

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

January 6, 1997

The Honorable Ross Johnson
Senator, Thirty-Fifth Senatorial District
State Capitol
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-96-316a

Dear Senator Johnson:

This letter is in response to your request for advice regarding the campaign provisions of Proposition 208.¹ This letter is a significant modification of the advice provided in the *Johnson* Advice Letter (A-96-316) to you dated December 10, 1996. That letter was wholly vacated by the Commission at their December 20, 1996, special meeting. The following advice is based on emergency regulations adopted by the Commission at their December 30, 1996, meeting. This letter will also answer questions asked in a follow-up advice letter from you to the Commission dated December 18, 1996. Many of the questions have been superseded by the Commission's decisions at the December 30, 1996, Commission meeting. As a result, we have answered only those questions that were not resolved by the Commission's rescission of the first *Johnson* letter.

QUESTIONS AND CONCLUSIONS

1. *In light of SEIU v. FPPC (E.D. Cal. 1990) 747 F.Supp. 580, 591, aff'd SEIU v. FPPC (9th Cir. 1992) 955 F.2d 1312, the following questions are raised with respect to Proposition 208:*

- a) *Does the Commission interpret the new Section 85306 to restrict only contributions from one candidate to another, and not transfers between a candidate's own committees?*
- b) *Does the Commission interpret new Sections 85313 and 89519 to limit the transfer of funds raised prior to January 1, 1997, into an officeholder account, to a maximum of \$10,000?*

¹ All statutory references are to the Government Code. Proposition 208 substantially amends the Political Reform Act of 1974, contained in sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

a) Yes. However, certain restrictions apply to transfers between a candidate's own committees as explained in the first *Johnson* letter. For your convenience, I will repeat the explanation provided in the first *Johnson* letter regarding transfers. This explanation does not apply to the "carry over" of funds raised prior to January 1, 1997, which is a separate item addressed by Commission Regulation 18530.1 and discussed in response to Question 2 below.

While Section 85306 clearly prohibits a candidate from using his or her campaign funds to make a contribution to any other candidate, Proposition 208 does not address intra-candidate transfers. However, Section 85301 establishes limits on contributions by any person to a candidate per election. The term "person," as defined in Section 82047, includes a political committee, including those committees controlled by a candidate. At first glance, then, a transfer/contribution from a candidate's controlled committee to another of his or her controlled committees would appear to be subject to the applicable limits for the transferee committee. In *SEIU, supra*, the court invalidated the intra-candidate transfer ban of Proposition 73 enacted by the voters in 1988. In the Ninth Circuit opinion upholding that decision, the court held that the intra-candidate transfer ban was not narrowly tailored to serve the compelling state interest. (*SEIU v. FPPC* (9th Cir. 1992) 955 F.2d 1312, 1322.) Therefore, for the most part, the candidates have been allowed to transfer funds freely between or among their own committees.

However, some intra-candidate restrictions are necessary in order to prevent the circumvention of the Proposition 208 contribution limits. For example, under Proposition 73, a candidate was prohibited from transferring to his or her special election committee, if the aggregate amount from any one contributor exceeded the special election limits of Section 85305. (Regulation 18535.) The same rationale would apply under Proposition 208 if a candidate transferred money from a controlled ballot measure committee with no limits to his or her candidate committee with limits. Proposition 208 is best read to permit intra-candidate transfers, to the extent that such transfers do not result in circumvention of the Proposition 208 contribution limits of Section 85301. Therefore, a candidate may make an intra-candidate transfer only if the transferor committee's funds, when traced back to each contributor, would not cause any contributor to exceed the limit in Proposition 208 applicable to the transferee committee.

b) An officeholder may transfer funds raised prior to January 1, 1997, into one Proposition 208 officeholder account created pursuant to Section 85313, but the transfer is limited to \$10,000 per calendar year. (Regulation 18531.3.) If the officeholder has funds in a campaign account opened prior to the passage of Proposition 208, the officeholder may make officeholder expenditures from that account as well.

