



California Fair Political Practices Commission

March 21, 1989

Robert E. Leidigh, Esq.
Olson, Connelly, Hagel & Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-100

Dear Mr. Leidigh:

This is in response to your request for advice concerning the effect of the February 8, 1989 decision in California Common Cause v. California Fair Political Practices Commission (Los Angeles County Superior Court, Case No. C709383) upon the campaign contribution requirements of the Political Reform Act.^{1/}

QUESTIONS

1. Assume that candidates or committees held contributions received before June 8, 1988:

a. If they spent the contributions between January 1, 1989 and February 7, 1989, must the expended contributions be refunded?

b. Can they spend the contributions after February 7, 1989?

2. Assume that candidates or committees held contributions received between June 8, 1988 and December 31, 1988:

a. If they spent the contributions between January 1, 1989 and February 7, 1989, must the expended contributions be refunded?

^{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.

b. Can they spend the contributions after February 7, 1989?

3. Assume that a candidate or committee, pursuant to Commission regulations in effect until February 8, 1989, placed contributions received prior to January 1, 1989 in a campaign bank account and intended to use the contributions to support or oppose candidates for office. Also assume that these contributions were then commingled in the campaign bank account with contributions received on or after January 1, 1989. Must the contributions received prior to January 1, 1989 be removed from the campaign bank account before expenditures can be made from it?

4. Assume that a candidate received contributions from committees between January 1, 1989 and February 7, 1989 and these contributions were made from funds which include contributions received by the committees prior to January 1, 1989:

a. Can the candidate spend these contributions after February 7, 1989?

b. Does it make any difference whether the contributions are made to the candidate's "officeholder" committee, "debt" committee or "election" committee?

5. Are contributions made to candidates or committees between July 1, 1988 and December 31, 1988 credited toward the contribution limits applicable to the fiscal year ending June 30, 1989?

CONCLUSIONS

1. Assuming compliance with Commission regulations in effect until February 8, 1989, candidates and committees were legally permitted, during the period from January 1, 1989 through February 7, 1989, to spend contributions received prior to June 8, 1988. However, absent a court ruling to the contrary, candidates and committees, from February 8, 1989 and thereafter, cannot spend contributions that they received prior to June 8, 1988 to support or oppose a candidate for office.

2. Assuming compliance with Commission regulations in effect until February 8, 1989, candidates and committees were legally permitted, during the period from January 1, 1989 through February 7, 1989, to spend contributions received between June 8, 1988 and December 31, 1988. However, absent a court ruling or new Commission regulation to the contrary, the Commission advises candidates and committees not to spend, from February 8, 1989 and thereafter, contributions received between June 8, 1988 and December 31, 1988 to support or oppose a candidate for office.

3. Based upon the answers to Questions 1 and 2 above, candidates and committees cannot spend, from February 8, 1989 and thereafter, contributions they received prior to January 1, 1989

to support or oppose a candidate for elective office. Candidates and committees who, in reliance upon Commission regulations, commingled contributions received both before and after January 1, 1989 into one campaign bank account, are not required to remove the pre-January 1, 1989 contributions from the campaign bank account. However, pending the outcome of the Commission's appeal in the California Common Cause case, supra, or adoption of new Commission regulations stating otherwise, the Commission advises candidates and committees to maintain the pre-January 1, 1989 contributions in their current campaign bank accounts if they desire to eventually use them to support or oppose a candidate for office. In the meantime, candidates and committees may deposit the pre-January 1, 1989 contributions in a savings account, money market account, certificate of deposit or similar account.

4. Assuming compliance with Commission regulations in effect until February 8, 1989, contributions made by committees to candidates between January 1, 1989 and February 7, 1989 which derived from contributions received by the committees prior to January 1, 1989 may be spent by candidates after February 7, 1989. Subject to restrictions set forth in the Political Reform Act and existing Commission regulations, this applies regardless of when a candidate spent or desires to spend the contributions, or whether the contributions were or will be spent in connection with the candidate's officeholder expenses, past campaign debts or upcoming election campaign.

5. Absent a court ruling or new Commission regulation to the contrary, contributions made to candidates or committees between July 1, 1988 and December 31, 1988 should be credited toward the contribution limits applicable to the fiscal year ending June 30, 1989. On April 4, 1989, the Commission is tentatively scheduled to consider adoption of an emergency regulation which would change this advice.

