



RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

November 6, 1995

Ms. LaVonne M. Harkless
Assistant City Clerk
Office of the City Clerk
1400 Highland Avenue
Manhattan Beach, CA 90266-4795

Re: Review of Ordinance
Our File No. G-95-327

Dear Ms. Harkless:

Thank you for sending us a copy of the City of Manhattan Beach's campaign contributions limitation ordinance for review. We have the following comments:

1. Contribution Limits. When we spoke recently, you questioned whether any court cases involving Proposition 73 of the June 1988 primary election affected the validity of local contribution limits. The Ninth Circuit Court of Appeals invalidated the statewide contribution limits imposed by Proposition 73. Service Employees International Union, et al. v. Fair Political Practices Commission (1992) 955 F.2d 1312. The court found the limits to be unconstitutional because they were imposed on a "fiscal year" basis which benefited incumbents over challengers. Therefore, the only contribution limits now in effect on the statewide level are for special elections and runoff elections.

However, the Political Reform Act¹ permits cities and counties to enact contribution limits applicable to elections within their jurisdictions. With respect to the validity of local ordinances, Section 85101 of the Act states:

¹ 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 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

(a) Nothing in this chapter shall affect the validity of a campaign contribution limitation in effect on the operative date of this chapter which was enacted by a local governmental agency and imposes lower contribution limitations.

(b) Nothing in this chapter shall prohibit a local governmental agency from imposing lower campaign contribution limitations for candidates for elective office in its jurisdiction.

(Section 85101.)

2. Loans. The ordinance subjects loans (other than those made by financial institutions) to the \$250 per election cycle contribution limits. (Sections 4.120.020(A) and 4.120.030(H).) This prohibits municipal candidates from lending their own campaign more than \$250 per election cycle. The provision limiting the amount of loans a candidate may make to his or her own campaign seems fine, although the constitutionality of such provisions has not been tested.

In Buckley v. Valeo, the U.S. Supreme Court held it was unconstitutional to limit the amount of personal funds a candidate could spend on his or her own campaign. (424 U.S. 1 at 54, 46 L.Ed.2d 659, 96 S.Ct. 612 at 651.) However, at least one state, Kentucky, has a similar provision limiting the amount candidates may loan their own campaigns. (Kentucky Revised Statutes §121.150(13).)

3. Anonymous Contributions. Section 4.120.030(B) of the ordinance requires candidates and committees to maintain a list of the contribution amounts, names, and addresses of anonymous contributors and to make this list available to the city clerk upon request. This section also requires the candidate or committee to aggregate anonymous contributions to ensure that no one individual has given \$100 or more. Subsection (C) places an overall cap of \$1,000 on the anonymous contributions a candidate or committee may use.

The provisions requiring recordkeeping and aggregation for anonymous contributions seem impractical. If the contributions are anonymous, campaigns will not know the identity of such contributors or their aggregate contribution amounts. Under the Act, candidates or committees may receive anonymous contributions under \$100. (Section 84304.) This a practical concession which recognizes that tracing small anonymous contributions (such as those a campaign receives from "passing the hat" at a fundraiser) is not possible. If you prefer stronger regulation of anonymous contributions than that contained in state law, the ordinance could simply prohibit the acceptance of anonymous contributions, or reduce the maximum allowable anonymous contribution.

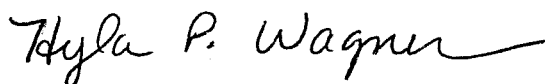
4. Bank Accounts. Section 4.120.030(D) of the ordinance specifies that municipal candidates must have one checking account from which all campaign expenditures must be made. It also states that candidates may establish savings accounts. The ordinance is consistent with Section 85201 of the Act which requires candidates to establish one campaign bank account. All contributions or loans made to the candidate must be deposited in the account, and all campaign expenditures must be made from the account. Under Commission regulation 18524(b), a candidate may transfer funds from the campaign bank account to savings accounts or other interest-bearing accounts. Contributions transferred from a campaign bank account to a savings account must be redeposited in the campaign bank account before being spent.

5. Drafting Note. You may want to make the following change in Section 4.120.030(A) -- contributions by person. That section states: "No person, other than a candidate, shall make, solicit, or accept any contribution which shall cause the total amount contributed by such person with respect to an election to a candidate or controlled committee to exceeding \$250."

If you have any questions regarding these comments, please feel free to contact me at (916) 322-5660. Because the Fair Political Practices Commission is required to maintain up-to-date copies of all local campaign finance ordinances, we would appreciate it if you would forward us a copy of the ordinance once it is adopted.

Sincerely

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Counsel, Legal Division