



# California Fair Political Practices Commission

November 30, 1989

Randy Riddle  
Deputy City Attorney  
Office of City Attorney  
City and County of San Francisco  
City Hall, Room 206  
San Francisco, CA 94102-4682

Re: Your Request for Informal Assistance  
Our File No. I-89-536

Dear Mr. Riddle:

This is in response to your request for advice concerning application of the Political Reform Act (the "Act")<sup>1</sup> to provisions of the San Francisco Municipal Election Campaign Contribution Control Ordinance. (San Francisco Administrative Code Sections 16.501, et seq.; the "Ordinance.")

Since your request does not identify a specific person or persons on whose behalf you are authorized to request this advice, we must treat the request as one for informal assistance under Regulation 18329.<sup>2</sup>

## QUESTIONS

1. Section 16.510, paragraph 4 of the Ordinance specifically lists what a candidate can do with campaign funds that have been raised but not expended in connection with an election. The permitted uses do not include expenditure of the funds for

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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.

<sup>2</sup> 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).)

activities related to holding the office sought in the election. Is this provision in conflict with and superseded by the provisions of the Act?

2. Section 16.503(d) of the Ordinance essentially states that a contribution is defined as set forth in the Act. Under the Act, how long can a debt that is in excess of the legal contribution limit remain a debt without becoming an illegal contribution? Can a creditor's decision not to collect a bill owed by a candidate effect a contribution of the unpaid amount?

#### CONCLUSIONS

1. Section 16.510, paragraph 4 of the Ordinance, to the extent it prohibits successful candidates for city office to use their unspent campaign funds to pay for expenses associated with holding that office, does not conflict with the Act. However, it may conflict with provisions of the Elections Code. Please contact the Attorney General's Office for advice in this regard.

2. Under the Act, a creditor's decision not to collect a debt may result in a contribution to the candidate. If the amount forgiven exceeds the contribution limits, the Act has been violated.

#### DISCUSSION

##### Section 16.510

Proposition 73, passed by California voters at the June 7, 1988 primary election, sets forth a statutory scheme designed to control the making of campaign contributions in California. Its provisions amended the Act and were generally intended to apply to all candidates for public office in California.

However, Section 85101, which was added to the Act by Proposition 73, states:

(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.

Furthermore, Section 81013, which predated Proposition 73, states:

Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail.

Based upon these sections, it is apparent that the Act is not intended to prevent local jurisdictions either from imposing lower contribution limitations on local candidates or from imposing other campaign requirements so long as the requirements do not prevent candidates from complying with the Act.

Section 16.510, paragraph 4 of the Ordinance lists the permitted uses of campaign contributions that were not used by the candidate in an election. It does not include use of the excess contributions to pay for expenses associated with holding the office sought in the election.

By contrast, Section 85202(b) states that contributions in the campaign account are held in trust for campaign expenses associated with the office sought or expenses associated with holding that office.

Since Section 16.510 of the Ordinance does not permit the scope of excess campaign funds uses permitted by Section 85302(b), it is arguably superseded by Section 85302(b) and, thus, void. However, as stated under Section 81013, the Act does not prevent local governments from imposing requirements that are different from the Act as long as the requirements do not prevent persons from complying with the Act. An elected officeholder is not required to spend his or her excess campaign contributions on expenses associated with holding office in order to comply with the provisions of the Act. Thus, any local limitation which prohibits such a use of campaign contributions does not violate the Act. Accordingly, Section 16.510, paragraph 4 of the Ordinance is not superseded by the provisions of the Act.

Finally, to the extent that the use of contributions is not governed by the Act, the "personal use" law, at Elections Code Sections 12400, et seq., governs the disposition of campaign contributions after an election. The Attorney General's Office, and not the Commission, has jurisdiction to enforce the "personal use" law until January 1, 1990, after which the Commission will assume those duties. Therefore, if you plan to act on this advice prior to January 1, 1990, we suggest that you contact the Attorney General's office to ascertain whether Section 16.510 is in conflict with any provisions of that law.

Section 16.503(d)

Section 16.503(d) of the Ordinance imposes the same definition of "contribution" on provisions of the Ordinance as that set forth in the Act. The question posed pertaining to this section is when, after a candidate incurs a debt, does the debt become a "contribution" for purposes of the Act? You apparently ask this question so that you can ascertain whether the debt has violated the contribution limits of the Ordinance.

The Act defines a contribution, in part, as "a payment ... except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes." (Section 82015.) "Payment" includes the "rendering of...property, services or anything else of value, whether tangible or intangible." (Section 82044.)

If the creditor has provided goods and services to the candidate's campaign, he or she has made a "payment" within the Act. The forgiveness of a debt owed for such goods and services would mean that the payments were made in exchange for less than full and adequate consideration. Thus, the portion of the debt so forgiven would constitute a contribution by the creditor to the candidate unless the decision to forgive the debt is not made for political purposes. (See, Steinberg Advice Letter, No. A-86-344, and Summers Advice Letter, No. A-77-014, copies enclosed.)

If the decision to forgive or reduce the debt is a product of a bona fide business judgment that all or part of the debt is uncollectable, the forgiveness or reduction will not be considered a contribution by the creditor. However, if the circumstances surrounding the debt forgiveness indicate that the creditor intended to bestow a political benefit on the debtor or that the creditor did not take reasonable steps to collect the debt, then the amount of debt forgiven will be considered a contribution. (See, Steinberg, supra.)

