



# California Fair Political Practices Commission

November 7, 1989

Hon. David B. Finkel  
Councilmember, Santa Monica City Council  
1424 Fourth Street, Suite 238  
Santa Monica, CA 90401

Re: Your Request for Advice  
Our File No. A-89-581

Dear Councilmember Finkel:

In your letter of October 2, 1989, you requested our advice concerning your duties and responsibilities under the campaign contribution provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTIONS

1. Is there a period commencing October 1, 1989 and ending in January 1990 during which a judicial candidate in a municipal court election in June 1990 is barred from raising campaign funds?
2. What limitations exist on your right to obtain campaign contributions in a municipal court election?
3. May funds raised by a city council member's campaign committee in 1986, 1987 and 1988 be transferred to the committee formed for the council member's candidacy for municipal court in the June 1990 election?

## CONCLUSIONS

1. The off-year fundraising ban in the Act does not apply to candidates for municipal court judge. It would apply only to candidates for the state Legislature.
2. Limitations on the solicitation, receipt and use of campaign contributions during election campaigns are set forth primarily in Sections 85100 through 85307 of the Act. Recent

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

court decisions affect the applicability of some of these sections.

3. Under an existing preliminary injunction issued in the case of Service Employees International Union, et al. v. Fair Political Practices Commission, U.S. District Court, Eastern District of California, Case No. CIVS 89-0433 LKK-JFM, a candidate may transfer contributions between his or her controlled committees. The court has also ruled that candidates may use campaign funds raised prior to January 1, 1989 to seek elective office after that date. Therefore, you may transfer contributions from your existing committee to your judicial committee.

#### FACTS

You intend to be a candidate for Judge of the Municipal Court in the June 1990 election. You have heard that there is a period commencing October 1, 1989 and ending on a date in January 1990 during which a candidate for that office is barred from raising campaign funds.

You are presently a member of the Santa Monica City Council and you have a campaign committee which raised funds in years preceding 1989 in connection with your campaign for that office. A balance of approximately \$900 exists in the committee's account.

#### ANALYSIS

On June 7, 1988 California voters passed two campaign reform initiatives known as Propositions 68 and 73. Both initiatives amended the Act and contained limitations on the solicitation, receipt and use of campaign contributions during election campaigns.

Proposition 68's contribution limitations applied solely to contributions to and for candidates for the Legislature. Among its provisions was Section 85309 which prohibits legislative candidates and certain committees which contribute to legislative candidates from receiving contributions in non-election years.<sup>2</sup> Proposition 73's contribution limitations applied to all candidates for elective office, but had no prohibition against receiving contributions in non-election years. Thus, since Proposition 73 applies to candidates for municipal court judge,

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<sup>2</sup> The operability of several provisions of Proposition 68, including Section 85309 is currently being contested in Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, California Court of Appeal, Second Appellate District, Case No. B039177 and Committee to Protect the Rights of Minorities v. Fair Political Practices Commission, U.S. District Court, Eastern District of California, Case No. CIVS 89-1255 EJG-EM.

there is no prohibition against you receiving contributions in non-election years.

Proposition 73's limitations on the solicitation, receipt, and use of contributions during election campaigns are set forth in Sections 85100 through 85307 of the Act. We refer you to these provisions for information on the contribution limitations applicable to your campaign for municipal court judge. Please note, however, that recent rulings by the court in Service Employees International Union, et al. v. Fair Political Practices Commission, U.S. District Court, Eastern District of California, Case No. CIVS 89-0433 LKK-JFM have either invalidated or preliminarily enjoined the enforcement of some of Proposition 73's limitations. We enclose copies of those rulings and a copy of our Interim Campaign Manual for your reference.

Most notable as regards to your situation was the court's invalidation of Section 85306 and its ban against the enforcement of Sections 85200, 85201, 85202 and 85304 to the extent these provisions prevent a candidate from transferring contributions among his or her separate committees for elective office.

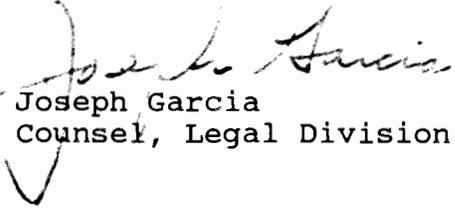
Section 85306 prohibited candidates from using pre-1989 contributions in elections to offices sought on or after January 1, 1989. The court's order dated September 14, 1989 invalidated this section and thus allows a candidate to use pre-1989 contributions to support himself or herself in a later election.

Sections 85200, 85201, 85202 and 85304 were interpreted by the Commission to prohibit a candidate from transferring contributions he or she received in running for one office to a committee established by that candidate to run for another office. The court's order dated May 19, 1989 permitted these types of transfers. Therefore, based on these orders, you are permitted to transfer contributions you have received for your city council campaigns for 1986, 1987 and 1988 into your municipal court campaign account.

If you have any questions concerning this letter, please contact me at (916) 322-5901. Questions about campaign disclosure should be addressed to the Commission's Technical Assistance and Analysis Division at (916) 322-5662.

Sincerely,

Kathryn E. Donovan  
General Counsel

By:   
Joseph Garcia  
Counsel, Legal Division

KED:JG:ld

Enclosures

DAVID B. FINKEL  
1424 Fourth Street, Suite 238  
Santa Monica, California 90401

Oct 6 8 15 AM '89

October 2, 1989

Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804-0807

Re: Request for information on campaign fund raising

Dear Sirs,

I have been informed that persons who intend to run for judicial offices might face time limitations on their ability to raise funds. I write for clarification of the rules in that regard.

Specifically, I intend to run for the office of Santa Monica Municipal Court in the June 1990 election. I have been informed that because of the propositions that were passed in the last general election, a window period commencing on October 1, 1989 and ending on a date in January, 1990 has been created, during which a candidate for the above office is barred from raising campaign funds. Is that true?

Please advise me of the limits that exist, if any, on my right to raise campaign funds for the race for the judicial seat referred to above, both in terms of time periods during which fund raising is prohibited, if any, and with respect to amounts of individual contributions that are permitted in a particular time period.

Additionally, I need advice on the following issue:

I presently am a member of the Santa Monica City Council, and have a campaign committee which raised funds in 1986, 1987 and 1988, in connection with city council campaigning. I have a small balance in that campaign account (\$900?). Am I entitled to transfer that balance to the account of a new committee I create to receive funds from those who contribute to my race for the judicial seat or must I keep the funds separated? Can I use the old committee, instead of creating a new one?

Thank you for your help in providing the information I need to resolve the above issues properly.

Yours truly,

A handwritten signature in cursive script, appearing to read "David B. Finkel".

DAVID B. FINKEL

cc: Roger Thornton  
Thom Poffenberger



# California Fair Political Practices Commission

October 11, 1989

David B. Finkel  
1424 Fourth Street, Suite 238  
Santa Monica, CA 90401

Re: Letter No. 89-581

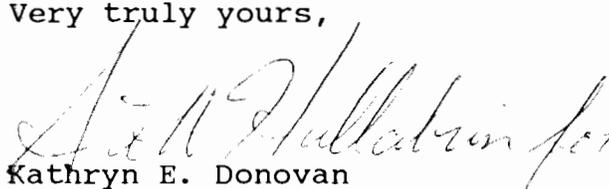
Dear Mr. Finkel:

Your letter requesting advice under the Political Reform Act was received on October 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Joe Garcia 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