



# California Fair Political Practices Commission

February 4, 1994

Tim McNamara  
Registrar of Voters  
Campaign Disclosure  
5201 Ruffin Rd., Suite I  
San Diego, CA 92123

Re: Your Request for Informal Assistance  
Our File No. I-94-021

Dear Mr. McNamara:

This is in response to your letter requesting general assistance regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Since your advice request seeks general information, we are treating your request as one for informal assistance.<sup>2</sup>

## QUESTION

What are the rules applicable to candidates who might campaign in the special election to be held on April 12, 1994, for the 79th Assembly District seat and who will also campaign in the June 7, 1994, primary election to the same seat for the subsequent term?

## CONCLUSION

Candidates must establish a separate campaign bank account and committee for each elective office sought, including offices sought in special elections. The Act limits contributions in

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<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).)

special elections and restricts transfers to a candidate's special election account from the candidate's other committees. However, the limits would not apply to other committees established for elections that are not special elections.

Please note, however, that expenditures by a candidate during the special election cycle must be made by the candidate's special election committee, unless it is clear from the surrounding circumstances that the expenditure is unrelated to the special election.

However, as we discussed in our telephone conversation of February 1, 1994, this letter does not consider the impact of a special runoff election, if one is necessary. You stated that if a special runoff election is necessary, it will be held on June 7, 1994. Should the special runoff election be necessary, you should contact the Commission for further advice.

#### FACTS

You have asked specifically about the rules governing persons who might campaign in the special election to be held on April 12, 1994, for the 79th Assembly District seat which became vacant when Assemblymember Steve Peace resigned.

**Special election for the remainder of the term:** A special election for the 79th Assembly District seat will be held on April 12, 1994.

**Election for next term:** You also stated that soon after the April special election, a regular state primary election will be held for the term which begins December 5, 1994. This primary election will be held on June 7, 1994.

#### DISCUSSION

The Act requires that before any contributions can be solicited or received for election to any office, the candidate must file a candidate intention statement (Form 501) with the Commission which identifies the specific office for which the funds are to be used for and the year the election is to be held. (Section 85200.) Second, candidates must establish a campaign bank account for each office sought, and must file a campaign bank account statement (form 502) with the Commission which identifies the campaign bank account. (Section 85201.) Third, once \$1,000 has been raised for election to office, the candidate is required to file a Statement of Organization with the Office of the Secretary of State. (Section 84101.)

Since special election campaigns are subject to different rules than committees for general elections, persons involved in the special election for the 79th Assembly District seat, and the general election (including the primary) for the next term of that

office must submit separate filings and maintain separate accounts for each election.

First, special elections continue to be governed by campaign contribution limits.<sup>3</sup> (Section 85305.) Section 85305(c)(1) provides that a person, including an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company corporation or association, may contribute up to \$1,000 for a special election, and \$1,000 for a special runoff election, if a runoff election is called. **"Broad Based Political Committees"** (a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates) and **Political Parties** may contribute up to \$5,000 for a special election, and \$5,000 for a special runoff election, if a runoff election is called and **"Political Committees"** (a committee of persons which receives contributions from two or more persons and acting in concert makes contributions to candidates) may contribute up to \$2,500 for a special election, and \$2,500 for a special runoff election, if a runoff election is called. (Section 85305(c)(2) and (c)(3).)

These limits would not apply to committees, other than special election committees. However, to ensure compliance with the special election contribution limits, Regulation 18535 restricts transfers to a candidate's special election account from the candidate's other committees.<sup>4</sup> Regulation 18535(b) provides that a candidate may transfer contributions from the candidate's other controlled committees only if the contributions transferred into the candidate's special election committee, when aggregated with all other contributions from, and transfers attributable to, the same contributor do not exceed the amount the contributor could have contributed to the special election committee for the special election.

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<sup>3</sup> The provisions of Proposition 73, added to the Political Reform Act in June of 1988, which established statewide fiscal year contribution limits for election, other than special elections, have been invalidated. (Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission (9th Cir. 1992) 955 F.2d 1312, cert denied \_\_\_ U.S. \_\_\_, 112 S.Ct. 3056.)

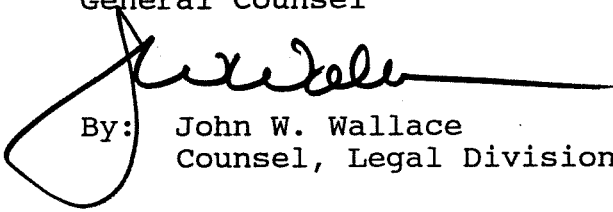
<sup>4</sup> Additionally, transfers of campaign funds to the special election committee from other candidates is prohibited. (Section 85304; Regulation 18535(b)(3).)

Additionally, any expenditure made by a candidate during the special election cycle<sup>5</sup> must be made by the candidate's special election committee, unless it is clear from the surrounding circumstances that the expenditure is unrelated to the special election. (Regulation 18535(e).) Thus, during the special election cycle, the Commission will presume that expenditures are for the special election, absent facts demonstrating that the expenditure was for the regular primary election. Consequently, the expenditures would have to be paid from the special election account with campaign funds raised subject to contribution limits.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>6</sup>

Sincerely,

Steven G. Churchwell  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

cc: Bob Steele  
Political Reform Division  
1230 J Street, Room 219  
Sacramento, CA 95814

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<sup>5</sup> "Special election cycle" means the day on which the office becomes vacant until the day of the special election. "Special runoff election cycle" means the day after the special election until the day of the special runoff election. (Section 85305(b).)

<sup>6</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.