Basically, all circumstances surrounding the debt will be evaluated to determine if the creditor has pursued remedies in the same manner as he or she would pursue a non-political debtor. For example, if the debt is not repaid in a timely fashion, consistent with normal business trade or practice, the creditor must commence reasonable efforts to collect which parallel the steps taken to collect from non-political debtors. Failure to pursue commercially reasonable remedies, including litigation if appropriate, will result in a contribution to the candidate. If the forgiveness of debt is deemed to be a contribution, and the amount so forgiven is in excess of permissible contribution limits, a violation of the Act would occur.

The violation would occur on the earlier of when the circumstances of the debt indicate that the creditor intended to

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bestow a political benefit on the debtor or when it is clear that the creditor has forsaken reasonable efforts to collect the debt.

Should you have any further questions, please contact me at (916) 322-5901.

Sincerely

Kathryn E. Donovan  
General Counsel

  
Scott Hallabrin  
Counsel, Legal Division

KED/SH/aa

Enclosures

**City and County of San Francisco:**

**Office of City Attorney**



Louise H. Renne,  
City Attorney

RANDY RIDDLE  
Deputy City Attorney  
(415) 554-4211

September 12, 1989

FPPC  
SEP 13 3 27 PM '89

Kathryn E. Donovan  
Fair Political Practices Commission  
Legal Division  
428 J Street, Suite 800  
Sacramento, California 95814

Dear Ms. Donovan:

We write to seek your advice regarding application of the campaign provisions of Political Reform Act (Government Code Sections 81000 et seq.; "the Act.") Our questions relate to the definition of contribution and use of campaign contributions held by a candidate after an election.

The San Francisco Municipal Election Campaign Contribution Control Ordinance (San Francisco Administrative Code Sections 16.501 et seq.; "the Ordinance") limits to \$500 the amount a person may contribute "in support of or opposition to" a candidate for City office. Also, as explained in more detail below, the Ordinance specifies how a candidate may use funds on hand after an election. I have enclosed a copy of the Ordinance with this letter.

Under the Ordinance, the City Attorney's office is charged with providing advice regarding application of the Ordinance. We have received two questions from a member of the public. Since both of these questions implicate the Act as well as the Ordinance, we seek your views to ensure that our opinion properly applies and is consistent with the relevant provisions of the Act.

The first question is:

1. Article XII, Section 16.510, paragraph 4, of the San Francisco Administrative Code specifically states what can be done with "Unexpended contributions held by a candidate or committee after the date of the election in which said candidate or measure appeared on the ballot . . . ." Using the funds for activities related to holding office is not listed. May an office holder in San Francisco legally use funds from this committee for activities related to holding office?

Under Proposition 73 a candidate may use contributions "for expenses associated with the election of the candidate to the specific office for which the candidate has stated . . . that he or she intends to seek or expenses associated with holding that

Kathryn E. Donovan (2)

September 12, 1989

office." Government Code Section 85202(b). This appears to apply to the use of contributions both before and after the election at which the candidate stands.

The Ordinance also limits the disposition of contributions on hand after the election. The candidate is limited to returning the contributions to contributors on a pro rata basis, donating the funds to a charitable organization or transferring the funds to another committee of the candidate. San Francisco Administrative Code Section 16.510.

Our question is whether the Proposition 73 regulating the use of campaign funds preempt the Ordinance's provisions on that subject. We note that Proposition 73 expressly provides that it does not affect the validity of a local campaign contribution limitation which imposes lower contributions. Government Code Section 85101. Proposition 73, however, does not speak to its effect on the provisions of local ordinances relating to the use of campaign funds.

The second question we received is:

2. How long can a debt that is in excess of the legal contribution limit stay on the books without becoming an illegal campaign contribution?

The Ordinance provides:

Contribution shall be defined as set forth in the Government Code of the State of California, provided, however, that "contribution" shall include loans of any kind or nature.

San Francisco Administrative Code Section 16.503(d).

Since the definition of contribution for the purposes of our local ordinance is the same as the definition under the Act, we solicit your views on this question. In particular we are interested in the criteria the Commission employs in deciding whether a creditor's decision not to collect a bill owed by a candidate effects a contribution of the unpaid amount. We ask that your answer address debts incurred both before and after the adoption of Proposition 73.

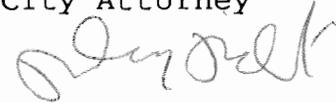
Kathryn E. Donovan (3)

September 12, 1989

Please feel free to contact me at (415) 554-4211 if you have any questions regarding this matter.

Very truly yours,

LOUISE H. RENNE  
City Attorney

A handwritten signature in cursive script, appearing to read "Louise H. Renne", written in black ink.

RANDY RIDDLE  
Deputy City Attorney

cc: John Carbone

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# California Fair Political Practices Commission

September 18, 1989

Randy Riddle  
Deputy City Attorney  
City Hall, Room 206  
San Francisco, CA 94102-4682

Re: Letter No. 536

Dear Mr. Riddle:

Your letter requesting advice under the Political Reform Act was received on September 13, 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,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh