



# California Fair Political Practices Commission

June 28, 1989

Phillip Recht  
Manatt, Phelps, Rothenberg and Phillips  
11355 West Olympic Boulevard  
Los Angeles, CA 90064

Re: Your Request for a Confirmation  
of Telephone Advice  
Our File No. A-89-331

Dear Mr. Recht:

This is in response to your request for a confirmation of telephone advice regarding the decision in Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission, United States District Court, Eastern District of California, Case No. CIVS-89-0433, LKK-JFM (hereafter, "SEIU") and the newly enacted provisions of the Political Reform Act (the "Act").<sup>1/</sup>

This letter confirms that your letter dated May 24, 1989 accurately summarizes the telephone advice I provided to you on that day concerning the decision in the SEIU case. As I stated in our telephone conversation, Section 85306 prohibits candidates from using campaign contributions received prior to January 1, 1989 to support or oppose any candidate for elective office.

However, due the recent SEIU decision in which a Federal District Court granted a preliminary injunction against enforcement of some provisions of the Act, funds raised prior to January 1, 1989 by political committees which are in compliance with the contribution limits of the Act may be contributed to candidates in future elections. Funds raised prior to January 1, 1989 that are in excess of the contribution limits of the Act may only be used for any lawful purpose other than to support or oppose a candidate for elective office.

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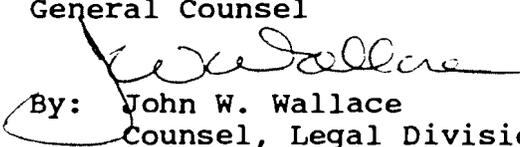
<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Because campaign funds collected prior to January 1, 1989 will be treated differently depending on whether the money was collected within the Proposition 73 contribution limits or in excess of them, I also advised you that it was important to keep accurate records concerning the use of the funds and the nature of the money used. Further, please be aware that this interpretation is subject to change once the SEIU case has been decided on the merits. A summary judgment motion concerning Section 85306 has been set for hearing in August, 1989, you may want to contact the Commission after August 15, 1989 to determine the status of the section. However, conduct during the duration of the preliminary injunction that is in compliance with the injunction will not be treated as a violation of the Act.

If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

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May 24, 1989

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OUR FILE NO

John Wallace
Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: Use of Pre-Proposition 73 Funds

Dear John:

This letter is intended to confirm our telephone conversation of May 24, 1989. In that conversation, I asked you whether a political committee which possesses funds which were raised prior to January 1, 1989 in amounts below the Proposition 73 limits may contribute those funds at this time to candidates for campaign purposes.

You stated that, given the preliminary injunction recently issued in the SEIU et al. vs. FPPC litigation, Proposition 73's ban on the use of pre-Proposition 73 funds for campaign purposes presently is not in force. Accordingly, a political committee possessing funds as described above may contribute those funds at this time to candidates for campaign purposes without violating any provision of Proposition 73 and without risk of an enforcement action by the FPPC.

Further, you stated that, should the court in the SEIU et al. vs. FPPC litigation reverse its current preliminary injunction ruling, and reinstate Proposition 73's ban against the use of pre-Proposition 73 funds for campaign purposes, such a ruling would have prospective effect only. In other words, the FPPC would not have the right, nor otherwise seek, to retroactively enforce the ban during the current period when the preliminary injunction is in effect.

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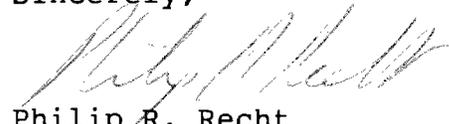
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John Wallace  
May 24, 1989  
Page 2

Finally, you advised that any committee considering making campaign contributions from pre-Proposition 73 funds at this time should maintain accurate records so as to protect itself should there be any question in the future as to the timing of the committee's contributions.

Should any matter contained in this letter be inaccurate as to our conversation, please inform me immediately.

Sincerely,

A handwritten signature in cursive script, appearing to read "Philip R. Recht".

Philip R. Recht  
Manatt, Phelps,  
Rothenberg & Phillips

PRR:kam