2. *What are the allowable uses of campaign dollars raised prior to January 1, 1997? For example, may those funds be used for future elections or deposited into a Proposition 208 officeholder account? What, if any, limitations apply? May those funds be transferred to another candidate on or after January 1, 1997? If those funds can be utilized in future elections or an officeholder account, do they have to be transferred prior to the effective date of January 1, 1997?*

The candidate may use campaign funds raised prior to January 1, 1997, for any purpose permitted by Sections 89510 - 89518, inclusive. (Regulation 18530.1.) Before all or part of such funds may be used for a future election and are not already in an account designated for a future election, they must first be transferred to a committee formed for that election pursuant to Sections 85200 and 85201. The funds also may be transferred to one officeholder account opened pursuant to Section 85313(a); however, the transfer is limited to \$10,000. This transfer may be made at any time once each calendar year.

3. *Will officeholders/candidates who intend to run in future elections with existing campaign funds (those raised prior to January 1, 1997) be required to transfer those funds to either an officeholder account or a future campaign account? If not, how may those funds be used? May an existing campaign account, that contains funds raised prior to January 1, 1997, be used to pay for officeholder expenses after January 1, 1997?*

See the response to Question 2.

4. *If officeholders are permitted to transfer funds held prior to January 1, 1997, into an officeholder account after January 1, 1997, may officeholders still raise \$10,000 for their officeholder accounts under Section 85313 of Proposition 208? May officeholder funds be carried over from one calendar year to another?*

A candidate may raise up to \$10,000 in contributions for the account each calendar year. This may include up to \$10,000 in existing funds transferred from accounts opened prior to the effective date of Proposition 208. Once the candidate raises \$10,000 into the account, regardless of the source, the candidate may not raise any additional funds into the account for that calendar year. In 1998 and later years, officeholders may carry over any unspent funds in the officeholder account from one calendar year to the next, as well as transfer funds from accounts opened prior to the effective date of Proposition 208.

5. *What are allowable expenditures from an officeholder account?*

Expenditures from officeholder accounts formed pursuant to Section 85313(a) must be for expenses related to assisting, serving, or communicating with constituents, or carrying out the official duties of the elected officer. The expenditures may not be made in connection with any campaign for elective office or ballot measure. Expenditures from officeholder accounts existing before January 1, 1997, may be made for any lawful purpose in Sections 89510 - 89518, inclusive.

6. *Does the Commission interpret new Section 85313(a) as requiring each elected official who intends to make officeholder expenditures after January 1, 1997, to establish a new officeholder account?*

No. An official with a pre-January 1, 1997, campaign account may use those funds for any purposes permitted by Sections 89510 - 89518, inclusive. This includes officeholder expenses. The

official *may* establish an officeholder account pursuant to Section 85313(a) in addition to the existing account.

7. (a) *Does Proposition 208 place any limitations on the ability of an officeholder or candidate to raise funds to repay debts incurred in connection with an election held prior to January 1, 1997? If officeholders/candidates are able to raise money after January 1, 1997, to retire prior campaign debts, what specific contribution limits, if any, would be in effect at the time the contribution made to retire the debt is received?*

(b) *Would the 25 percent non-individual limit for contributions be in effect? An officeholder who loaned money to a candidate or officeholder is repaid those funds after January 1, 1997. How may those dollars be used? May they be transferred into an account for a future campaign or an officeholder account?*

(a) A candidate who has an outstanding debt from an election held prior to January 1, 1997, may continue to raise funds into that account to retire that debt, but funds raised after January 1, 1997, are subject to the Proposition 208 contribution limits for that office. (Regulation 18530.7.) The 25 percent non-individual limit for contributions would *not* be in effect.

(b) If an officeholder is repaid a loan he or she made to another candidate prior to January 1, 1997, the repayment will not be considered a contribution, and thus not subject to the limits, as long as it is a documented loan repayment from the debtor. If the repayment is made to a committee opened prior to the effective date of Proposition 208, then the repaid funds will not be subject to Proposition 208. Compare this to any *contributions* collected to pay off a loan made prior to January 1, 1997, which *are* subject to limits as provided by Section 85305(c).

8. *A person contributed to an election prior to January 1, 1997. May that same person contribute money to that candidate after January 1, 1997, to help retire a debt for the same election?*

For purposes of the contribution limits, contributions made in connection with an election held prior to January 1, 1997, will not be aggregated with contributions made after January 1, 1997, by the same person to pay down a candidate's debt for that election.

