



California Fair Political Practices Commission

December 27, 1989

Timothy J. Gawron, Esquire
Deputy City Attorney
City of Vista
c/o Higgs, Fletcher and Mack
2000 First National Bank Building
401 West "A" Street
San Diego, CA 92101-7908

Re: Your Request for Informal Assistance
Our File No. I-89-550

Dear Mr. Gawron:

This is in response to your letter requesting assistance regarding a proposed campaign ordinance for the City of Vista and its validity with respect to the provisions of the Political Reform Act (the "Act").^{1/} Your advice request focuses on a single provision of your proposed campaign ordinance that was not included with your inquiry. We decline to provide formal written advice on the provision out of the context of the ordinance which it attempts to implement. Consequently, we are treating your request as one for informal assistance and have provided the following general guidelines.^{2/}

QUESTION

May the City of Vista enact a local campaign ordinance which sets contribution limits that are lower than the Act's and automatically voids the election of a candidate if the candidate exceeds the limits?

^{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. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Where the provisions of local law conflict with the Act, the local law will be superseded. However, the Act does not prevent a local governmental agency from imposing lower campaign contribution limitations for candidates for elective office in its jurisdiction or penalties for violation of these local limits. To the extent that the local ordinance conflicts, if at all, with provisions of the law outside the Act, we offer no advice as to the validity of the ordinance.

DISCUSSION

The Proposition 73 amendments to the Act provide that contributions to candidates for elective office must comply with the contribution limits set forth in Sections 85301, 85303 and 85305. Contributions from a person to a candidate are limited to \$1,000 each fiscal year.^{3/} (Section 85301.) Contributions from a political committee to a candidate are limited to \$2,500 each fiscal year, and contributions from a broad based political committee or political party to a candidate are limited to \$5,000 per fiscal year. (Section 85303.) Contributions from a person to a political committee, broad based political committee or political party are limited to \$2,500 in any fiscal year. (Section 85303.)

However, Section 85101 provides:

(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.

Moreover, Section 81013 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.

^{3/} The fiscal year is July 1 through June 30. (Section 85102(a).)

According to these sections of the Act, the Act does not prevent local jurisdictions from either 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. (Van Winkle Advice Letter, No. I-89-335, copy enclosed.) Also, where the provisions of local law do not conflict with the Act, the local law will not be superseded. (Riddle Advice Letter, No. A-88-409, copy enclosed.)

You have not provided us with sufficient information about the proposed campaign ordinance to determine whether it will be superseded by the Act.^{4/} You did state in your letter that the limits on individual contributions would be \$500 per candidate per election. While on its face it would appear the proposed ordinance provides lower contribution limits than the Act, this is not necessarily so. The Act limits contributions on a fiscal year basis, running from July 1 through June 30. (Section 85102(a).) Thus, even a lower per election limit may in aggregate exceed the limits of the Act under some circumstances.

For example, in San Jose the local ordinance also permitted a person to contribute up to \$500 to a candidate for mayor in each primary, general or special election. In addition, if a mayoral candidate was successful, the same contributor could contribute an additional \$500 to the candidate for officeholder expenses for that term of office.^{5/} This meant that an individual could give potentially \$1,500 in a fiscal year--\$500 for the primary election, \$500 for the general election and \$500 for officeholder expenses.^{6/} However, since the primary election was held in June and the runoff, if one was necessary, was held in November of the following fiscal year, the San Jose ordinance actually permitted candidates to receive no more than \$1,000 in campaign contributions from a contributor in a fiscal year and was therefore valid

^{4/} Please note, Section 81009.5 requires that any local government agency which has enacted, enacts, amends, or repeals an ordinance or other provision of law affecting campaign contributions and expenditures shall file a copy of the action with the commission.

^{5/} The Act treats contributions for officeholder purposes no differently than campaign contributions generally with respect to the fiscal year limits. (La Follette Advice Letter, No. I-89-122, copy enclosed.)

^{6/} The San Jose ordinance also permitted a \$500 contribution to a candidate for special elections. Under the Act a contributor may contribute \$1,000 to a candidate in a special election in addition to the basic contribution limits in Sections 85301, 85302 and 85303. Thus the San Jose special election limit was consistent with that of the Act. (Section 85305.)

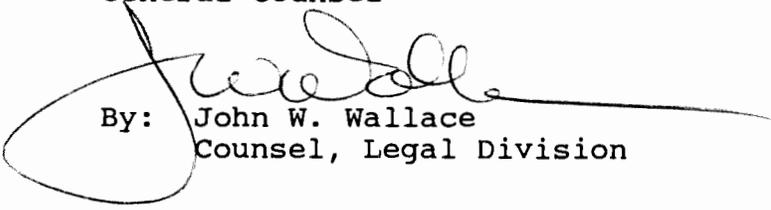
with respect to the limits of the Act. (Gallo Advice Letter, No. I-88-454, copy enclosed)

Thus, since we do not have sufficient information on your proposed ordinance, we cannot determine if the limits of the Act supersede the ordinance. However, if your local ordinance is valid, penalties provided by the ordinance for violation of your city's contribution limits would apparently not prevent candidates from complying with the Act. Therefore, the Act does not prohibit a local ordinance from imposing penalties in addition to those imposed by the Act. Please note, however, that since the Commission has no jurisdiction beyond the Act, we offer no advice as to whether the penalty provisions of the ordinance violate any other provisions of law.

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

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

HIGGS, FLETCHER & MACK

ATTORNEYS AT LAW

FPPC

SEP 22 3 24 PM '89

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September 15, 1989

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814
Attn: Legal Division

Dear Sirs:

I am requesting an advice letter on the following issue:
Does a city ordinance, which purports to automatically void the election of a candidate and vacate that office if it has been determined that such candidate has violated a provision of a local ordinance limiting campaign contributions, contravene the aims of the FPPA?

The Political Reform Act of 1974, Government Code Section 81000 et seq., (the "Act") calls for civil sanctions including fines and penalties for violations of its provisions. The City of Vista, County of San Diego, is proposing to enact a municipal ordinance whereby campaign contributions to candidates for elective offices will be limited to \$500.00 per candidate per election. The proposed ordinance also contains other provisions which are based upon the Act. The proposed ordinance specifically purports to void the election and vacate the office of any candidate who is found to have violated the campaign contribution limits as described in the ordinance.

While the Political Reform Act of 1974 and the Campaign Spending Limits Act of 1986 expressly allows for local ordinances which do not contravene the purposes of either act, the legal uncertainty over Propositions 86 and 73 clouds this area.

Please advise the City of Vista as to whether the above-referenced provision in its proposed ordinance would contravene the spirit of the Acts, and indeed, whether in the opinion of the FPPA, such proposed municipal action is legally enforceable.

We anxiously await receipt of your advice letter.

September 15, 1989
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Thank you for your time and effort. Your attention to this matter will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Timothy J. Gawron".

TIMOTHY J. GAWRON, ESQ.
Deputy City Attorney, City of
Vista

C24/TJG



California Fair Political Practices Commission

September 27, 1989

Timothy R. Gawron
Higgs, Fletcher & Mack
2000 First National Bank Building
401 West "A" Street
San Diego, CA 92101-7908

Re: Letter No. 89-550

Dear Mr. Gawron:

Your letter requesting advice under the Political Reform Act was received on September 22, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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