



# California Fair Political Practices Commission

July 18, 1989

Quentin L. Kopp  
Member of the Senate  
State Capitol  
Sacramento, CA 95814

Re: Your Request for Informal Assistance  
Our File No. I-89-388

Dear Senator Kopp:

This is in response to your letter dated May 17, 1989.

You attach a newspaper article to your letter which concerns the fundraising activities of State Controller, Gray Davis. The article states that Mr. Davis, who has expressed his intention to run for both Governor and Controller, is soliciting the payment of campaign contributions by checks that do not designate which of the two campaigns they support.

You ask the Commission whether this type of fundraising activity is permitted under Proposition 73.

The Commission's policy is to decline from giving advice on past conduct. (See Commission Regulation 18329(b)(8)(A)<sup>1</sup>, copy enclosed.) This is because such conduct may currently or in the future be the subject of Commission investigation.

The Commission also declines from giving advice where the requestor is not authorized to seek advice on behalf of the person whose conduct is in question. (See Commission Regulation 18329(b)(8)(B).) The Commission gives advice so that persons can ascertain their duties under the Political Reform Act. Thus, we do not give advice when it is not for the purpose of specifically assisting that person.

On these grounds, the Commission cannot specifically comment on the activities of Mr. Davis about which you inquire.

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<sup>1</sup> Commission regulations are located in Title 2, Division 6 of the California Code of Regulations.

We can, however, summarize the Proposition 73 provisions and Commission regulations that relate to the solicitation and receipt of campaign contributions.

Government Code Section 85200<sup>2</sup> requires each candidate for elective office to file a statement of intention to be a candidate for that office prior to the solicitation or receipt of any contribution. Section 85201 requires that the candidate establish one bank account per office sought for the receipt and expenditure of contributions.

Commission Regulation 18523.1 (copy enclosed) requires all written solicitations of campaign contributions to identify the controlled committee and office for which the contribution is sought and to instruct contributors to designate that their contributions are for that particular committee. The Commission, however, has not adopted a similar regulation for oral solicitations of contributions.

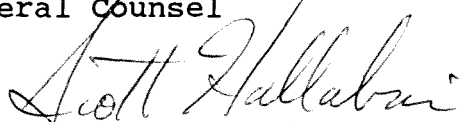
The Commission has recognized that candidates may receive some contributions that do not designate for which of their controlled committees the contribution is given. Regulation 18523 (copy enclosed) permits candidates to allocate these contributions to any one of their controlled committee accounts required under Section 85201.

Section 85202 states that contributions deposited in a candidate's controlled committee bank account are held in trust and can only be spent in connection with the office to which the account relates. As you are aware, to the extent that this provision prohibits transfers of contributions between a candidate's own controlled committees, its enforcement has been temporarily enjoined in the Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission case.

We hope that this reply has been of assistance. However, if you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Scott Hallabrin  
Counsel, Legal Division

KED:SH:aa  
Enclosures

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<sup>2</sup> All references are to the Government Code unless specified otherwise.

SACRAMENTO ADDRESS

STATE CAPITOL  
95814  
(916) 445-0503  
ATSS 8-485-0503

DISTRICT OFFICES

363 EL CAMINO REAL, #205  
SO. SAN FRANCISCO, CA 94080  
(415) 952-5666  
ATSS 8-597-3706

350 McALLISTER

STATE BUILDING, ROOM 2024  
SAN FRANCISCO, CA 94102  
(415) 557-9871  
ATSS 8-597-9871

# California State Senate



STATE SENATOR  
**QUENTIN L. KOPP**

EIGHTH SENATORIAL DISTRICT

REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

COMMITTEES

TRANSPORTATION, CHAIRMAN  
HOUSING & URBAN AFFAIRS  
LOCAL GOVERNMENT  
REVENUE & TAXATION  
TOXICS & PUBLIC SAFETY  
MANAGEMENT

May 17, 1989

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KOPP

Hon. John Larson, Chairman  
Fair Political Practices Commission  
428 J Street  
Sacramento, CA 95804

Dear Mr. Larson:

I enclose a copy of an article from the May 2, 1989 edition of the San Diego Union.

I would like to ascertain the Commission's opinion as to whether the practice described in the article of soliciting campaign funds with checks that do not designate the payee committee is legal under Proposition 73 and the implementation thereof in regulations of the Fair Political Practices Commission. I would also like specific citations to such regulations.

Thank you for your time and attention. I look forward to hearing from you.

Sincerely yours,

*Quentin L. Kopp*  
QUENTIN L. KOPP

QLK:jr

enc.

# Gray Davis files for re-election, may skip governor's race

By Gerry Braun  
Staff Writer

After struggling most of the year to mount a credible campaign for governor, state Controller Gray Davis has taken a first step toward quitting the race by filing papers to seek re-election next year.

A spokesman yesterday said that Davis "has not made up his mind to close down the governor's campaign" and "wants to keep both options open."

The April 28 filing, made public yesterday, also allows Davis to raise money for the two races simultaneously, as he apparently plans to do at a fund-raising dinner later this month.

Yet the political reality is that by creating a fallback position for next year, Davis is all but conceding what was established in polls and private conversations long before — that his gubernatorial bid is foundering. That perception is likely to grow now, inhibiting his fund raising as the gubernatorial candidates head toward a June 30 contribution reporting deadline.

