



California Fair Political Practices Commission

February 17, 1989

Ronald T. Vera
Barbosa and Vera
1000 Corporate Center Dr., Suite 350
Monterey Park, CA 91754

Re: Your Request for Informal
Assistance
Our File No. I-89-061

Dear Mr. Vera:

This is in response to your request for written confirmation of the telephone advice provided by our agency relative to the newly enacted campaign contribution limitation provisions of the Political Reform Act. (the "Act")^{1/} Since your advice request does not refer to a specific governmental decision, we are treating your question as a request for informal assistance pursuant to Regulation 18329(c)(3). (copy enclosed)^{2/}

As we discussed over the telephone, the information provided in your memorandum regarding Proposition 73, the campaign reform initiatives of 1988, is basically correct. The points of clarification required in the memorandum are:

o Proposition 68 does not establish a new hearing procedure. Rather it requires that the present hearing

^{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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

procedure used for violations of the Act be extended to cover violations of the campaign reform provisions.

- o Proposition 68 requires persons who send mass mailings to support or oppose legislative candidates, and do so without cooperation or coordination of any candidate, to include the notice to voters required by Section 85600.

- o The Act does not require reporting of contributions to federal candidates.

- o The operative date of the campaign contribution limitations is January 1, 1989. (Section 85104.)

- o No contributions may be solicited or received prior to the filing of a statement of intent and campaign account form with the Commission. (Sections 85200 and 85201.)

- o A candidate need not file a statement of intent nor open a campaign bank account if he or she uses only personal funds, and these funds are used solely to pay a filing fee and the cost of a candidate statement. (Regulation 18522, copy enclosed.) However, if the candidate plans to solicit or receive contributions from others, he or she must comply with the statement of intent and bank account requirements in Sections 85200 and 85201.

- o It is not yet clear whether the ban on use of public funds prohibits local jurisdictions from paying for the publication and distribution of candidate statements in the sample ballots. The Commission will consider this issue in March. (Proposed Regulation 18530, copy enclosed.)

- o Under the Regulation 18536.2, as adopted by the Commission, expenditures made by non-controlled committees other than primarily formed committees are not made "to support or oppose a candidacy" when used for conducting voter registration and nonpartisan get-out-the-vote drives. However, such expenditures are considered payments made "to support or oppose a candidacy" when made by candidates, controlled committees, and committees formed primarily to support one or more candidates.

- o The Commission had adopted regulations to allow persons who received contributions prior to January 1, 1989, to carry over the funds which are in compliance with Proposition 73. Legal action was brought challenging the Commission's regulations on the use of previously held campaign funds. (California Common Cause v. FPPC (Case No. C709383, Los Angeles Superior Court).) On February 8, the court found the Commission's regulations to be invalid. In the absence of contrary instructions from the Commission, we

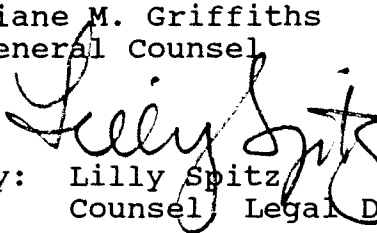
Ronald T. Vera
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Page 3

are presently advising that all campaign contributions received before January 1, 1989, may not be carried over for use in future campaigns.

I trust our conversation and this summary are of assistance to you. Please contact me at (916) 322-5901 if you have any additional questions.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosures

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January 19, 1989

Ms. Lillian Spitz
Legal Counsel
Fair Political Practices Commission
428 J. Street
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RE: PROPOSITION 68,73

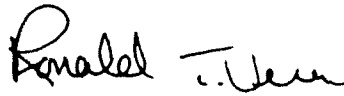
Dear Ms. Spitz:

Our firm is general counsel to several public agencies. We have been requested to provide a broad outline of the measures that go into place on January 1, 1989 because of Proposition 68 and 73. In this regard we prepared the enclosed draft.

Quite frankly, however, I have not been able to keep up with all of the recent regulations and lawsuits and will suggest our clients call FPPC offices directly for up-to-date information. Is there a hot-line number you maintain? Are we accurate in our representations made in the enclosed memorandum?

I would appreciate hearing from you so that we can get back to our clients. Thank you for your assistance in this matter.

Yours very truly,


Ronald T. Vera

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enclosure:

I. AN OVERVIEW OF THE CAMPAIGN FINANCE REFORM INITIATIVES OF 1988

In June 1988, California voters approved two campaign finance reform initiatives which will affect electoral campaigns for many of NALEO's members in California. Proposition 68, sponsored by Common Cause, and Proposition 73, sponsored by three California state legislators, both passed by solid margins. However, the two propositions have numerous areas of conflict and it is still unclear how the two propositions will be reconciled. In clear areas of conflict, the provisions of Proposition 73 will become operative since it out polled Proposition 68.

