



California Fair Political Practices Commission

March 13, 1991

Carl P.A. Nelson, Esq.
BOLD & POLISHER
500 Ygnacio Valley Road, Suite 325
Walnut Creek, CA 94596-3840

Re: Your Request for Informal Assistance
Our File No. G-91-103

Dear Mr. Nelson:

You are seeking advice on the status of, and decision in, Service Employees International Union, et al. v. FPPC, et al. ((E.D. Calif., 1990) 747 F.Supp. 580.) We first provide you with the following background information.

The district court's decision, issued on September 25, 1990, invalidated the contribution limits of the Political Reform Act¹ that were premised on a fiscal year basis. These candidate contribution limitations, found in Sections 85301 and 85303(a) and (b), were added to the Political Reform Act when the voters passed Proposition 73 in the 1988 June election.² The court also invalidated the prohibition on a candidate's transfer of funds between and among his or her own committees, and invalidated the prohibition on a candidate's transfer of funds to another candidate. (Section 85304.) The court viewed the prohibition on transfers between candidates as a means by which circumvention of the contribution limits could be prevented, so because the limits themselves were found invalid, the transfer prohibition was similarly ruled invalid as well.

On September 28, 1990, the court issued a partial stay of its previous order, reinstating the provisions of Proposition 73 as they applied to candidates for legislative office only. The duration of this partial stay was conditional, to dissolve upon a final ruling in Taxpayers to Limit Campaign Spending v. FPPC (Case No. B039177, California Court of Appeal, Second Appellate District, Div. 3; Case No. S012016, California Supreme Court).

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code.

² The court's order invalidated all fiscal year contribution limits. Therefore, Section 85302 was also invalidated.

The Taxpayers case addressed the issue of which, if any, provisions of Proposition 68 were to be given effect. Proposition 68 was a campaign finance reform initiative also passed by the voters in June, 1988 but with fewer votes than Proposition 73.

On November 1, 1990, the California Supreme Court concluded in Taxpayers that because both propositions were competing, conflicting initiative measures which addressed and sought to comprehensively regulate the same subject, the proposition receiving the most affirmative votes - Proposition 73 - prevailed in its entirety and the proposition receiving fewer affirmative votes - Proposition 68 - was not given any effect. A petition for rehearing was denied by the court and a remittitur issued on January 18, 1991. A final decision in the case was thus reached and on that date the district court's partial stay dissolved automatically.

With this as background, we turn to your questions.

First, there has been no order entered which "goes beyond the initial ruling" of September 25, 1990. We note that the court's order invalidate all contribution limitations premised on a fiscal year basis. These would include the candidate contribution limitations of Sections 85301, 85303(a), and 85303(b), as well as Section 85302's fiscal year limit on contributions to committees and political parties for the purpose of making contributions to candidates. Section 82015 was not part of the court's order. The only orders of any kind in the SEIU case following the September 28, 1990 partial stay were those from the U.S. Court of Appeals, 9th Circuit, and the U.S. Supreme Court, both courts denying the defendants' request for a stay pending appeal in October, 1990.

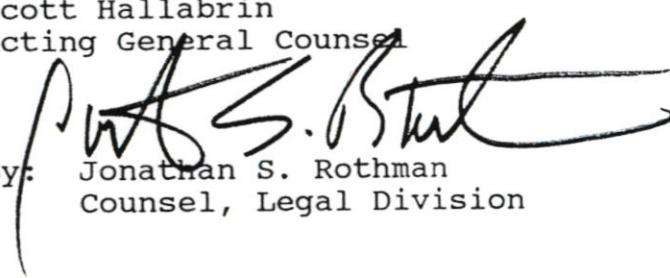
Second, there have been no "subsequent rulings" by the district court other than one for attorneys' fees sought by Plaintiffs-in-Intervention California Democratic Party. Your reference may instead be to actions of the California Supreme Court on November 1, 1990 and January 18, 1991, discussed above.

Third, it is inaccurate to regard the decision in SEIU as one which "validates" portions of Proposition 73. It is more accurate instead to refer to the decision as one which invalidates certain sections of the Political Reform Act, discussed above, and the FPFC and Defendants-in-Intervention have appealed the district court's rulings to the U.S. Court of the Appeals, 9th Circuit. (Case Nos. 89-15771, 90-16200, and 90-16372.) All briefs were on file with the court as of January 23, 1991. No party has appealed "the validation of portions of Proposition 73" because the district court only invalidated certain provisions.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Jonathan S. Rothman
Counsel, Legal Division

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