FACTS

On June 7, 1988, California voters approved Proposition 73, which amended the Political Reform Act. Proposition 73 contained campaign contribution limitations that were applicable to both candidates for political office and committees that make contributions to candidates.

Proposition 73 also contained Section 85306, which states:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

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On September 26, 1988, the Commission adopted emergency Regulations 18536 and 18536.1. Section 18536(b)(2) excluded from the coverage of Section 85306 any contributions received by a candidate or committee on or before December 31, 1988 that were brought into compliance with Proposition 73's contribution limitations^{2/} and that were placed in a separate bank account pursuant to Regulation 18536.1.

Regulation 18536.1 detailed how contributions could be reviewed and brought into compliance with Proposition 73's contribution limits and set forth the requirements for depositing the contributions into a separate bank account. This regulation also stated that, if contributions received prior to December 31, 1988 were in fact "carried over" for use to support or oppose a candidacy after that date, they would be credited toward the contribution limits applicable to the fiscal year ending June 30, 1989.

Regulations 18536 and 18536.1 were made permanent on January 19, 1989.

On February 8, 1989, in the case of California Common Cause v. California Fair Political Practices Commission (Los Angeles County Superior Court, Case No. C709383) subdivision (b)(2) of Regulation 18536 and all of Regulation 18536.1 were invalidated by the court. A written order has not yet been issued in this case. However, the court ruled orally that, beginning on January 1, 1989, Section 85306 prohibited the use of contributions possessed on or before the effective date of Proposition 73 (June 8, 1988) to support or oppose a candidate for office. The court also stated, in essence, that the Commission has the discretion to determine whether a similar prohibition applies to contributions received between June 8, 1988 and December 31, 1988. Finally, the court indicated that its ruling was "effective immediately."

At its public meeting on March 7, 1989, the Commission announced that it would appeal the order rendered in the California Common Cause case. Also, Commission staff was directed to advise that, absent further court order or Commission regulation to the contrary, contributions made between June 8, 1988 and December 31, 1988 could not be used to support or oppose candidates for office and would be credited toward the contribution limits applicable to the fiscal year ending June 30, 1989.^{3/}

^{2/} See Sections 85301 through 85303.

^{3/} A proposed emergency regulation which, for the purposes of the contribution limitations of Sections 85301 through 85303, defines the 1988-89 fiscal year as January 1, 1989 through June 30, 1989 is tentatively scheduled for consideration by the Commission at the meeting to be held on April 4, 1989.

ANALYSIS

As described above, the court in the California Common Cause case stated that its ruling was effective on February 8, 1989. On this basis, the following activities were permissible and need not be rescinded if they took place on or before February 7, 1989 and were consistent with the Political Reform Act and Commission regulations, including Regulations 18536(b)(2) and 18536.1:

(1) A committee making contributions to candidates from contributions the committee received prior to January 1, 1989.

(2) A candidate spending contributions he or she received prior to January 1, 1989.

However, beginning on February 8, 1989, the court specifically prohibited the use of any unspent contributions received by candidates or committees before June 8, 1988 to support or oppose candidates for office. As stated above, this prohibition will remain in effect until changed by court order or appropriate Commission regulation.

As for contributions received between June 8, 1988 and December 31, 1988 that were not contributed or spent before February 8, 1989, the court has apparently left it within the Commission's discretion to determine whether and to what extent they can be used to support or oppose candidates.

Regardless of the exceptions to Section 85306 created by Regulations 18536 and 18536.1, the Commission has consistently interpreted that section to be operative on January 1, 1989. Article II, Section 10(a) of the California Constitution states that an initiative statute such as Proposition 73 is deemed effective the day after the election "unless the measure provides otherwise." On this basis, Section 85306 could be interpreted as being effective on June 8, 1988, which was the day after Proposition 73 was passed. However, Section 85104 states that the chapter in which Section 85306 is contained (Chapter 5 of Title 9 of the Government Code) became "operative" on January 1, 1989. Though not clearly stated, Section 85104 appears to create the required exception to Article II, Section 10(a). Accordingly, absent further court order or Commission regulation on the subject, the Commission advises that contributions received between June 8, 1988 and December 31, 1988 cannot be used to support or oppose a candidate for office on or after February 8, 1989.

