

**SUPERSEDED  
IN PART**

by I-97-547  
(Herr)



RAVI MEHTA  
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

February 14, 1997

Ms. Rebecca Avila  
Executive Director  
City of Los Angeles Ethics Commission  
201 North Los Angeles Street  
L.A. Mall, Suite 2  
Los Angeles, California 90012

**Re: Your Request for Advice  
Our File No. A-96-355**

Dear Ms. Avila:

This letter is a response to your request for advice regarding the officeholder and surplus funds provisions of the Political Reform Act (the "Act") as amended by Proposition 208.<sup>1</sup>

**FACTS**

Current Los Angeles law permits elected officials to establish one officeholder expense fund, commonly referred to as an "officeholder account." City officeholder accounts were created in Los Angeles after the passage of campaign finance reform. With the passage of Proposition H in 1990, the city implemented a campaign finance ordinance which, among other things, instituted a fundraising window for campaigns for elective city office. Because the fundraising window prohibited officeholders from fundraising continuously for future city campaigns, the officeholder accounts were created to allow elected officials to raise a limited amount of funds for expenditures related to holding office, but not in connection with a campaign for elective city office. In 1994, the city council enacted tighter regulations for these city officeholder accounts, including contribution limits.

Currently, officeholders may receive contributions to their city officeholder accounts of no more than \$1,000 during any fiscal year from any person, and no more than \$75,000 during any fiscal year in total contributions. (Los Angeles Municipal Code §§ 49.7.12 A 4, 6.) In

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18110 - 18995, of the California Code of Regulations.

addition to adding tighter regulations and stronger disclosure requirements, the officeholder ordinance that was amended in 1994, and the accompanying regulations, continue to prohibit the use of such funds for city campaigns. City law also permits elected city officials to establish one legal defense fund within their city officeholder account, if necessary.

As explained in a memorandum from the City Ethics Commission to the General Counsel of the Fair Political Practices Commission, dated December 12, 1996, because the officeholder accounts in city law were created by the city council and not enacted by the voters, staff of the Los Angeles Ethics Commission believes that Proposition 208 will preempt city law with respect to officeholder accounts. Therefore, as of January 1, 1997, the officeholder account contribution limits of section 85313 will apply to elected city officials.

### QUESTIONS AND CONCLUSIONS

**1. Officeholder Accounts.** *As of January 1, 1997, will elected city officials in Los Angeles be required to close their city officeholder accounts, established pursuant to Los Angeles Municipal Code Section 49.7.12, and establish new officeholder accounts pursuant to Government Code Section 85313, or may they maintain their current city officeholder accounts? If Los Angeles elected city officials may maintain their current city officeholder accounts, may they retain all the funds currently in these accounts, or will they be required to dispose of all but \$10,000?*

We agree with the City Ethics Commission staff that the officeholder account provisions of section 85313 preempt the officeholder provisions of city law. Proposition 208 was passed by the voters on November 5, 1996, and became effective on January 1, 1997. The initiative amended the Act and imposes a comprehensive scheme of contribution limits for state and local elections. Proposition 208 specified that the initiative would not preempt local ordinances in certain circumstances. Section 85706 provides as follows:

(a) Nothing in this act shall nullify contribution limitations or other campaign disclosures or prohibitions of any local jurisdiction that are as or more stringent than set forth in this act.

(b) The governing body of a local jurisdiction may impose lower contribution limitations or other campaign disclosures or prohibitions that are as or more stringent than set forth in this act. A local jurisdiction may impose higher contribution or expenditure limitations only by a vote of the people.

\* \* \*

You state that the officeholder accounts provisions in city law were enacted by the city council and not authorized by the voters in a ballot measure. The city law officeholder account provisions, which permit contributions of up to \$1,000 and an aggregate of \$75,000 per year, are less stringent than those of section 85313, which permit contributions of up to \$250 and an aggregate of \$10,000 per year. Therefore, state law preempts the city law with respect to officeholder accounts.

You ask whether elected city officials are required to close the city officeholder accounts that contain funds raised prior to the effective date of Proposition 208. In Regulation 18530.1 and the *Johnson* Advice Letter, No. 96-316a, the Commission stated that funds raised prior to the effective date of Proposition 208 can be carried over and spent for any purpose, consistent with the personal use provisions of sections 89510-89518. For example, a State Senator who was elected in 1996 may continue to make officeholder expenditures from funds remaining in his or her 1996 campaign committee.

Consistent with the Commission's regulations and advice concerning the use of "old money" under Proposition 208, elected city officials in Los Angeles are not required to close their city officeholder accounts or dispose of the funds in such accounts. City officials may keep their officeholder accounts and spend the funds in those accounts consistent with sections 89510-89518 governing the use of campaign funds and the city law and regulations concerning officeholder accounts. Effective January 1, 1997, however, city officials may not raise additional funds in these accounts.

We have advised that an elected official who wants to open a Proposition 208 officeholder account may not redesignate a bank account from a prior campaign as his or her Proposition 208 officeholder account, but must open a new bank account. (*Johnson* Advice Letter, *supra*, and *Weldy* Advice Letter, No. A-96-331.) Similarly, to facilitate accurate accounting and reporting of officeholder contributions, elected city officials who want to raise officeholder funds after January 1, 1997, must open a new Proposition 208 officeholder account. All funds raised for the Proposition 208 officeholder account are subject to the \$250 per contributor limit and the \$10,000 per year aggregate limit. Regulation 18531.4 and the *Weldy* Advice Letter, *supra*, discuss how to open and report contributions to a Proposition 208 officeholder account.

