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CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

February 11, 1997

Dario L. Marenco
Representing the Second District Board of Supervisors
San Joaquin County
Room 701, Courthouse
222 East Weber Avenue
Stockton, California 95202

Re: Your Request for Advice
Our File No. A-96-373

Dear Mr. Marenco:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").[1]

FACTS

You are a member of the Board of Supervisors for San Joaquin County. The county has more than 100,000 residents. The contribution limit applicable to you is $250 per election.

QUESTIONS AND CONCLUSIONS

You have asked a number of questions pertaining to Proposition 208, The California Political Reform Act of 1996, which became effective on January 1, 1997. The Commission adopted a number of emergency regulations at their December 30, 1996, meeting concerning Proposition 208 which are referenced below to address your questions.[2]

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[1] Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18110 - 18995, of the California Code of Regulations.

[2] Emergency regulations expire by operation of law 120 days after adoption. Regulation 18530.7 will expire on May 7, 1997. The Commission may adopt the regulation as a permanent regulation before the expiration date.

1. May an officeholder transfer funds raised prior to January 1, 1997, into an officeholder or new account for that same individual? Is there any limit to the amount if it can be transferred?

Proposition 208 permits an officeholder to establish an officeholder account for expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer, provided aggregate contributions to such account do not exceed $10,000 within any calendar year. (Section 85313.) Pursuant to Emergency Regulation 18531.3, 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. (Also see *Johnson* Advice Letter, A-96-316a, copy attached.) 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. (*Johnson* Advice Letter, *supra.*)

2. May contributions to the officeholder account be accepted from another officeholder's campaign fund account?

Section 85306 prohibits a candidate from using his or her campaign funds to make a contribution to any other candidate. (*Johnson* Advice Letter, *supra.*) However, section 85313 states in relevant part:

> "(b) No person shall make, and no elected officer or officeholder account shall solicit or accept from any person, a contribution or contributions to the officerholder account totaling more than two hundred fifty dollars ($250) during any calendar year. *Contributions to an officeholder account shall not be considered campaign contributions.*
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> * * * *
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> (d) All expenditures from, and contributions to, an officeholder account are subject to the campaign disclosure and reporting requirements of this title."
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> (Emphasis added.)

A candidate or his or her campaign committee is a "person" within the meaning of the Act. (Section 82047.) As stated above, a contribution to an officeholder account is not considered a campaign contribution. Therefore, we conclude that a contribution from a candidate to another candidate's officeholder account is permitted in an amount not to exceed $250.

3. Can funds raised prior to January 1, 1997, be used for the next election?

A 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 that 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. (*Johnson* Advice Letter, *supra.*) The funds may also be transferred to one officeholder account opened pursuant to section 85313(a) as discussed above.

4 & 5. May a candidate seeking election in June 1998 raise funds during the off-year (1997) to be used for that 1998 election? Is there a limit on how much can be raised during the 1997 off-year? Do funds raised prior to January 1, 1997, count against the limits of funds raised in 1997 (if possible) or in the election year 1998?

If funds may be raised in the off-year 1997 for a 1998 election, do funds contributed in the off-year count toward the $250 aggregate maximum for the 1998 election? (In other words, if someone contributes the maximum ($250) in the off-year, does that mean that an individual cannot contribute any more in 1998 for that election?)

You ask under what circumstances off-year fundraising is permitted.

Section 85305 states in relevant part:

> "(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. This section shall not apply to retiring debts incurred with respect to any election held prior to the effective date of this act, provided such funds are collected pursuant to the contribution limits specified in Article 3 (commencing with Section 85300) of this act, applied separately for each prior election for which debts are being retired, and such funds raised shall not count against the contribution limitations applicable for any election following the effective date of this act.
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> (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."

Only under certain circumstances may off-year fundraising occur. Pursuant to section 85305, at its December 30, 1996, meeting the Commission decided that a candidate may raise funds during the off-year to pay campaign debts incurred on or before January 1, 1997. (Regulation 18530.7, copy enclosed.) Therefore, off-year fundraising is permitted for payment of campaign debts, subject to specified limitations.