Assuming compliance with the Political Reform Act and Commission regulations, the California Common Cause court ruling would not prohibit a candidate, prior to February 8, 1989, from receiving contributions from a committee even if they derived from contributions received by the committee prior to January 1, 1989. The candidate may also retain and spend those funds after February 7, 1989 since, according to Commission regulations in effect at the time the candidate received the contributions, the

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contributions were legally received after December 31, 1989. This conclusion is based on Section 85306, which does not prohibit the candidate from spending contributions unless he or she possessed those contributions prior to January 1, 1989.

You have also asked, in light of the ruling in this case, whether committees and candidates must remove pre-1989 contributions from campaign bank accounts in which they have been commingled with post-1989 contributions. It is clear that committees and candidates cannot spend pre-1989 contributions to support or oppose candidates at this time. However, if the Commission is ultimately successful in the California Common Cause case and candidates and committees desire to use these contributions to support or oppose candidates, we advise that the pre-1989 contributions remain in these campaign bank accounts. This would maintain consistency with Regulations 18536 and 18536.1 and avoid accounting and recordkeeping problems that could occur if the pre-1989 contributions were removed from and later placed back in these campaign bank accounts. In this regard, please refer to Regulation 18524^{4/} (copy enclosed) for guidelines on how campaign funds may be invested.

Finally, you inquire as to whether contributions made during the period from July 1, 1988 to December 31, 1988 will be credited toward the contribution limits applicable to the fiscal year ending June 30, 1989. As noted above (see footnote 3), the Commission will consider an emergency regulation at its April 4, 1989 meeting that states, in effect, that contributions made during the last six months of 1988 will not be credited toward the contribution limits of the fiscal year ending June 30, 1989.

However, pending the Commission's determination of this question, the most cautious course would be to credit these contributions toward the limits for the fiscal year ending June 30, 1989. This advice is consistent with one possible interpretation of Proposition 73.

For example, Section 85301 states that no person shall make and no candidate shall accept a contribution to exceed \$1,000 "in any fiscal year." (Emphasis added.) Section 85102(a) defines "fiscal year" to mean July 1 through June 30. These sections can easily be interpreted to mean that any contribution made during the period from July 1, 1988 through December 31, 1988 would be credited toward the \$1,000 limit that is in effect until June 30, 1989. Though Proposition 73 is not clear on this point, the Commission believes that this approach affords the most protection to candidates, committees and the public interest until this question is resolved by further court order or Commission regulation.

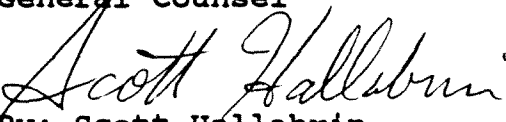
^{4/} Regulation 18524 has been submitted to the Office of Administrative Law for review. It is anticipated that this regulation will be effective in mid-May 1989.

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I hope that this letter has been of assistance. If, however, you have further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

Enclosure



California Fair Political Practices Commission

February 15, 1989

Robert E. Leidigh
Olson, Connelly, Hagel & Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: File No. 89-100

Dear Mr. Leidigh:

Your letter requesting advice under the Political Reform Act was received on February 14, 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

Law Offices of
OLSON, CONNELLY, HAGEL & FONG

FPPC

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February 16, 1989

Scott Hallabrin
Senior Staff Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 "J" Street, Suite 800
Sacramento, California 95814

**RE: SUPPLEMENT TO REQUEST FOR ADVICE DATED
FEBRUARY 14, 1989; YOUR FILE NO. 89-100**

Dear Mr. Hallabrin:

This letter is a follow-up to my previous letter requesting advice dated February 14, 1989. I understand that this letter has been assigned Advice No. 89-100 and was assigned to you.

This letter will confirm my conversation with Kathryn Donovan on February 14, 1989, clarifying that the Commission has not yet determined whether to appeal the court's decision and has not decided to continue to implement the regulations. That does not alter our request for expedited formal written advice.

In addition to the questions posed in my earlier letter, I wish to pose the following question.

