



California Fair Political Practices Commission

July 18, 1989

Peter Bagatelos
Bagatelos & Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-89-327

Dear Mr. Bagatelos:

You have requested advice regarding application of the provisions of the Political Reform Act (the "Act"),¹ as amended by Proposition 73. Because your request is a general inquiry, we treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

Do the limits on contributions in Proposition 73 apply to contributions and expenditures in connection with the following activities:

- (1) Contributions to political committees for non-candidate related activities (e.g. administrative and overhead expenses).
- (2) Candidates for federal elections.

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).)

- (3) Candidates in other states.
- (4) Ballot measures.
- (5) Candidate recall efforts.
- (6) Voter registration.
- (7) Non-partisan get-out-the-vote drives.
- (8) Partisan get-out-the-vote drives.
- (9) Independent expenditures to support or oppose candidates for office.

CONCLUSION

The limits in Proposition 73 apply to contributions made to candidates for state and local office in California. The limits also apply to contributions made to committees to make contributions to candidates. The limits do not apply to contributions to political committees for non-candidate related activities (e.g. administrative and overhead expenses). In addition, the limits do not apply to contributions to candidates for federal elections or elections in other states, to contributions for ballot measures including candidate recall efforts, and contributions for independent expenditures to support or oppose candidates for elective office. Contributions for voter registration and get-out-the-vote drives may be subject to the limits depending on the circumstances.

ANALYSIS

Section 85301 limits contributions by persons, to a candidate, including all committees controlled by that candidate to \$1,000 in any fiscal year. Section 85303(a) limits contributions by a political committee to a candidate, and all committees controlled by that candidate, to \$2,500 in any fiscal year. Section 85303(b) limits contributions by a broad based political committee or a political party to a candidate and all committees controlled by that candidate, to \$5,000 in any fiscal year. Section 85302 limits contributions by a person to a political committee, a broad based political committee or a political party to \$2,500 in any fiscal year to make contributions to candidates for elective office.

The above limits apply either to contributions to candidates or to contributions which will be used to make contributions to candidates. Accordingly, contributions which are not made to candidates, or which are not used to make contributions to

candidates are not limited. Section 85303(c) clarifies this by specifying that financial or other support provided to a political committee or broad based political committee is not limited if it is used for purposes other than to make contributions directly to candidates for elective office. Thus contributions for non-candidate related expenses (e.g. administrative and overhead expenses) are not limited by Section 85302.

As noted above, the contribution limits in Sections 85301, 85302, and 85303 apply either to contributions to candidates or to contributions which will be used to make contributions to candidates. Section 82007 excludes from the definition of "candidate" "any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971." Thus, by definition, the term "candidate" excludes individuals running for Federal office. Therefore contributions and expenditures in connection with candidates running for federal office are not subject to the contribution limits in Sections 85301, 85302, and 85303.

Section 82007 defines candidates essentially as individuals seeking, or attempting to seek, nomination or election to any elective office. The Act defines an "election" as "any primary, general, special or recall election held in this state." (Section 82022, emphasis added.) Accordingly, candidates running for election in another state are not subject to the contribution limits in Sections 85301, 85302, and 85303.

Section 82043 defines a "measure" as:

[A]ny constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.

Contributions to a ballot measure are not contributions to candidates, or contributions to make contributions directly to candidates as those terms are used in Sections 85301, 85302, and 85303. Accordingly, such contributions to a ballot measure are not subject to the contribution limits provided in those sections. Since recall efforts are submitted to popular vote as a ballot measure, the same rationale is applicable. Therefore, contributions to a recall effort are not subject to the contribution limits in Sections 85301, 85302 and 85303. (Pringle Advice Letter, No. A-89-155, copy enclosed.)

In In re Welsh (1978) 4 FPPC Ops. 78, (copy enclosed), the Commission ruled that payments to an organization which engaged only in non-partisan voter registration, and no other activity in

connection with elections, did not constitute contributions for purposes of the Act and payments by such organizations did not constitute expenditures for purposes of the Act. The Commission emphasized the non-partisan nature of the organization conducting the voter registration activities. Under such circumstances the organization was not a "committee" and was not required to disclose its activities pursuant to the campaign reporting provisions of the Act. The Welsh Opinion did not categorically exempt all voter registration activity from disclosure. Based on the Welsh Opinion, we conclude that an organization which conducts either non-partisan voter registration or non-partisan get-out-the-vote drives, and engages in no other political activity, is not a "committee" for purposes of the Act.

Expenditures made by a political committee or a broad based political committee for voter registration activities and partisan or non-partisan get-out-the-vote drives are not deemed to be contributions to a candidate if the expenditures are not made at the behest of the candidate.³ Therefore, whether such expenditures are "contributions to candidates for elective office" within the meaning of Section 85302 depends on the specific facts of the situation. If the expenditures are not deemed to be contributions to a candidate, the funds used for such expenditures are not subject to the limits in Section 85302. If the expenditures are made at the behest of the candidate, the expenditures would be an in-kind contribution to the candidate, and therefore, subject to the contribution limits. (Regulation 18215.)

Section 82031 defines an independent expenditure as:

[A]n expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

Since an independent expenditure is not a contribution to a candidate, contributions to a committee for the purpose of making independent expenditures are not subject to the limitations in Sections 85302.

³ Subdivision (b) of Regulation 18215, (copy enclosed), clarifies that an expenditure is made at the behest of a candidate if it is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate or his or her controlled committee.

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I trust this letter has provided you with the guidance you requested. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED/JA/aa

Enclosures

LAW OFFICES OF
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BARRY FADEM
PETER A. BAGATELOS
WES VAN WINKLE

May 23, 1989

Ms. Carla Wardlow
Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Carla:

This will confirm our telephone conversation on April 24, 1989. I called you to confirm which categories of expenditures currently do not fall within the limits established by Proposition 73. You confirmed that the Proposition 73 limits do not apply to contributions and expenditures in connection with the following activities:

- (1) Ballot measures;
- (2) Candidate recall efforts;
- (3) Voter registration;
- (4) Nonpartisan get-out-the-vote drives;
- (5) Contributions to political committees for non-candidate related activities, e.g. administrative and overhead expenses;
- (6) Independent expenditures to support or oppose candidates for office;
- (7) Candidates for federal elections, and
- (8) Candidates in other states.

I also spoke subsequent to our conversation with Jeevan Ahuja, Esq. regarding his advice letter to Senator David Roberti, dated March 24, 1989. Mr. Ahuja indicated that partisan get-out-the-vote drives also would not be subject to the Proposition 73 limits.

Mr. Carla Wardlow
May 23, 1989
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It is my understanding that an entity which engages exclusively in activities under item 7 and 8 above would not be required to register and/or file campaign statements in California. An entity which is organized exclusively for one or more of the purposes described in items 3 and 4 would not appear to be required to register and/or file campaign statements in California as a committee. I understand, however, that there could be some circumstances under which such a committee may be required to file campaign statements for engaging in political activities.

I would appreciate very much receiving a confirmation letter from you as to the matters described above. Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Peter A. Bagatelos". The signature is written in dark ink and is positioned above the typed name.

Peter A. Bagatelos

PAB/mlq



California Fair Political Practices Commission

June 1, 1989

Peter A. Bagatelos
Bagatelos & Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: Letter No. 89-327

Dear Mr. Bagatelos :

Your letter requesting advice under the Political Reform Act was received on May 24, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja 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