For example, 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 the debts, but funds raised after January 1997, are subject to the Proposition 208 contribution limits for that office. Or, for example, a candidate seeking election in June 1998, can raise funds during the off-year (1997) within the contribution limits of section 85301, but only to pay campaign debts incurred before January 1, 1997. (Section 85305, Regulation 18530.7, *Johnson* Advice Letter, *supra*, and *Ryan* Advice Letter, No. A-96-329.) Therefore, assuming $250 is the applicable limit, if a contributor gives a candidate $250 during the off-year (1997) for the payment of campaign debts incurred before January 1, 1997, for a 1998 election, that contributor cannot contribute any additional funds for that same election. (Section 85305(e).) Also, 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 percent non-individual limit stated at section 85309. (Regulation 18530.7, *Brady* Advice Letter, No. A-96-360.)

A candidate seeking election in June 1988 may not otherwise raise funds during the off-year to be used for the 1998 election. Please note however, that contributions made before the effective date of Proposition 208 do not count toward the applicable limit. Therefore, if a contributor gave a candidate $1,000 before January 1, 1997, for a 1998 election, that contributor may contribute an additional $250 for that same election.

6. In raising funds as an officeholder, may half of the amount collected be designated as a donation to a charitable community fund, specifically to the Sheriff's Foundation for Safe Neighborhoods, an organization established pursuant to section 503 of the Internal Revenue Code, if that intention is declared on the fundraising invitations?

Nothing in the Act prevents a candidate from co-hosting a joint fundraiser with a nonprofit organization. (*See Goodin* Advice Letter, No. A-94-290.) Therefore, a candidate can collect funds at a fundraising event held jointly with a nonprofit organization, where the invitations state that half of the amount collected is a donation to a charitable organization.

However, the contribution limitations contained in section 85301 set limits on contributions made "to any candidate or the candidate's controlled committee." (Section 85301.) Section 85305 contains time restrictions on when a candidate may accept contributions. Contributions a candidate solicits for himself or herself, or for the candidates' controlled committee, will be subject to the limits set forth in sections 85301 and 85305.

If a candidate solicits funds for a nonprofit organization, the limitations in sections 85301 and 85305 will not apply unless the organization is actually the candidate's controlled committee. The Commission has interpreted the definition of "controlled committee" broadly to include any significant participation in the actions of a committee by a candidate, his or her agent, or representatives or any other committee he or she controls. (*Higdon* Advice Letter, No. I-94-189.) Regulation 18217 provides an alternative definition of controlled committee applicable to organizations that are tax exempt under Section 501 of the Internal Revenue Code. A copy of regulation 18217 is enclosed to assist you in determining the application of the regulation to you in conducting joint fundraisers with a nonprofit organization.

7. Are non-monetary contributions counted against the $250 contribution limit? Is there any monetary value on volunteers?

You also ask if nonmonetary payments and volunteer services count against the contribution limits. A "payment" includes the rendering of anything of value, whether tangible or intangible. (Section 82044.) Therefore, a nonmonetary payment is a contribution. (Section 82015 and Regulation 18215.) The nonmonetary contribution counts against the $250 limit. Volunteer personal services, however, are exempted from the definition of "contribution." (Section 82015; Regulation 18215(c)(2).) Therefore, they are not reportable contributions and do not count toward contribution limits. However, these payments, under some circumstances, may be deemed gifts subject to limits. (Sections 82028 and 89503.) In addition, personal services provided by employees at their employer's request may not be deemed voluntary personal services if they are rendered for political purposes and exceed more than 10 percent of an employee's time in a calendar month. (Regulation 18423.) Therefore, the receipt of personal services by a campaign can sometimes result in reporting requirements and other limitations. You should seek further assistance if you have a specific question in mind.

8. How are the voluntary expenditure limits determined for a county election?

Pursuant to section 85400(c), a local jurisdiction may establish voluntary expenditure limits for candidates and controlled committees of such candidates for elective office. The

expenditure limits are not to exceed $1 per resident for each election in the district in which the candidate is seeking elective office. We assume that the voluntary expenditure limits should be determined by counting the number of individuals residing in the local jurisdiction at the time of the election. Since it may be impracticable or even impossible to determine the number of residents with any certainty; a local jurisdiction may utilize the most recently available census data or other reliable data. The Commission should have a regulation giving guidance on this question later in the year.

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

Sincerely,

Steven G. Churchwell
General Counsel

Luisa Menchaca

By: Luisa Menchaca
Senior Staff Counsel, Legal Division

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