For example, Proposition 73 prohibits any expenditure of public funds either in support of political campaigns or on behalf of candidates, while Proposition 68 authorized public financing of election contests for state offices. Because state law provides that when successful ballot measures conflict, the one with the most votes takes effect, it will generally mean that the measures set forth in Proposition 73 will prevail.

At the present time, the task of reconciling the provisions of Proposition 68 and 73 rests in the hands of the California Fair Political Practices Commission and to some extent with the Attorney General's office. Since last July, the California Fair Political Practices Commission has been meeting on a regular basis and adopting emergency regulations for implementing the major provisions of Proposition 73 dealing with campaign finance reform.

From a legal perspective, Proposition 68 and 73 both amend the Political Reform Act of 1974 found in California Government Code Sections 81000-91015. Because the regulations now being proposed by the California Fair Political Practices Commission are continually subject to scrutiny and are being revised monthly, much of what is discussed herein is subject to change. For example, at least three lawsuits have been filed either challenging some of the apparent conflicts between Proposition 68 and 73 or attacking those implementing regulations adopted by the Fair Political Practices Commission. More lawsuits are likely to be filed. For this reason, this memorandum is intended to be only a resource document that NALEO members might use in the early months 1989 as initial preparation for an electoral campaign. Unless otherwise designated, much of the discussion pertains to Proposition 73.

II. SUMMARY OF THE LAW

Although much of it conflicts with Proposition 73, Proposition 68 does four important things. First, Proposition 68 establishes a hearing procedure by the Fair Political Practices Commission for violations of California's Political Reform Laws. Second, Proposition 68 states that a political campaign committee is required to identify the name of any individual or entity which controls the committee. If a committee has already filed a statement of organization with the state it must now amend its statement to include such names. Third, Proposition 68 requires persons to put the following statement on state or local election mass mailings:

NOTICE TO VOTERS

(Required by State Law)

This mailing is not authorized or approved by any legislative candidate or election official. It is paid for by (fill in name and address).

This statement must appear in a separate box on the envelope and each page of any mass mailing. Fourth, Proposition 68 requires persons making campaign contributions to federal legislative candidates of more than \$10,000 to notify the Commission and all candidates in that legislative district by telegram each time this occurs. This latter provision, enacted at Government Code §85302 may have to be reconciled with the state and local campaign contribution limitations of Proposition 73.

Proposition 73 promises to have the most immediate effect on local and state campaigns. Its major provisions, which became operative on January 1, 1989 deal with both the use of, and receipt of, funds for political campaigns. The major provisions of Proposition 73 provide that any campaign funds held on or before June 8, 1988 cannot be spent to support or oppose a candidate for elective state or local office. Moreover, effective January 1, 1989, any candidate for state or local office must file a statement of intention to run for a specific office, establish a single campaign contribution account for each particular campaign and deposit and withdraw all of the money used to finance a political campaign from this account. Under Proposition 73, all campaign funds are affected and all state and local politicians and candidates are affected. The major provisions are explained below.

III. QUESTIONS AND ANSWERS ABOUT PROP 73

Q. Does Proposition 73 require me to file any papers before I run for office?

A. Yes. Under Proposition 73, before a candidate for an office solicits or accepts campaign contributions, that candidate must file with the California Fair Political Practices Commission a statement of intention to be a candidate for a specific office. This statement must be signed under penalty of perjury.

Q. When I receive campaign contributions, what procedures must I follow under Proposition 73?

A. Once a candidate files a statement of intention, he or she must then establish a single campaign contribution account for that particular campaign at a bank or other savings institution located in California. After this campaign contribution account is established, the name and location of the financial institution, along with the account number, must be filed with the California Fair Political Practices Commission within 24 hours.

Q. What types of funds must be placed in this campaign contribution account?

A. After this campaign contribution account is established, all contributions or loans made to the candidate, to another person on behalf of the candidate, or to the candidate's controlled committee must be deposited in the account. In addition, if the candidate wishes to use his or her personal funds for campaign purposes, these funds must also be deposited in the campaign contribution account. When the candidate needs money to pay for campaign expenses, the funds must come from the campaign contribution account. In essence, all of the money used in a campaign for elected office must first be channeled through the campaign contribution account.

There is, however, one important exception to the campaign contribution account requirement. Under the California Fair Political Practices Commission's Regulations, a candidate could use his or her personal funds to pay a filing fee or a candidate statement fee without having to file a statement of intention or open a campaign bank account. Personal funds used in this manner would still be subject to the reporting requirements contained in Government Code Section 84200, et seq.

Q. Under Proposition 73, who can I accept private campaign contributions from?

A. A candidate can accept private contributions only from "persons, political committees, broad based political committees, and political parties."