9. *Will the Commission require officeholders who do not intend to appear on any ballots after January 1, 1997, to establish a new campaign committee after the effective date of Proposition 208?*

Officeholders who do not intend to run for any office after January 1, 1997, are not required to establish a new campaign committee after the effective date of Proposition 208.

10. *An officeholder, who has existing campaign funds, was "termed out" in 1996 and does not intend to run for a future election. Under pre-Proposition 208 law, surplus funds are governed by*

Section 89519. Proposition 208 repealed Section 89519 and replaced it with a new Section 89519 containing completely different surplus funds requirements. Is this officeholder subject to Section 89519, as it existed prior to January 1, 1997? If not, what rules would apply to the officeholder's use of these funds?

Funds that became surplus pursuant to Section 89519 prior to December 31, 1996, will remain subject to that section after the effective date of Proposition 208. (Regulation 18519.4(c).) If an officeholder holding funds leaves office after January 1, 1997, the surplus funds will be subject to the new Section 89519 as it was adopted in Proposition 208. (Regulation 18519.4(b).)

11. Do funds contributed to an officeholder/candidate to retire a debt for an election held prior to January 1, 1997, count against the contributor's aggregate limit?

No. Funds contributed after January 1, 1997, to retire a debt for an election held prior to January 1, 1997, will not count against the contributor's aggregate limit (\$25,000 biennially).

12. An officeholder has a contractual obligation that was incurred prior to the enactment of Proposition 208. Would this contractual obligation be treated differently than a debt from a previous campaign?

No. If the contractual obligation was incurred prior to the enactment of Proposition 208, it will be subject to the definitions and limitations of Title 9 in effect on or before December 31, 1996, except to the extent that funds collected on or after January 1, 1997, to pay this obligation are subject to the contribution limits of Section 85301.

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4. Under Proposition 208, how must officeholders/candidates deal with campaign assets, such as computer equipment, databases, etc., that the committee owns or leases as of December 31, 1996? May these assets be brought forward for use in a future election?

Assets owned by officeholders/candidates may be brought forward for use in a future election. (Regulation 18530.1.)

5. Does Proposition 208 prevent candidates/officeholders from opening campaign accounts for more than one office to be decided at the same election?

No.

6. May existing campaign funds raised prior to January 1, 1997, be divided and transferred to more than one committee?

Yes. Existing campaign funds may be retained in an existing committee, or transferred into one or more new committees. (Regulation 18530.1.)


7. *If an invoice or bill is received by the existing campaign committee after January 1, 1997, for services rendered in December 1996, may that bill be paid out of the existing campaign account? How will that expenditure be treated with respect to any expenditure ceiling that subsequently may be accepted?*

Yes. That expenditure will not be subject to any expenditure ceiling if made out of an existing campaign committee. If the expenditure is made from a committee formed for an election to be held after January 1, 1997, the expenditure will not count toward any expenditure ceiling for that election if the payment is for services rendered prior to January 1, 1997.

14. *Senator Jones has for some time maintained a year-round campaign office. In the campaign office, he has computer equipment and furniture that he leases, as well as a part-time campaign treasurer. The committee has signed lease agreements for both the office space and the furniture since 1995. Each lease agreement has two years to run. Senator Jones has a contract with the treasurer that has six months to run. Senator Jones has expended virtually all of his campaign funds in his recent re-election campaign. How may Senator Jones pay for these existing contractual obligations? Would the answer be any different if Senator Jones had existing funds in his campaign account to pay for these contractual obligations?*

The law prior to Proposition 208 did not make any distinction between campaign expenses and officeholder expenses. Both types of expenses could be made from a single campaign account. Therefore, Senator Jones may pay for these obligations out of existing campaign funds. If Senator Jones has no existing campaign funds raised prior to January 1, 1997, he may pay for those funds in either of two ways. He may open an officeholder account pursuant to Section 85313(a) and raise up to \$10,000 in a calendar year to pay those costs. If the contractual obligation was entered into prior to January 1, 1997, he may also raise contributions to pay off the obligation pursuant to Section 85305(c), which provides that contributions may be accepted to retire debts incurred with respect to any election held prior to January 1, 1997, if such funds are collected pursuant to the contribution limits. (Regulation 18530.7.)

Sincerely,



Steven G. Churchwell
General Counsel