Recent surveys show Davis to be a distant third choice among Democratic voters, consistently trailing former San Francisco Mayor Dianne Feinstein and Attorney General John Van de Kamp, while faring poorest of the three in match-ups against U.S. Sen. Pete Wilson, the likely Republican nominee.

Davis was the choice of 12 percent of Democrats in a California Poll conducted last month, in which Feis-

Under Proposition 73, the campaign reform law that voters adopted last year, Davis cannot solicit

funds for one race and spend them in another. Once a check is deposited in Davis' gubernatorial campaign account, for example, it can only be spent for that race or returned to the contributor.

Kuwata said that Davis' short-term solution is to solicit checks that are not specifically made out to either campaign.

"A lot of people will write checks to Friends of Gray Davis," Kuwata said, referring to Davis' old campaign committee. He said the invitations for Davis' fund-raising dinner "don't state a particular office" and that the generic checks are being solicited "by word of mouth."

"He is steering them toward a legally established committee and he is telling them exactly what he is doing," Kuwata said.

In the event that Davis makes up his mind before June 30, he will deposit these checks in the appropriate committee — otherwise he will probably split the money between the two accounts, Kuwata said.

"This is not a campaign that is being run in a traditional way," Kuwata said. "It's a different sort of campaign in that the candidate has not yet made up his mind as to what he wants to do."

Under state law, if Davis receives a check not designated for a con-



Gray Davis

May raise money for two races simultaneously

Law Offices of

OLSON, CONNELLY, HAGEL & FONG F.P.P.C.

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June 30, 1989

Kathryn E. Donovan  
General Counsel  
FAIR POLITICAL PRACTICES COMMISSION  
428 "J" Street, Suite 800  
Sacramento, California 95814

HAND DELIVERED

RE: REQUEST FOR FORMAL WRITTEN ADVICE

Dear Ms. Donovan:

I write seeking formal written advice on behalf of Lance Olson and Suzette Olson. Both Mr. Olson and Ms. Olson serve as treasurer for various California recipient committees. This advice request is based upon an intended course of conduct; however, that course of conduct may be altered dependent upon the Commission's advice.

BACKGROUND

Both Mr. Olson and Ms. Olson are aware of the Commission's action in recently adopting Regulation 18531.5. As treasurers, they are also well aware of the Commission's long-standing regulation regarding duties of the treasurer. (Regulation 18427.) Specifically, they are aware of the Comment to that regulation, which provides guidance with respect to the duties of the treasurer to inquire behind and beyond the information presented on the surface of a document such as a contribution check.

Regulation 18531.5(a) and (b) provides for cumulation of contributions from various types of entities. The duty to cumulate falls both on the contributors and on the recipients because the contribution limitations apply to both giver and receiver.

Furthermore, newly amended Regulation 18428 places a burden of disclosure on only certain types of "affiliated entities." Many other contributors which may be considered "affiliated" under Regulation 18531.5

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

OF COUNSEL  
LLOYD G. CONNELLY, Member  
California State Legislature

Kathryn Donovan  
June 30, 1989  
Page three

2.) Does the Comment to Regulation 18427 apply to the duty of a recipient treasurer as relates to ascertaining whether two contributions received from two separate entities must be cumulated for purposes of the contribution limits when no disclosure under Regulation 18428(d) has occurred?

Very truly your,

OLSON, CONNELLY, HAGEL & FONG



ROBERT E. LEIDIGH

Kathryn Donovan  
June 30, 1989  
Page two

are not covered by 18428. For example, Regulation 18428(a) limits the regulation's application:

only to committees which do not receive campaign contributions [major donor committees] and committees which receive no campaign contributions which must be itemized under Government Code Section 84211(f) if such committees are made up of a principal entity and one or more affiliated entities. . . .

Thus, in many instances, there is no legal obligation for affiliated contributors to inform recipients of the fact that they are affiliated. For instance, a recipient committee (PAC) which is "directed and controlled" by the same person as a second recipient committee is not covered by the requirements of Regulation 18428, including subdivision (d)'s requirement that the affiliated entity advise the recipient of its affiliated status.

Likewise, an individual who owns (and therefore controls) a business entity would not fall within the requirements of Regulation 18428 unless and until the individual and the business entity have contributed \$10,000 in a calendar year, which would make them a major donor committee. If, together, they contributed only \$8,000 during a calendar year, the regulation does not apply.

Mr. Olson and Ms. Olson intend to receive contributions in their respective roles as treasurers to recipient committees. They intend to continue to perform the duties required of them under Regulation 18427. However, when checks are received from two separate entities which appear, on their face, to be regular and properly identified, they do not intend to send out inquiries to the contributors asking whether they may in some way be "affiliated" with any of the other hundreds of contributors to that particular recipient committee.

#### QUESTIONS

1.) What factors should a recipient treasurer look for in determining whether to aggregate contributions from two separate entities?

Law Offices of  
**OLSON, CONNELLY, HAGEL & FONG**

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June 30, 1989

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

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OF COUNSEL  
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Very truly your,

OLSON, CONNELLY, HAGEL & FONG

  
ROBERT E. LEIDIGH



# California Fair Political Practices Commission

July 6, 1989

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

Re: Letter No. 89-389

Dear Mr. Leidigh:

We received your letter requesting confirmation of advice under the Political Reform Act on June 30, 1989. Your letter has been assigned to our Technical Assistance and Analysis Division for response. If you have any questions, you may contact that division directly at (916) 322-5662.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh:confadv1