors? My plan is to return to every donor the percentage of his/her donation that my campaign did not spend (53%). Ted Prim, Deputy Attorney General, felt that returning the funds did not violate the personal use law of campaign funds.

I plan to be at the May 2 hearing, where I can answer any questions. Thank you for your kind attention to these matters.

Very sincerely yours,



Joan Darrah