The term "person" is defined under the Act as "an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization." The term "political committee" is defined as "a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates." The term "broad based political committee" is defined as "a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates."

Q. Can I use any public funds to finance my campaign?

A. No. While Proposition 68 allowed some public financing, this conflicts with Proposition 73 and Proposition 68 will be overruled in this area. The avoidance of even the appearance of public financing is one of the major provisions of Proposition 73. Under Proposition 73, public funds cannot be used to finance any state or local election campaigns. No public office holder or candidate will be permitted to accept any public funds to be used for the purpose of seeking elective office. This prohibition extends even to the use of public funds to pay for candidates' statements contained in voter information pamphlets.

Q. How much money can each private donor give to my campaign under Proposition 73?

A. No person can contribute or loan more than \$1,000 per fiscal year (July 1 of current year through June 30 of following year) to a candidate. In fact, no candidate can even solicit more than \$1,000 per fiscal year from a person. The \$1,000 limit does not apply to a candidate's contribution of his or her own personal funds to the campaign.

Similar provisions govern contributions from political organizations. A political committee cannot contribute or loan in excess of \$2,500 per fiscal year to a candidate. A broad based political committee or a political party cannot contribute or loan in excess of \$5,000 per fiscal year to a candidate.

Q. I can accept money from a political committee or party, but is there any limit applied to contributions given to a political committee, "broad based" political committee, or political party?

A. Yes. As of January 1, 1989, a political committee, broad based political committee, or political party can accept up to \$2,500 from a "person" per fiscal year.

Q. If I have extra funds on January 1, 1989 can I give those to a friend's campaign?

A. No. Under Proposition 73, a candidate or committee controlled by that candidate is prohibited from transferring funds received for that candidate to another candidate.

Q. What then can I do with campaign funds already on hand?

A. The general rule under Proposition 73 is that any person who possesses campaign funds on June 8, 1988 (the effective date of Proposition 73), may expend those funds after January 1, 1989, for any lawful purpose except to support or oppose a candidate for elective office. Several regulations now being proposed by the California Fair Political Practices Commission define in what situations this general rule applies (see following two questions and answers).

Q. What does the term "lawful purpose" mean?

A. Under the proposed regulations, the term "lawful purpose" is defined as any use which does not conflict with the "personal use law" set forth in California Elections Code Sections 12400 through 12407. Although a detailed discussion of the personal use law is beyond the scope of this memorandum, in a nutshell, it prohibits candidates from using campaign funds, including funds of political action committees, for personal use. The following items are considered personal uses of campaign funds under the personal use law: (1) payments for professional services or personal debts; (2) travel expenses (for the candidate and relatives); and (3) payments for personal gifts over \$100. In addition, no funds are to be used to lease or refurbish vehicles or equipment. Upon leaving an elected office, or after being defeated, surplus campaign funds can only be used for the following purposes: (1) repayment of personal loans if there is a reasonable relationship to political, legislative, or governmental activity; (2) payment of outstanding campaign expenses; (3) contributions to any candidate, committee, or political party; (4) pro rata repayment of contributors; (5) donation to any organization no part of which benefits any private individual (for example, a nonprofit 501(c)(3) corporation).

Q. What does the term "to support or oppose a candidacy for elective office" mean?

A. Under the regulations, the following actions are considered "to support or oppose a candidacy for elective office": (1) contributions made to any candidate for state or local elected office, the candidate's controlled committee, or a committee primarily formed to support or oppose the candidate (i.e., a "friends committee"); (2) independent expenditures

made by any candidate or committee for the purpose of advocating the election or defeat of another candidate for state or local elective office; (3) contributions and expenditures to support or oppose the recall of any state or local elected officer.

However, the current regulations now being circulated also create three exceptions to the general definition of expenditures deemed to "support or oppose a candidacy for elective office." The exceptions are: (1) payment of the candidate's or committee's campaign debts for goods consumed or services completed prior to January 1, 1989; (2) payment of officeholder expenses; (3) contributions to candidates for state or local office outside of California, and contributions to ballot measures other than recall measures. In addition, an exception for overhead expenses and expenses for voter registration activities and non-partisan get-out-the-vote drives is proposed.

Q. Is there any exception to the general rule that after January 1, 1989, campaign funds received before June 8, 1988, cannot be used to support or oppose a candidate for elective office?

A. Yes. An exception to this rule applies to contributions received by a candidate or political committee on or before December 31, 1988, which are brought into compliance with the contribution limitations of Proposition 73 and which are deposited in a separate bank account. This exception allows candidates and committees to establish a separate bank account in order to carry forward such funds for use after January 1, 1989.

Thus, under the proposed regulations, candidates and committees can deposit new contributions (those received between June 8, 1988 and December 31, 1988) directly in a separate bank account if the contributions are in compliance with the limitations effective after January 1, 1989.

