



California Fair Political Practices Commission

July 20, 1989

Carl K. Newton
Burke, Williams & Sorensen
One Wilshire Building
624 South Grand Avenue, 11th Floor
Los Angeles, California 90017

Re: Your Request for Informal Assistance
Our File No. I-89-313

Dear Mr. Newton:

You have requested advice concerning local campaign ordinances under the Political Reform Act (the "Act").¹ We do not have sufficient facts to provide specific advice and your inquiry as to constitutionality does not present a question under the Act; accordingly, we will provide only general guidance. This letter is considered informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTIONS

1. May a city ordinance place a limit on campaign expenditures without establishing any form of public financing?
2. May a city ordinance limit the time in which a candidate may accept contributions by prohibiting the filing of a

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).)

candidate's statement of intent any sooner than six (6) months prior to the applicable election?

3. May a city ordinance provide that candidates who voluntarily agree to expenditure limits may have higher contribution limits than those who do not agree to expenditure limits, assuming that all limits are within the contribution limits of the Act?

CONCLUSIONS

1. Section 85300 prohibits the use of public money to fund a candidate's campaign for public office. Whether or not a city ordinance may limit campaign expenditures without a system of public financing is a constitutional question outside the jurisdiction of the Commission.

2. The Act does not establish a time limit for filing statements of intention, but merely requires that they be filed prior to soliciting or receiving contributions. The Act does permit local government agencies to impose lower contribution limits than those provided for in the Act and to impose additional requirements which do not prevent compliance with the Act. Narrowing the time for contributions to be made by narrowing the time between the filing of the statement of intention and the election will not necessarily result in lower contribution limits than those imposed by the Act. However, the Act would not prohibit enactment of such a provision by local ordinance so long as the ordinance would not prevent compliance with the Act.

3. If the contribution limits do not exceed those in the Act, the Act would not prevent local government agencies from imposing less restrictive contribution limits on candidates who agree to limit expenditures than imposed on other candidates. Whether the proposed provision would be constitutional is beyond the jurisdiction of the Commission.

FACTS

The City of Santa Clarita is considering a proposed ordinance on campaign reform. There are several elements to the proposed measure. As the attorney for the city, your office is concerned that provisions limiting campaign spending and shortening the period in which campaign contributions may be received may be unconstitutional pursuant to Buckley v. Valeo (1976) 424 U.S. 1. Another concern is that state law may preempt the proposed local ordinance.

ANALYSIS

Provisions of the Act currently provide for statewide limitations on campaign contributions. (Sections 85300 et seq.) Section 85300 prohibits the use of public moneys to finance campaigns for public office.³ Sections 85301, 85302, 85303 and 85305 provide for specific limitations on the amount of campaign contributions. However, the Act allows local jurisdictions to impose stricter requirements with respect to contribution limits. (Section 85101.) Local agencies are also permitted to impose requirements in addition to those set forth in the Act, so long as the local requirements do not prevent a person from complying with the Act. (Section 81013.)

With respect to local ordinances regulating contribution limits, the Act provides specifically as follows:

(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.

Section 85101, emphasis added.

Pursuant to Sections 81013 and 85101, the Commission has jurisdiction to examine current or proposed local ordinances to see if they are consistent with the provisions of the Act. Thus we have examined local ordinances to determine if their provisions comply with contribution limits and transfer limits of the Act. (Riddle Advice Letter, No. A-88-409, copy enclosed.) However, the Commission's jurisdiction does not extend to making a determination of the constitutionality of local ordinances. Whether a governmental entity may impose a limit on campaign expenditures is a constitutional question. (See, e.g., Buckley v. Valeo (1976) 424 U.S. 1.)

The Commission is currently involved in federal litigation dealing with constitutional issues arising from limitations on the

³ The validity of a county charter provision which provides for public funding for candidates in county elections is currently being litigated in County of Sacramento, et al. v. Fair Political Practices Commission, John Van De Kamp (Attorney General) and John Dougherty (District Attorney of the County of Sacramento), Case No. C005845, Court of Appeal, Third Appellate District.

amount and use of campaign contributions imposed by Proposition 73. (Service Employees International Union, AFL-CIO, et al. v. FPPC, U.S. District Court, Eastern District of California, Case No. Civs 89-0433 LKK-JFM.) Enclosed is a copy of a recent court order in that case granting a preliminary injunction against on the case are scheduled for August 11, 1989. The court's findings may be helpful in evaluating the city's proposed ordinance.

