

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

January 17, 1997

Rex L. Brady
Law Offices of Rex L. Brady
3501 Jamboree Road
South Tower, Suite 606
Newport Beach, California 92660

Re: Your Request for Advice
Our File No. A-96-360

Dear Mr. Brady:

This letter is a response to your request for advice on behalf of Michael S. Carona, regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

May Michael S. Carona, who will run for the office of Sheriff/Coroner of Orange County in the June 1998 election, loan his heretofore debt-free campaign committee \$20,000 before the end of 1996, characterize this loan as a preexisting campaign debt, and solicit contributions during the first six months of 1997 specifically to repay this debt?

CONCLUSION

Yes. Mr. Carona may consider the outstanding loan balance a campaign debt. The Commission has adopted an emergency regulation providing that funds may be collected at any time after January 1, 1997, to repay campaign debt, including loans, that existed prior to January 1, 1997. Such contributions are subject to contribution limits of Section 85301, but are exempt from some of the other limitations of Proposition 208. It is advisable to keep separate records if the campaign committee will also accept contributions for the upcoming race which are *not* earmarked for retirement of the prior debt, since the law treats such contributions differently.

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18000 - 18995, of the California Code of Regulations. Your letter requests advice on the Act "or any other law for that matter"; we are unable to offer advice on any body of law other than the Act, and we limit our discussion accordingly.

ANALYSIS

The Commission does not provide formal, written advice on past conduct and, by hypothesis, the loan under discussion was to have been made prior to January 1, 1997. We do not, therefore, comment on the propriety of such a loan. A loan to a campaign committee for use in an election campaign has always been considered a campaign debt and, answering your second question, such a loan is specifically described as a campaign debt in an emergency regulation (Regulation 18530.7, copy enclosed) adopted by the Commission on December 30, 1996.

Your final question is whether it is permissible to collect contributions to repay a 1996 campaign debt (a loan for the 1998 election campaign) during the first six months of 1997. Regulation 18530.7(b)(1) expressly provides that such contributions may be solicited and accepted without regard to the "off year ban" enacted under Proposition 208 at Section 85305 (copy inclosed). However, Regulation 18530.7(b) also expressly states that contributions made after January 1, 1997, to retire pre-1997 campaign debt, *are subject to the campaign limits established by Proposition 208 at Section 85301.*

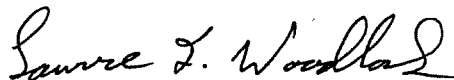
Regulation 18530.7 makes it clear that a candidate may raise funds to retire a 1996 campaign loan at any time after January 1, 1997. Although subject to the contribution limits of Proposition 208, Regulation 18530.7(b) exempts "old debt" fundraising from a number of the other restrictions of Proposition 208, such as the \$25,000 aggregate contribution limit specified in Section 85310, and the 25% non-individual contribution limit stated at Section 85309. Funds raised at the same time by the same campaign, but which are not earmarked for repayment of pre-1997 debt, *are* subject to the \$25,000 aggregate contribution limit and the 25% non-individual contribution limit, among other provisions of Proposition 208.

As you can see, the transition to a new body of law results in a situation where funds contributed to Mr. Carona's committee in 1997 will be treated very differently, depending on the use to which the committee puts them. This may affect the rights of contributors (for example, whether or not a contribution counts towards the contributor's \$25,000 aggregate limit depends on whether or not the contribution is used to repay old debt), as well as the committee's own obligations. For this reason, Mr. Carona must inform contributors of the intended use for each contribution, and keep separate records of contributions dedicated to debt retirement.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lawrence T. Woodlock
Staff Counsel, Legal Division