Old contributions (those already on hand on June 8, 1988), referred to by the Fair Political Practices Commission as "cash on hand," must undergo a two-step accounting process to ensure that individual contributions satisfy the restrictions set forth in Proposition 73. In the first step, the candidate or committee must add together all contributions

received up to that point in order to arrive at the total amount of cash at hand. While going through this process, the candidate or committee must note any individual contributions which exceed the contribution limits established by Proposition 73. In the second step, that portion of any individual contribution which exceeds the limits of Proposition 73 must be deducted from the total amount of cash on hand calculated in the first step. Only the remaining cash on hand can be deposited in the separate bank account.

Q. Why must I go through this separate bank procedure?

A. The separate bank account procedure acts as a transition between the old law, which contained no contribution limitations, and the law under Proposition 73 which does.

Thus, a candidate or his or her campaign election committee must review past contributions and establish the separate bank account by the end of the current fiscal year (June 30, 1989). Contributions not deposited in the separate account by that date could not be used to support or oppose a candidate.

Q. Can I avoid the restrictions of Proposition 73 by receiving funds in the form of gifts or honorariums?

A. No. A gift or honorarium from a single source to an elected officeholder cannot exceed \$1,000 in any calendar year (remember that the other Proposition 73 limits apply to fiscal years). However, reimbursement for actual travel expenses and reasonable subsistence costs (meals, lodging, etc.) are not included within the \$1,000 limit.

Q. Can I still send out newsletters or other mass mailings at public expense?

A. The actual language of Proposition 73 states that "[n]o newsletter or other mass mailing shall be sent at public expense" Because this language on its face appears to prohibit every type of mass mailing, the Commission will issue regulations defining what and what is not permitted.

89-061

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January 19, 1989

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428 J. Street
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RE: PROPOSITION 68,73

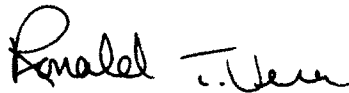
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Q. What does the term "to support or oppose a candidacy for elective office" mean?

A. Under the regulations, the following actions are considered "to support or oppose a candidacy for elective office": (1) contributions made to any candidate for state or local elected office, the candidate's controlled committee, or a committee primarily formed to support or oppose the candidate (i.e., a "friends committee"); (2) independent expenditures

made by any candidate or committee for the purpose of advocating the election or defeat of another candidate for state or local elective office; (3) contributions and expenditures to support or oppose the recall of any state or local elected officer.

However, the current regulations now being circulated also create three exceptions to the general definition of expenditures deemed to "support or oppose a candidacy for elective office." The exceptions are: (1) payment of the candidate's or committee's campaign debts for goods consumed or services completed prior to January 1, 1989; (2) payment of officeholder expenses; (3) contributions to candidates for state or local office outside of California, and contributions to ballot measures other than recall measures. In addition, an exception for overhead expenses and expenses for voter registration activities and non-partisan get-out-the-vote drives is proposed.

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received up to that point in order to arrive at the total amount of cash at hand. While going through this process, the candidate or committee must note any individual contributions which exceed the contribution limits established by Proposition 73. In the second step, that portion of any individual contribution which exceeds the limits of Proposition 73 must be deducted from the total amount of cash on hand calculated in the first step. Only the remaining cash on hand can be deposited in the separate bank account.

Q. Why must I go through this separate bank procedure?

A. The separate bank account procedure acts as a transition between the old law, which contained no contribution limitations, and the law under Proposition 73 which does.

Thus, a candidate or his or her campaign election committee must review past contributions and establish the separate bank account by the end of the current fiscal year (June 30, 1989). Contributions not deposited in the separate account by that date could not be used to support or oppose a candidate.

Q. Can I avoid the restrictions of Proposition 73 by receiving funds in the form of gifts or honorariums?

A. No. A gift or honorarium from a single source to an elected officeholder cannot exceed \$1,000 in any calendar year (remember that the other Proposition 73 limits apply to fiscal years). However, reimbursement for actual travel expenses and reasonable subsistence costs (meals, lodging, etc.) are not included within the \$1,000 limit.

Q. Can I still send out newsletters or other mass mailings at public expense?

A. The actual language of Proposition 73 states that "[n]o newsletter or other mass mailing shall be sent at public expense" Because this language on its face appears to prohibit every type of mass mailing, the Commission will issue regulations defining what and what is not permitted.



California Fair Political Practices Commission

February 1, 1989

Ronald T. Vera
Barbosa & Vera
Los Angeles Corporate Center
1000 Corporate Center Drive, Suite 350
Monterey Park, CA 91754

Re: Letter No. 89-061

Dear Mr. Vera:

Your letter requesting advice under the Political Reform Act was received on January 20, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz 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,

Diane M. Griffiths
by *Kid*
Diane M. Griffiths
General Counsel

DMG:plh