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CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 5, 1997

Joseph Montes
Law Offices of Burke, Williams & Sorensen
611 West Sixth Street, Suite 2500
Los Angeles, California 90017

**Re: Your Request for Advice
Our File No. A-97-051**

Dear Mr. Montes:

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

QUESTION

If a jurisdiction adopts voluntary expenditure ceilings pursuant to Section 85400(c) after a candidate has accepted contributions for an election, must the candidate file a statement of acceptance or rejection of those ceilings?

CONCLUSION

Yes. Section 85401 and Regulation 18541 require a candidate to file a statement of acceptance or rejection of the voluntary expenditure ceilings in Section 85400 before accepting any contributions. If a jurisdiction enacts limits after a candidate begins raising money, the candidates must immediately file a statement of acceptance or rejection in order to accept additional contributions. Finally, if a local jurisdiction has not adopted spending limits, the candidates obviously need not state whether they accept them.

FACTS

A city which you represent is considering adopting, in the very near future, a voluntary expenditure ceiling pursuant to Section 85400(c) for a March 1997 election. Some candidates may wish to agree to accept the voluntary expenditure ceilings for the election. These same candidates may have already accepted contributions.

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

ANALYSIS

Section 85400 imposes voluntary expenditure ceilings for Assembly, Senate, Board of Equalization, and statewide candidates. However, it does not impose voluntary expenditure ceilings on other candidates. Section 85400(c) merely allows any local jurisdiction, municipality, or county the option of imposing voluntary expenditure ceilings:

“(c) Any local jurisdiction, municipality, or county may establish voluntary expenditure ceilings for candidates and controlled committees of such candidates for elective office not to exceed one dollar (\$1) per resident for each election in the district in which the candidate is seeking elective office. Voluntary expenditure ceilings may be set at lower levels by the local governing body.”

Section 85401(a) specifies a filing requirement before contributions may be accepted:

“(a) Each candidate for office shall file a statement of acceptance or rejection of the voluntary expenditure ceilings in Section 85400 before accepting contributions.”²

Since Section 85400 does not require that all candidates be subject to voluntary expenditure ceilings, Section 85401 necessarily does not apply to those candidates who are not subject to any voluntary expenditure ceilings. Simply, candidates who are not subject to any voluntary expenditure ceilings do not have to file a statement of acceptance or rejection of ceilings which do not exist. Therefore, those candidates may accept contributions within the timing restrictions of Section 85305 without filing a statement of acceptance or rejection of voluntary expenditure ceilings.

If a jurisdiction adopts a voluntary expenditure ceiling after a candidate accepts contributions, that candidate must then file a statement of acceptance or rejection of voluntary expenditure ceilings before any additional contributions may be accepted. If a candidate has already collected more in contributions than the voluntary expenditure ceilings allow him to spend, he/she may return the contributions over the ceiling pro rata and subsequently file a statement of acceptance of the voluntary expenditure ceilings.

In certain situations it may be acceptable to return contributions by some reasonable method other than pro rata. However, since there are no specific rules governing the return of contributions from campaign funds that are not considered surplus, a method of returning contributions, other than pro rata, must be analyzed on a case-by-case basis. I have enclosed the

² Please see Emergency Regulation 18541 for procedure on how a candidate may accept or reject voluntary expenditure ceilings. (Copy enclosed.) Emergency regulations expire by operation of law 120 days after adoption. Regulation 18541 will expire on May 7, 1997. The Commission may adopt the regulation as a permanent regulation before the expiration date.

Hertzberg Advice Letter, I-94-082 for guidance on this issue.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read 'Marte Castaños', with a long horizontal flourish extending to the right.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:LTW:ak