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FAIR POLITICAL PRACTICES COMMISSION

March 5, 1997

Shirley L. Grindle
Chairman
Orange County Campaign Finance Reform Committee
5021 E. Glen Arran
Orange, California 92869

**Re: Your Request for Advice
Our File No. I-97-050**

Dear Ms. Grindle:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Since you are not asking as the authorized representative of an individual whose duties are in question, we are treating this as a request for informal advice and are providing you general guidance only.² (Section 83114(b); Regulation 18329(b)(2)(A) copy enclosed.)

QUESTIONS

1. May an officeholder account contain more than \$10,000 after December 31, 1997?
2. What are the general restrictions on when and how a contribution to an independent expenditure committee is made?

CONCLUSIONS

1. Yes. A candidate may deposit in his or her officeholder account no more than \$10,000 per calendar year. However, Proposition 208 does not contain an aggregate cap on the total amount in the officeholder account in any given time. Thus, after 1997 the balance could exceed \$10,000.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329, subd. (c)(3).)

2. Other than the fact that the \$250 limit applies on a per election basis (see Section 855500(d)), Proposition 208 does not specify any timing restrictions on when contributions to committees making independent expenditures of \$1,000 or more supporting or opposing a candidate may be made. (Compare section 85305 [“blackout” period for contributions to candidates].) In addition, contributions to independent expenditure committees shall not be aggregated with a contributor’s independent expenditures and contributions to a particular candidate under section 85305(c).

ANALYSIS

1. Officeholder Accounts

Section 85313 governs the establishment and use of officeholder expense funds.

“(a) Each elected officer may be permitted to establish one segregated officeholder expense fund 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 a fund do not exceed ten thousand dollars (\$10,000) within any calendar year and that the expenditures are not made in connection with any campaign for elective office or ballot measure.” (Section 85313(a).)

According to section 85313(a), a candidate may raise up to \$10,000 in contributions for the account each calendar year. 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. (*Johnson Advice Letter*, No. A-96-316a.) In 1998, an elected officer could also raise up to \$10,000 for the officeholder account and add that to any unspent funds in the officeholder account. Conceivably there could be up to \$20,000 in the officeholder account in 1998 and up to \$30,000 in the account in 1999 and so on and so forth until the elected officer is out of office.

2. Contributions to Independent Expenditure Committees

The Act limits the amount which may be contributed to certain independent expenditure committees. Section 85500(b) provides:

“(b) Notwithstanding subdivision (d) of Section 85301, any committee that makes independent expenditures of one thousand dollars (\$1,000) or more supporting or opposing a candidate shall not accept any contribution in excess of two hundred fifty dollars (\$250) per election.” (Section 85500(b).)

Section 85500(b) sets a limit that applies per election, rather than per election cycle. Primary and general elections are defined in the Act as “separate elections.” (Section 82022.) Since the primary election counts as one election and the general election counts as a second election, section 85500(b) allows a committee that makes independent expenditures of \$1,000 or more supporting or opposing a candidate to accept up to \$250 for the primary election and up to \$250 for the general election from any person.

Unlike the provisions governing contributions to candidates and candidates’ controlled committees, Proposition 208 does not specify any timing restrictions on when contributions to committees making independent expenditures of \$1,000 or more supporting or opposing a candidate may be made. (Section 85305.) Notwithstanding the above, a contribution should specifically earmark for which election the contribution is being made.

In addition, the Act, as amended by Proposition 208, also specifies when expenditures will not be considered independent and shall be treated as a contribution. Section 85500(c) states:

“(c) Any contributor that makes a contribution of one hundred dollars (\$100) or more per election to a candidate for elective office shall be considered acting in concert with that candidate and shall not make independent expenditures and contributions which in combination exceed the amounts set forth in Section 85301 in support of that candidate or in opposition to that candidate’s opponent or opponents.” (Section 85500(c).)³

We read section 85500(c) to combine only independent expenditures made directly by the

³ Section 85500(d) also addresses when expenditures are to be treated as contributions rather than independent expenditures:

“(d) An expenditure shall not be considered independent, and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made either:

- (1) With the cooperation of, or in consultation with, any candidate or any authorized committee or agent of the candidate.
- (2) In concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of the candidate.
- (3) Under any arrangement, coordination, or direction with respect to the candidate or the candidate’s agent and the person making the expenditure.
- (4) By a candidate or officeholder supporting another candidate or officeholder of the same political party running for a seat in the same legislative body of the candidate or officeholder.


For purposes of this section, the person making the expenditure shall include any officer, director, employee, or agent of that person.” (Section 85500(d).)

contributor in support of the candidate⁴ with contributions to the candidate. This does not include contributions made to other persons, who, in turn, make independent expenditures in support of a candidate.⁵ Therefore, a contributor who makes a \$100 contribution to a candidate may also contribute to an independent expenditure committee in an amount of \$250, consistent with section 85500(b). However, a contributor who makes a \$100 contribution may only make an additional \$150 dollars in direct independent expenditures, assuming a \$250 limit under Section 85301.

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

Sincerely,

Steven G. Churchwell
General Counsel


By: Marte Castaños
Staff Counsel, Legal Division

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⁴ Section 85500(c) treats payments in opposition to that candidate's opponent or opponents the same as payments in support of that candidate.

⁵ Please note the prohibition in section 85703 which prohibits a person from making a contribution on the condition that it will be contributed to any particular candidate, however.