



California Fair Political Practices Commission

March 11, 1993

Philip R. Recht
Manatt, Phelps & Phillips
11355 West Olympic Blvd.
Los Angeles, CA 90064-1614

Re: Your Request for Advice
Our File No. I-93-093

Dear Mr. Recht:

This is in response to your request for advice regarding Government Code Section 85304 of the Political Reform Act (the "Act").^{1/} Since you are seeking advice on behalf of an unidentified public official and not inquiring about a specific decision before you, your letter is considered a request for informal assistance.^{2/}

QUESTION

Is Government Code Section 85304, the "transfer ban" on contributions to candidates, still in effect now that the contribution limitations on candidates for the Los Angeles Mayor's election have been suspended?

CONCLUSION

Since the contribution limitations have not been eliminated, but have been raised to a higher threshold, the transfer ban is still in effect.

FACTS

The City of Los Angeles has a local campaign law which establishes contribution limitations during city elections. The campaign law is administered by the City Ethics Commission.

1/ Government Code Sections 81000-91015.

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).)

Charter Section 312, at subsection C, provides, among other things, that:

* * *

(6) No person shall contribute a total of more than \$1,000 to any candidate for Mayor, City Attorney or Controller and to his or her controlled committee for a single election. A candidate for Mayor, City Attorney or Controller, and his or her controlled committee, shall not accept any contributions [sic] or contributions totaling more than \$1,000 from any person for a single election. Nothing in this section is intended to limit the amount a candidate can contribute in his or her candidacy for Mayor, City Attorney or Controller from his or her personal funds.

* * *

(8) No person shall make a contribution in connection with a single election for an elective City office which would cause the aggregate amount of such contributions by that person to exceed a sum equal to \$500 multiplied by the number of City Council offices appearing on the ballot at that election plus \$1,000 multiplied by the number of city-wide offices appearing on the ballot at that election, but in no case less than \$1,000, in connection with all candidates in that election seeking election to all elective City offices; provided, however, that a candidate shall not be limited by this Subdivision 8 in the amount he or she may contribute or expend in connection with his or her own campaign, subject to the provisions of Subdivision 12 of this Subsection C.

* * *

(9)(c) No candidate for Mayor, together with the controlled committee of such candidate, shall accept more than a total of \$900,000 in contributions from persons, other than individuals, in connection with any election.

(10) No person other than a candidate shall make, and no person or candidate shall solicit or accept any loan of more than \$500 for use in connection with an election for City Council, or of more than \$1,000 for use in connection with an election for Mayor, City Attorney or Controller. Further, no person other than a candidate shall make, and no person or candidate shall solicit or accept any loan for use in connection with an election for City office for a period of more than

thirty (30) days. Loans to a candidate or to a candidate's controlled committees shall be counted against the contribution limitations applicable to the candidate. A candidate is not prohibited from obtaining a personal loan of any amount from a licensed financial lending institution in the regular course of business, unless the loan is made for political purposes.

* * *

(12) No candidate shall expend or contribute more than \$30,000 in personal funds in connection with his or her campaign for elective City office unless and until the following conditions are met.

(1) Notice of the candidate's intent to so expend or contribute shall be provided by registered mail to all opponents and to the City Ethics Commission at least 30 days in advance of the election, specifying the amount intended to be expended or contributed;

* * *

Each opponent of any candidate who has complied with the above conditions shall be permitted to solicit and receive, and contributors to each such opponent may make, contributions in excess of the limitations established in Subdivision 5 and 6 of Subsection C until such opponent has raised contributions in amounts above such limit equal to the amount of personal funds deposited by the candidate in his or her campaign contribution checking account.

Charter Section 312, at Section B.1, incorporates the Act's definition of person. "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Section 82047.) The City Ethics Commission's Analysis of its Charter Provisions defines an "individual" to be a human-being.

ANALYSIS

Government Code Section 85304 was added to the Political Reform Act by Proposition 73, a campaign finance initiative on the June 1988 statewide primary ballot. That section provides that no candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfers of funds between candidates or their controlled committees are prohibited.

However, this section was found to be unconstitutional to the extent it prohibits transfers of campaign funds between a candidate's own committees. (Services Employees International Union, et al. v. Fair Political Practices Commission (1992) 955 F.2d 1312.) The same case held that this section is also unconstitutional to the extent it prohibits a candidate from transferring funds to another candidate where there is no valid system of campaign contribution limits in effect.

Section 312 of the Los Angeles City Charter applies a system of campaign contribution limits. The candidate-to-candidate transfer ban of Government Code Section 85304, therefore, applies to candidates running for election in the City of Los Angeles.

Section 312 of the Los Angeles City Charter, by its own language, has provided a mechanism to lift the limits in instances where a candidate has contributed large amounts of personal funds into their own campaigns. Subdivision C 12 of the Charter requires candidates who intend to contribute more than \$30,000 in personal funds to their own campaign to notify all opponents in that election, as well as the City Ethics Commission, of their intent to do so. Once this occurs, each opponent shall be permitted to solicit and receive, and contributors may make, contributions in excess of the limitations established in subdivision 5 and 6 of the Charter Section 312.

Such an event has occurred in the election for Mayor in the City of Los Angeles. Mayoral candidate Richard J. Riordan notified the City Ethics Commission that he has deposited \$1,000,000 in personal funds into his campaign checking account.

On February 26, 1993, the City Ethics Commission notified all candidates for mayor that each candidate "shall be permitted to solicit and receive contributions in excess of the \$1,000 per person contribution limit established under Charter Section 312 C 6, up to \$7,000 per person." (Emphasis added.)

They advised:

Effective immediately, therefore, you may solicit and receive contributions of up to \$7,000 per person for the April 20, 1993 primary election. You may continue to raise such funds until they total the \$1,000,000.00 in personal funds deposited by Mr. Riordan into his campaign checking account. Please note, however, that any such contributions raised remain

subject to (1) the \$900,000 limit for contributions received from non-individuals established in Charter section 312 C 9; and (2) the \$1,000 limit on loans established in section 312 C 10.

It is your contention that the remaining contribution limitations apply to the aggregate that "individuals" may contribute. However, the Los Angeles City Ethics Commission in its Yaroslavsky Opinion, No. 92-003, February 4, 1993, stated that candidates were still subject to the contribution limitations of Charter Section 312 C 8, 9 and 10. Those subdivisions limit aggregate contributions from persons, contributions from non-individuals and loan from persons, respectively.

Thus, a system of contribution limitations under the City of Los Angeles Charter remains in effect. Subdivision C 12 of Charter 312 does not provide for a total suspension of contribution limitations. Rather, it raises the threshold on the amount of contributions a candidate may solicit and receive, to the total aggregate amount which a person may contribute.

Accordingly, the candidate-to-candidate transfer ban of Government Code Section 85304 remains in effect.

I trust this answers your question. If we can be of further assistance, please feel free to contact the Commission's Legal Division at (916) 322-5901.

Sincerely,

Jeff Marschner
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

JM/JET/jt