**2. Surplus Funds.** Proposition 208 adds a new provision governing the use of surplus campaign funds. Section 89519 defines surplus campaign funds as "[a]ny campaign funds in excess of expenses incurred for the campaign or for expenses specified in subdivision (d) of Section 85305 [attorney's fees]." Under section 89519, a candidate must distribute all surplus campaign funds within 90 days after his or her withdrawal, defeat, or election to office. A candidate who is elected to office may deposit up to \$10,000 of surplus funds in his or her officeholder account. Section 89519(b) provides that "[a]ny remaining surplus funds shall be

distributed to any political party, returned to contributors on a pro rata basis, or turned over to the General Fund."

a. *Section 89519 provides that surplus campaign funds may be "turned over to the General Fund." Section 85313(e) provides that excess officeholder funds shall be "turned over to the General Fund." Will a current or former city officeholder be in compliance with this provision if he or she turns over such funds to the general fund of the City of Los Angeles?*

We interpret the General Fund referenced in section 89519(b) and section 85313(e) to mean the General Fund of the State of California, and not the general fund of a local jurisdiction. The Act contains numerous references to the General Fund of the State of California. In three instances the Act refers to the "General Fund of the state": section 83116(c) (monetary penalties for violations of this title shall be paid to); section 83122 (appropriation to the Commission shall come from); and section 84304 (anonymous contributions shall be deposited in). In three other instances, the Act specifically provides that funds must be paid either to the state General Fund or to the general fund of the relevant local jurisdiction. Section 89501(b)(2) regarding the return of prohibited honoraria states that the honoraria may be "delivered to the State Controller for donation to the General Fund, or in the case of a public official for local government agency, delivered to his or her agency for donation to an equivalent fund... ." Section 91009 concerning amounts recovered in civil actions states: "The remaining fifty percent shall be deposited in the General Fund of the state. In an action brought by the civil prosecutor, the entire amount recovered shall be paid to the general fund or treasury of the jurisdiction." Section 91013(c) states that the filing officer shall deposit fines for the late filing of statements or reports "into the general fund of the jurisdiction of which he or she is an officer."

Sections 89519(b) and 85313(e) state that funds must be paid over to "the General Fund." The use of the singular, capitalized term, and the absence of any reference to the general fund or treasury of a local jurisdiction, indicate that this refers to the General Fund of the State of California.

b. *If a current city official is not eligible to run for reelection to city office in 1999 because of term limits, or decides not to run, at what point are his or her city officeholder funds determined to be surplus?*

Pursuant to Regulation 18519.4(b)(1), the official's "old" city officeholder funds that were raised before January 1, 1997, will become surplus on the date the city official leaves office. The funds will be subject to the surplus rules of section 89519 at that time. This interpretation is consistent with the treatment of officeholder funds carried over by state officials under Regulation 18530.1 and the *Johnson* Advice Letter, *supra*.

For officeholder funds raised after January 1, 1997, section 85313(e) will govern the disposition of excess. Section 85313(e) provides that "[a]ny funds in an officeholder account remaining after leaving office shall be turned over to the General Fund."

*c. If a current city official, who is presently raising funds in connection with a bid for reelection, decides not to run for reelection in 1997 after January 1, 1997, at what point are his or her campaign funds determined to be surplus?*

The campaign funds raised by the candidate become surplus under section 89519 ninety days after the candidate "withdraws" from the race. Section 89519 provides that all surplus campaign funds must be distributed within ninety days following a candidate's "withdrawal, defeat, or election to office." If necessary, the Commission will consider a regulation clarifying when surplus funds must be distributed.

**3. Legal Defense Fund.** *May an elected official in Los Angeles create a legal defense fund, if necessary? If so, is a separate account required, or may he or she do so within the officeholder account? Would such a legal defense fund be subject to the officeholder contribution limits, the campaign contribution limits, or neither?*

Section 85305 provides that funds may be raised outside the blackout period for certain legal expenses:

(c) No candidate or the controlled committee of such candidate shall accept contributions more than 90 days after the date of withdrawal, defeat, or election to office. Contributions accepted immediately following such an election or withdrawal and up to 90 days after that date shall be used only to pay outstanding bills or debts owed by the candidate or controlled committee.

\* \* \*

(d) Notwithstanding subdivision (c), funds may be collected at any time to pay for attorney's fees for litigation or administrative action which arises directly out of a candidate's or elected officer's alleged violation of state or local campaign, disclosure, or election laws or for a fine or assessment imposed by any governmental agency for violations of this act or this title, or for a recount or contest of the validity of an election, or for any expense directly associated with an external audit or unresolved tax liability of the campaign by the candidate or the candidate's controlled committee; provided such funds are collected pursuant to the contribution limits of this act.

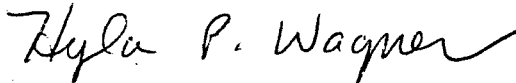
(e) Contributions pursuant to subdivisions (c) and (d) of this provision shall be considered contributions raised for the election in which the debts, fines, assessments, recounts, contests, audits, or tax liabilities were incurred and shall be subject to the contribution limits of that election.

Elected city officials may raise funds for the purposes specified in section 85305(d) at any time during the election cycle. You state that city law provided for the creation of a legal defense fund within the officeholder account, if necessary. However, funds raised pursuant to section 85305(d) should not be deposited in an officeholder account. Contributions to an officeholder account are limited to \$10,000 aggregate per year and \$250 per contributor. In contrast, there is no aggregate limit on funds raised for legal expenses under section 85305(d), and the applicable contribution limit is the limit for the election which the legal expenses relate to. In addition, section 85313 limits the use of officeholder account funds to expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Hyla P. Wagner  
Staff Counsel, Legal Division

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