



California Fair Political Practices Commission

March 6, 1990

David R. Frank
County Counsel
County of Shasta
1640 West Street
Redding, CA 96001

Re: Our File No. I-90-100

Dear Mr. Frank:

This is in reply to your letter concerning the question of whether recall elections are elections to office for purposes of the Political Reform Act (the "Act").¹

In your letter you refer to our Roberti Advice Letter, No. A-89-358 (copy enclosed). That letter concludes that recall elections are not elections to office. Therefore, once a recall effort becomes official, contributions received by an officeholder for the purpose of defending against it are not subject to the contribution limits of the Act.

To support this conclusion, we cited, among other things, Section 85300 and Article 2, Section 18 of the California Constitution. Section 85300 prohibits the expenditure of public moneys "for the purpose of seeking elective office." Article 2, Section 18 requires that state officeholders who successfully defend against a recall be reimbursed by the State for expenses they incur in doing so. In our Roberti letter we stated that classifying a recall election as an election to office would, due to Article 2, Section 18, render Section 85300 unconstitutional, at least as applied to statewide recall elections. You indicate in your letter that you believe this may not be the case, because Section 85300 applies to moneys spent for "seeking elective office," whereas an officeholder is not "seeking elective office" in a recall election.

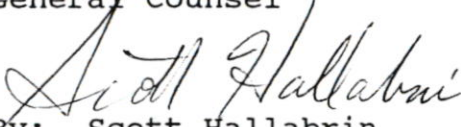
¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

We agree with your conclusion that recall elections are not elections for the purpose of seeking elective office. This seems the only logical way to classify recall elections in light of Section 85300 and Article 2, Section 18. This is the position we took in the Roberti letter in concluding that the attempted recall of an officeholder was not an election to office subject to the contribution limitations of the Act. To conclude otherwise would bring the Government Code and constitutional provisions into direct conflict.

I hope that this adequately responds to your letter. However, should you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

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Enclosure