7. A PAC made a contribution to a candidate in August 1988, which was not (or now will not) be carried forward (segregated) by the candidate. Does that contribution count against the Proposition 73 limits for contributions to that candidate which are made between January 1, 1989 and June 30 1989? This was clear under the regulations before the court's decision, but we would appreciate your response now that the court has ruled.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG


ROBERT E. LEIDIGH

P.S. Please add to the list of representative PACs the Association of California State Attorneys and Administrative Law Judges PAC.

cc: Clients Listed

LANCE H. OLSON
BRUCE J. HAGEL
LEROY Y. FONG
ROBERT E. LEIDIGH

OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

300 Capitol Mall, Suite 350
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OLSON, CONNELLY, HAGEL & FONG FPPC

February 14, 1989

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Diane M. Griffiths
General Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 "J" Street, Suite 800
Sacramento, California 95814

**RE: REQUEST FOR EXPEDITED FORMAL WRITTEN ADVICE
PURSUANT TO GOVERNMENT CODE SECTION 83114(b)
REGARDING STATUS OF SEGREGATION AND USE OF
EXISTING CAMPAIGN FUNDS UNDER FPPC REGULATIONS 2
CALIFORNIA CODE OF REGULATIONS SECTIONS 18536,
18536.1 AND 18536.2**

Dear Ms. Griffiths:

This office serves as treasurer for and/or as legal counsel to the persons listed in Attachment "A". This request is made in our capacity as representative for each of the persons listed in that attachment and has been authorized by each client listed. In addition, pursuant to 2 California Code of Regulations Section 18321(a)(1) we are making this request on behalf of all other clients who are similarly situated.

This request is not fact specific; it seeks a purely legal conclusion. Hence, we ask that a response be expedited. However, formal written advice from the Commission is necessary in order to provide the immunities afforded by Government Code Section 83114(b).

On February 8, 1989, the Superior Court in Los Angeles County issued its oral decision that the above-referenced Commission regulations are invalid. At the Commission meeting on February 10, 1989, it was indicated that pending a Court of Appeal ruling, the Commission will continue to implement these regulations.

Our clients were not parties to the Los Angeles Superior Court action. They are subject to the Commission's regulation under the Political Reform Act. Consequently, we seek the Commission's formal written advice as to the following questions:

1. Contributions and expenditures have been made after January 1, 1989, and prior to February 8, 1989, with campaign funds collected (in existence) prior to January 1, 1989, in reliance upon these regulations. Must these contributions and expenditures be refunded?

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2. Contributions and expenditures have been made prior to February 8, 1989, with campaign contributions received (in existence) prior to June 8, 1988, in reliance upon these regulations. Must these contributions and expenditures be refunded?

3. Prior to February 8, 1989, contributions have been segregated in accordance with these regulations and deposited into appropriate accounts by both PACs and candidates. May these funds now be expended? Is the answer different for contributions received prior to June 8, 1988, as contrasted to contributions received between June 8, 1988, and January 1, 1989?

4. If the answer to question 3 is in the negative, please respond to the following question. If the segregated funds have been commingled with contributions received after January 1, 1989, must the segregated funds be transferred to another account (re-segregated) prior to any expenditures being made from the campaign bank account of that committee?

5. Candidates have received contributions after January 1, 1989, and after having filed Form 501 and Form 502. Those contributions were received prior to February 8, 1989. Those contributions may include funds which have been segregated by PACs in accordance with these regulations. Consequently such contributions would include funds which were in existence prior to June 8, 1988, or January 1, 1989.

May a candidate retain and expend contributions received after January 1, 1989, without regard to whether those contributions were comprised, in whole or in part, of PAC funds in existence prior to June 8, 1988, or January 1, 1989. Assume that any such funds were segregated in accordance with these regulations?

6. In your response to question 5, does it make any difference whether the contributions were received by a candidate for an "officeholder" committee, a "debt" committee, or an "election" committee?

Your prompt response to these questions is requested, due to the immediate problems faced by our clients and thousands of other candidates and committees statewide.

Very truly yours,
OLSON, CONNELLY, HAGEL & FONG



ROBERT E. LEIDIGH

cc: Clients Listed in Attachment "A"

ATTACHMENT "A"

List of Representative Candidates

Bruce Bronzan

Steve Clute

Lloyd Connelly

William Craven

Richard Floyd

Phillip Isenberg

Jack O'Connell

Others Similarly Situated (Time and logistics prevented obtaining specific authorization from other clients prior to sending this letter. However, their situations are covered by these questions.)

List of Representative PACs

State Council Service Employees International Union PAC

California School Employees Association PACE

United Food and Commercial Workers PAC

Others Similarly Situated (Time and logistics prevented obtaining specific authorization from other clients prior to sending this letter. However, their situations are covered by these questions.)

Treasurers

Lance H. Olson

Suzette Skill Olson