



California Fair Political Practices Commission

June 7, 1994

Richard H. Koppes
General Counsel
Public Employees' Retirement System
Lincoln Plaza, 400 P Street
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-94-182

Dear Mr. Koppes:

This is in reply to your request for advice. You have asked whether candidates for positions on the Public Employees' Retirement System ("PERS") Board subject to the restrictions of Government Code Section 84308 if they are elected.¹

Since your question relates to specific PERS Board positions, the advice herein will provide immunity under Section 83114(b) to any past or future candidate for one of those positions.

QUESTION

Are contributions made to a candidate for election to the PERS Board within the scope of Section 84308?

CONCLUSION

No. Such contributions are not addressed by Section 84308.

FACTS

By statute, the PERS Board of Administration consists of thirteen members. Of these, six are elected from the membership under the Board's supervision. (Section 20100(g).) Of the remaining seven Board members, two, the State Treasurer and the State Controller, hold office by virtue of holding statewide elected office. (Section 20100(c) and (d).) The rest of the Board members hold office by virtue of appointment. (Section 20100(a), (b), (e), and (f).) This request for advice pertains

¹ Government Code Section 84308 is located in the Political Reform Act (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.

only to PERS Board members who hold PERS Board seats under Section 20100(g) (election by the PERS membership).

The PERS Board is responsible for developing its own procedures for the election of the six Board members elected from the membership. (California Constitution Art. XVI, Section 17; Section 20102.) Accordingly, the PERS Board has enacted regulations which govern its elections. (See 2 Cal. Code Regs. §§554 et seq.) It currently is amending those regulations.

The six PERS Board members elected from the membership are elected by the following constituencies: two are elected by members of the system (i.e., elected by all active and retired PERS members, commonly referred to as the "members-at-large"); one is elected by active state members; one is elected by active school members; one is elected by active local (except school) members; and one is elected by retired members. (Section 20100(g).) Board members are elected for four year terms. (Section 20101.) If a seat becomes vacant during the term, the PERS Board conducts a special election. (Section 20100.)

PERS Board member terms are staggered. In the first year of the cycle, an election is held for the three seats representing active state, school, and local members. In the second year, an election is held for the retiree representative. There is no election in the third year, and, in the fourth year, an election is held for the two member-at-large positions.

In the last member-at-large election, there were approximately 876,000 potential voters. In the last state, school, and local member elections, there were approximately 207,000, 218,000, and 202,000 potential voters, respectively. PERS projects that in the next retired member election, there will be approximately 250,000 voters. Under current regulations, PERS mails ballots directly to retired members, and forwards ballots for all active members to agency election officers for distribution. (See 2 Cal. Code Regs. §554.5.) Under the new proposed regulations, PERS will mail ballots directly to all potential voters. PERS canvasses the returned ballots and the Secretary of State certifies the results. (See 2 Cal. Code Regs. §554.6.)

The number of candidates for the PERS Board member seats varies. Typically, there are approximately 35 candidates in a member-at-large election, and less for the other elections. There were four candidates (including incumbents) in the last local member election, thirteen candidates in the last state member election, five in the last school member election, and four candidates in the last retired member election.

It takes approximately one year to conduct an election. Typically, the voting portion of the election occurs between October and November, for seats which will be assumed the following January.

PERS is currently in the process of preparing for and conducting an election for the three positions which represent active state, school, and local members. During this process, questions have arisen as to the restrictions which may apply to candidates for PERS Board-seats who accept contributions for campaign purposes.

ANALYSIS

In the Koppes Advice Letter, No. A-94-121, we concluded that the provisions of the Political Reform Act (the "Act") which regulate campaign activities do not apply to PERS Board elections. We also concluded that, generally, contributions to candidates for the PERS Board were contributions under Section 82015, not gifts subject to the Act's reporting provisions and gift limits. Based upon this latter conclusion, you now ask if those same contributions subject the PERS Board candidates to the restrictions set forth in Section 84308 if they are elected to the PERS Board.

Generally, Section 84308 restricts the voting of members of boards and commissions if they have received contributions of more than \$250 from a party or participant in various proceedings before that board or commission. Members of the PERS Board are subject to Section 84308. However, the question you pose is whether contributions to PERS Board members for election to the PERS Board itself are "contributions" within the coverage of Section 84308.

Subdivision (a)(6) of Section 84308 defines "contribution," for purposes of that section, as follows:

"Contribution" includes contributions to candidates and committees in federal, state, or local elections.

Furthermore, Section 82022 defines "election" as "any primary, general, special or recall election held in this state."

Reading these sections together, it appears that Section 84308's restrictions were meant to apply only to those contributions made in primary, general, special or recall elections. PERS Board elections do not fall within any of these categories. Furthermore, as stated above, in the Koppes Advice Letter we concluded that PERS Board elections were not the type of elections regulated by the Act's campaign provisions. On this basis, we conclude that contributions made to a candidate for election to the PERS Board do not subject that candidate, once elected, to the restrictions of Section 84308.

This assumes that these contributions are made solely for the purpose of supporting that candidate in that particular PERS Board election. Contributions made to a PERS Board candidate which otherwise are for the purpose of supporting his or her candidacy

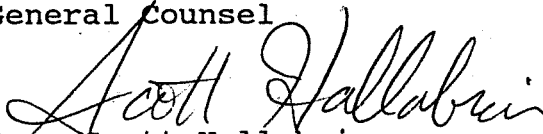
in a primary, general or special election for another office or which are to assist the candidate in a recall election relating to another office, do subject the candidate to Section 84308's restrictions. The same applies to contributions directed or solicited by that candidate for contribution to a candidate or committee in a primary, general, special or recall election for another office.

Finally, we note that the remaining questions in your letter are premised upon such contributions making Section 84308 applicable. Since we do not find the section to be applicable, we do not need to address the additional questions.

Should you have any questions, please contact me at 916/322-5901.

Sincerely,

Steven G. Churchwell
General Counsel


By: Scott Hallabrin
Assistant General Counsel

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