



# California Fair Political Practices Commission

January 20, 1994

Honorable Rex Bloomfield  
Supervisor, County of Placer  
County Administrative Center  
175 Fulweiler Avenue  
Auburn, CA 95603

Re: Your Request for Informal Assistance  
Our File No. I-93-327

Dear Mr. Bloomfield:

You have requested confirmation of telephone advice provided to you on August 24, 1993, concerning your responsibilities under various provisions of the Political Reform Act (the "Act").<sup>1</sup> Your request does not address a pending governmental decision, but rather seeks general guidance. Accordingly, we treat your letter as a request for informal assistance under the provisions of Regulation 18329.<sup>2</sup>

You provided this office with the following factual information during our telephone conversation in August and again in your letter. You are a member of the Placer County Board of Supervisors (District 5) and, in that capacity, you are interested in supporting three land use initiatives which would allow for public participation in the decisionmaking process, preserve agricultural lands, and require developers to pay for the full cost of the necessary infrastructure improvements and government services. These initiatives were drafted in response to a vote of the board of supervisors to allow for new growth areas in the western part of the county which you had opposed.

You asked if any provisions of the Act would limit your activities to support the above-referenced initiatives, such as:  
(1) making a contribution to the committee formed to support the

<sup>1</sup> 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, Sections 18000 18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

initiatives, (2) endorsing the initiatives, (3) speaking on behalf of the initiatives, and/or (4) collecting signatures for the initiative drive.

In your letter, you raise another question, though similar to the inquiry above. You state that you lost a bitter vote over a major development project in your home community. The Sierra Club will be mounting a legal challenge to the project. Since you opposed the project, you asked if the Act places limits on your behavior. For example, may you make a contribution to the legal challenge and, if so, does the contribution have to be made from your campaign bank account (now your officeholder account) or may you make it from your personal account. Also, you ask if you may speak on behalf of the lawsuit.

#### Conflict of Interest

The Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) The Act specifies that an official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public

official within 12 months prior to the time when the decision is made.

(Section 87103.)

Absent some disqualifying economic interest as set forth in Section 87103, or some direct financial effect on you personally resulting from a county board of supervisors' decision, you may make, participate in making, or use your official position to influence a decision.

As I stated in our telephone conversation, none of the activities<sup>3</sup> in which you would like to engage constitute governmental decisionmaking and thus cannot be the basis for a conflict of interest under the Act.

Please note that the Commission's jurisdiction is limited to the provisions of the Act. Other laws which may pertain to your inquiry, such as the laws governing incompatible activities of local officers, are outside the jurisdiction of the Commission. We suggest that you contact your county counsel for the purpose of obtaining a written opinion with respect to other applicable laws, such as the laws governing incompatible activities.

#### Personal Use

The general rule of the personal use law which regulates the appropriate use of campaign funds (Sections 89510-89522) is that any expenditure of campaign funds must be, at a minimum, reasonably related to a political, legislative, or governmental purpose. (Section 89512.) However, where an expenditure confers a substantial personal benefit on the candidate or officeholder, the expenditure must be directly related to a political, legislative, or governmental purpose. (Section 89512.) A substantial personal benefit is defined as a direct personal benefit to the candidate or officeholder of \$100 or more. (Section 89511(a)(3).)

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<sup>3</sup> One other aspect for you to consider is whether the initiative committee would be considered a controlled committee of yours. Depending upon the degree of a candidate's or elected officer's involvement in a ballot measure committee's activities, he or she may have a significant influence on the committee's actions or decisions. If that is the case, the committee would be deemed a controlled committee of that candidate or elected officer. (Section 82016; Roberti Advice Letter, No. I-90-339, and Pastrick Advice Letter, No. A-87-063.) Thus, depending upon the nature of your activities and the level of your involvement with the initiative committee, the committee may be considered your controlled committee.

Moreover, the personal use law sets forth provisions dealing with specific types of expenditures. For example, Section 89515 provides:

Campaign funds may be used to make donations or loans to bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations, where no substantial part of the proceeds will have a material financial effect on the candidate, elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or member of his or her immediate family, and where the donation or loan bears a reasonable relation to a political, legislative, or governmental purpose.

Thus, as I indicated on the telephone in response to your inquiry, you may use campaign funds to make a contribution to the initiative committee described above since it appears that such a contribution is reasonably related to a political, legislative, or governmental purpose. (Section 89512.)

Furthermore, you may use campaign funds to make a donation to the Sierra Club since it appears such a donation to a nonprofit organization would bear a reasonable relationship to a political, legislative, or governmental purpose. (Section 89515.)

#### Campaign Bank Account Rule

Proposition 73, passed by the voters in the June 1988 state primary election, amended the Act by imposing, in part, new restrictions on candidates, officeholders, and committees. In particular, Proposition 73 requires candidates to file a statement of their intention to receive contributions for the purpose of running for elective office prior to receiving any such contributions (including loans). (Section 85200.) In addition, Section 85201 requires:

(a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial institution located in the state.

(b) Upon the establishment of an account, the name of the financial institution, the specific location, and the account number shall be filed with the commission within 24 hours.

(c) All contributions or loans made to the candidate, to a person on behalf of the candidate,

or to the candidate's controlled committee shall be deposited in the account.

(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

(e) All campaign expenditures shall be made from the account.

(Section 85201; emphasis added.)

As you can see, the language of Section 85201(d) and (e) prohibits candidates and officeholders from making direct payments from personal funds for campaign expenses in connection with their own election. However, candidates and officeholders may make political contributions to other candidates, officeholders, or ballot measure committees, such as the initiative committee, from personal funds. Political contributions made from personal funds are required to be disclosed on your campaign statement.<sup>4</sup>

Furthermore, nothing in the Act prohibits candidates or officeholders from using personal funds to make donations to charitable or nonprofit organizations. The donation to the Sierra Club appears to fall within this category.

#### Summary

To summarize, in addition to the conflict-of-interest provisions of the Act discussed above, other activities of elected officers that are regulated by the Act are, in pertinent part: (1) the legally permissible uses of campaign funds (also noted above); (2) disclosure of assets and income on a Statement of Economic Interests; and (3) campaign reporting obligations and other restrictions imposed on committees, candidates, and public officials (whether elected or appointed) as set forth in Chapter 4 of the Act (Sections 84100-84400). Apart from these considerations, the Act does not restrict the activities of candidates or elected officers and their participation in the political process.

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<sup>4</sup> If you have any questions regarding campaign reporting, you may contact our Technical Assistance & Analysis division at (916) 322-5662.

If you have any further questions regarding this matter,  
please feel free to contact me at (916) 322-5901.<sup>5</sup>

Sincerely,

Steven G. Churchwell  
General Counsel

*Deanne Stone*

By: Deanne Stone  
Senior Commission Counsel

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<sup>5</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.