



FAIR POLITICAL PRACTICES COMMISSION

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November 14, 2001

David L. Gould, Treasurer
David L. Gould Company
555 South Flower, Suite 4510
Los Angeles, CA 90071

**Re: Your Request for Advice
Our File No. A-01-241**

Dear Mr. Gould:

This letter is in response to your request for advice on behalf of Senators Richard Alarcón, Martha Escutia, Kevin Murray, Ed Vincent and Assemblyman Paul Koretz regarding Proposition 34 amendments to the provisions of the Political Reform Act (the "Act")¹, specifically issues dealing with fundraising limits under Government Code § 85316² and regulation 18531.6.

QUESTIONS

1. May campaign committees that were originally formed for elections held prior to January 1, 2001, but which were redesignated for elections held after January 1, 2001, accept contributions in unlimited amounts?
2. If not, may campaign committees that were originally formed for elections held prior to January 1, 2001, but which were redesignated for elections held after January 1, 2001, reverse their redesignations, thus re-establishing their pre-January 1, 2001 committees, and open new committees for their future elections?

CONCLUSIONS

1. No. Campaign committees originally formed for elections held prior to January 1, 2001, but which were redesignated for elections held after January 1, 2001, are subject to the contribution limits of sections 85301 and 85302.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² All further statutory references are to the Government Code, unless otherwise specified.

2. No. The reestablished committees would be considered committees formed on or after January 1, 2001, under regulation 18531.6(b)(1), and would still be subject to the contribution limits of sections 85301 and 85302. Moreover, once a campaign committee that was originally formed prior to January 1, 2001, has been redesignated for a future election, it cannot be redesignated as the pre-January 1, 2001 committee.

FACTS

You serve as the treasurer of several campaign committees that were created before January 1, 2001, for candidates seeking legislative office in a previous election. Some of these committees have debts from previous elections. Some of these committees have been redesignated for the 2002 election.³ Amended 410 (Statement of Organization) forms and new 501s (Statement of Intention) have been filed for the 2002 election or a later election, if applicable. None of these committees has accepted contributions greater than allowed under Proposition 34.

ANALYSIS

1. May campaign committees that were originally formed for elections held prior to January 1, 2001, but which were redesignated for elections held after January 1, 2001, accept contributions in unlimited amounts?

Regulation 18531.6 provides, in pertinent part:

“(b) 2001 and Subsequent Elections. Government Code section 85316 applies to a candidate for elective state office in an election held on or after January 1, 2001, as follows:

“(1) The contribution limits of Government Code sections 85301 and 85302 apply to any candidate controlled committee formed on or after January 1, 2001, whether the committee is designated for an election held pre- or post-January 1, 2001.

“(2) Beginning January 1, 2001, contributions received by any candidate controlled committee formed prior to January 1, 2001, for an election held after January 1, 2001, are subject to the limits of Government Code section 85301 and 85302.”

³ You state in your letter that some of your clients who have redesignated their committees for the 2002 election, or later elections, if applicable, have debt from earlier elections, and that their redesignations took place prior to the Commission's ruling that section 85316 does not apply to committees formed for elections held prior to January 1, 2001. You have not indicated when the redesignations occurred. However, the timing of the redesignations does not impact the analysis presented herein.

At the Commission meeting held July 9, 2001,⁴ a member of the public specifically raised the question you ask concerning committees that had been formed prior to January 1, 2001, but which were designated for an election after 2001. The concern raised was that a literal reading of the proposed regulatory language suggested that the contribution limits in sections 85301 and 85302 would not apply to those committees. It was suggested that regulation 18531.6 incorporate the word "redesignate" to make it clear that committees created before January 1, 2001, but being used for an election after January 1, 2001, would be subject to the Proposition 34 limits.

After discussion of the issue, the Commission asked staff to clarify the language to reflect that committees established prior to January 1, 2001, but redesignated for elections held after January 1, 2001, would be subject to the contribution limits of sections 85301 and 85302. (Commission Minutes, July 9, 2001, pg. 16.)

Applying regulation 18531.6, subsection (b)(2) clearly states that committees formed (or redesignated) prior to January 1, 2001, for post-January 1, 2001 elections became subject to contribution limits on January 1, 2001. Therefore, campaign committees that were redesignated⁵ for the 2002 or later elections are subject to the contribution limits of sections 85301 and 85302, and they may not accept contributions in excess of those limits, regardless of when they were originally formed.

2. May campaign committees that were originally formed for elections held prior to January 1, 2001, but which were redesignated for elections held after January 1, 2001, reverse their redesignations, thus re-establishing their pre-January 1, 2001, committees, and open new committees for their future elections?

You ask whether redesignating the committees again will somehow revert them back to pre-2001 status. The answer is no.

Once a committee is redesignated for a new election, and an amended Statement of Organization (Form 410) and a new Statement of Intent (Form 501) is filed, the earlier committee is effectively terminated and the redesignated committee becomes a newly formed committee for the designated election.⁶

By seeking to "reverse the redesignations," you are essentially seeking to redesignate the committees backwards, to designate them as 2000 committees rather than as committees for future elections. This practice was anticipated by the Commission and is specifically disallowed in regulation 18531.6(b)(1):

⁴ Proposed regulation 18531.6 was the subject of several Commission meetings, held on June 8, 2001; July 9, 2001; and September 10, 2001. The issues you raised, and many other complicated and controversial issues, were discussed at length and public comment was considered at all of these meetings.

⁵ At its October 11, 2001, meeting, the Commission voted to expressly disallow redesignation with respect to state candidates. We anticipate that the regulations adopting this decision will be adopted at the Commission's December 7, 2001 meeting.

⁶ The Commission considered issues related to redesignation at several Commission meetings, held on July 9, 2001; August 3, 2001; and September 10, 2001.

“(b) 2001 and Subsequent Elections. Government Code section 85316 applies to a candidate for elective state office in an election held on or after January 1, 2001, as follows:

“(1) The contribution limits of Government Code sections 85301 and 85302 apply to any candidate controlled committee **formed on or after January 1, 2001**, whether the committee is designated for an election held pre- or post-January 1, 2001.” (Emphasis added.)

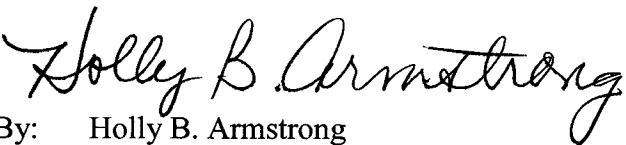
Therefore, you may not “reverse the redesignations” and re-establish the pre-January 1, 2001 committees.

You should also be aware that to further reduce the potential that pre-January 1, 2001 committees may be used to raise contributions in excess of the limits of sections 85301 and 85302, the Commission adopted emergency regulation 18404.2 in October, which requires committees controlled by defeated candidates and candidates no longer holding the elective state offices for which the committees were formed to be terminated no later than December 31, 2002.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel


By: Holly B. Armstrong
Staff Counsel, Legal Division

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