You have asked whether it is permissible under the Act for a city to prohibit the filing of a statement of intent to be a candidate until six months prior to the election. Section 85200 provides as follows:

Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective office shall file with the commission a statement signed under penalty of perjury of intention to be a candidate for a specific office.

Emphasis added.

The Act does not establish a specific time for filing statements of intention other than the requirement that they be filed prior to solicitation or receipt of contributions. The Act permits a local governmental agency to enact lower contribution limits for candidates for elective office in its jurisdiction than are provided for in the Act. (Section 85101(b).) One effect of reducing the period in which contributions are solicited and received might be to reduce the number of contributions received. However, reduction in the number of contributions does not mean that the contributions received will be lower in amount. Thus, imposition of a time limit for filing the statement of intention could not be justified on the basis of enacting a lower contribution limit.

Although not justifiable as imposing a lower contribution limit, the proposed ordinance might be valid pursuant to the general authority of local agencies to impose additional requirements so long as such requirements do not prevent compliance with the Act. (Section 81013; Eckis Advice Letter, No I-87-202; Nielsen Advice Letter, No. A-82-006, copies enclosed.) In order that your ordinance not be viewed as preventing compliance with the Act, it should also expressly prohibit local candidates from soliciting or receiving contributions prior to the filing of the statement of intention. Otherwise the ordinance might be viewed as preventing a candidate from complying with Section 85200, which

requires the filing of the statement of intention prior to soliciting or receiving contributions. We again emphasize that this analysis does not address the constitutionality of such a provision.

You indicated in our recent telephone conversation that the city is considering an ordinance which would effectively establish a two-tiered system of contribution limits. All limits would be within the statewide limits. Under the proposed provision as you explained it, candidates who are willing to voluntarily accept expenditure limits will be permitted higher contribution limits than those who do not. Such a proposal would not appear to be violative of the Act, since it would impose lower contribution limits. However, it is possible that the system would be viewed as an expenditure limit that might not be constitutional. As previously indicated, we cannot make determinations as to the constitutionality of the proposed ordinance.

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures

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May 19, 1989

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OF COUNSEL
DWIGHT A. NEWELL
MARY REDUS GAYLE*

WRITER'S DIRECT DIAL
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OUR FILE NO.

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Office of the General Counsel
Fair Political Practices Commission
428 "J" Street, #800
P. O. Box 807
Sacramento, California 95804-0807

Re: Opinion Request: Campaign Reform Ordinance

Dear Counsellor:

This letter is sent in my capacity as City Attorney of Santa Clarita to request a staff opinion on behalf of the entire City Council of the City of Santa Clarita pursuant to Government Code Section 83114.

The City Council is presently considering a proposed ordinance on campaign reforms. There are several elements to the proposed measure, two of which raise the following issues:

(1) Whether a city ordinance may place a limit on campaign expenditures, without establishing any form of public financing; and

(2) Whether a city ordinance may limit the time in which a candidate may accept contributions by prohibiting the filing of a candidate's Statement of Intent any sooner than six (6) months prior to the applicable election.

RECEIVED
MAY 23 1989
CITY OF SANTA CLARITA
CITY CLERK'S OFFICE

General Counsel
Fair Political Practices Commission
May 19, 1989
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As to the limitation upon campaign expenditures, this office is concerned that such an ordinance may be unconstitutional pursuant to Buckley v. Valeo (1976) 46 L.Ed.2d 659.

This office has a similar concern with the ability of a city to prevent a candidate from filing a Statement of Intent sooner than six (6) months prior to the election. Without filing the Statement of Intent, a candidate may not receive contributions. It would appear that this regulation, similar to an expenditure limitation, would not pass constitutional muster. While the city's interest in relegating incumbent campaigning to six (6) months of the election year would be advanced, the prohibition would restrict challengers as well, and the public is deprived of the ability to receive important political speech.

I look forward to your opinion on this matter. Should you need any further information, please feel free to contact me at any time.

Sincerely,



Carl K. Newton
for BURKE, WILLIAMS & SORENSEN

CKN/TBM/LTR0052

cc: Mayor and Members of the City Council
George A. Carvalho, City Manager.



California Fair Political Practices Commission

May 24, 1989

Carl K. Newton
Burke, Williams & Sorensen
One Wilshire Building
624 South Grand Avenue, 11th Floor
Los Angeles, CA 90017

Re: Letter No. 89-313

Dear Mr. Newton:

Your letter requesting advice under the Political Reform Act was received on May 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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 that reads "Scott Hallabrin for".

Kathryn E. Donovan
General Counsel

KED:plh