

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

March 12, 1997

Janice C. Guy  
Clerk of the Council  
City of Santa Ana  
20 Civic Center Plaza, M30  
Post Office Box 1988  
Santa Ana, California 92702

**Re: Your Request for Advice  
Our File No. A-97-055**

Dear Ms. Guy:

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

### QUESTIONS

1. City of Santa Ana Charter Section 1206, passed by a vote of the people, defines a candidate's fundraising period as an election cycle which is two years for the mayor and four years for a councilmember. Proposition 208 defines the fundraising period as six months prior to the election, given Santa Ana's population. With regards to the allowable fundraising period, does Santa Ana's Charter prevail over Proposition 208 in the spirit of the "vote of the people" provision in Proposition 208's section 85706(b)?

2. A small contributor committee ("SCC") may make contributions to candidates at twice the applicable Proposition 208 contribution limit; Santa Ana has a Charter-set limit of \$1000 per contributor per election cycle. Can Proposition 208 trigger a new \$2000 limit from SCC's to Santa Ana candidates?

3. Santa Ana Charter Section 1207 restricts candidates and incumbents to only one campaign committee and one bank account. May a Santa Ana incumbent or candidate create additional committees such as an officeholder committee and/or a committee to retire an old debt per Proposition 208, despite the Charter restriction?

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

## CONCLUSIONS

1. Santa Ana's Charter does not prevail over Proposition 208 with regards to the off-year fundraising ban.
2. If a candidate accepts voluntary spending limits, SCCs may contribute \$2,000 to Santa Ana candidates.
3. A Santa Ana incumbent official may maintain one bank account for each prior election for the purposes of retiring old debt incurred in those elections.

## FACTS

On November 3, 1992, the voters of Santa Ana passed amendments to the city charter that imposed campaign contribution limitations. Section 1206 provides as follows:

"No person shall make, and no candidate for mayor or city council or campaign treasurer shall solicit or accept, any contribution or loan which would cause the total amount contributed or loaned by that person to that candidate, including contributions or loans to all committees controlled by that candidate, to exceed one thousand dollars (\$1,000) in any election cycle; provided, however, that the city council may, by ordinance, adjust such limit to reflect changes in the consumer price index; and provided further that nothing therein shall apply to a candidate's contribution of his or her personal funds to his or her own campaign contribution account. As used herein, "election cycle" means the period of time between the date of an election to the office of mayor or councilmember and the date of the next election to the same office."

The amendments also restricted the number of campaign committees and bank accounts to be opened by a candidate. Section 1207 provides:

"A candidate for the office of mayor or city council shall have no more than one campaign committee and one campaign contribution account out of which all expenditures for the purpose of seeking such office shall be made. The campaign contribution account shall be established and maintained as set forth in Section 85201 of the Government Code."

## ANALYSIS

### The Off-Year Ban

Proposition 208, passed by the voters on November 5, 1996, went into effect on January 1, 1997, and substantially amended the Act. Section 85706(a) provides that Proposition 208 does not nullify any local jurisdiction's contribution limitations that are as or more stringent than Proposition 208's restrictions. Section 85706(b) further provides that a local jurisdiction may impose higher contribution or expenditure limitations only by a vote of the people. The Commission has interpreted Section 85706 to permit local jurisdictions that had higher contribution limitations before January 1, 1997, to remain in effect *if* the higher limitations were passed by a vote of the people. (*Mueller Advice Letter, No. A-96-353.*)

Santa Ana has more than 100,000 residents. Therefore, the contribution limitation imposed by Proposition 208 for Santa Ana would be \$250 for each election in which the candidate is attempting to be on the ballot or is a write in candidate. (Section 85301(b).) Santa Ana's voters, however, adopted a higher contribution limit in 1992. That limit, \$1,000 per election cycle, will remain in effect because it was passed by the voters. Election cycle is defined in Santa Ana City Charter Section 1206 as "the period of time between the date of an election to the office of mayor or councilmember and the date of the next election to the same office."

Proposition 208 also imposed an off-year ban on fundraising. Pursuant to Section 85305(a), no candidate in Santa Ana, nor the candidate's controlled committee, shall accept contributions more than six months before any election in which the candidate is attempting to be on the ballot, or is a write-in candidate. This provision operates as a total ban on fundraising until six months before the election. Prior to the passage of Proposition 208, Santa Ana did not have any off-year ban on fundraising. The city charter did define the term "election cycle" for the purposes of determining the amount of the contribution limitation, but there is no provision in the Charter prohibiting candidates from raising contributions prior to the beginning of the election cycle. Therefore, the off-year ban in Section 85305 applies to Santa Ana elections.

### Candidate Bank Accounts

You also asked if a Santa Ana incumbent or candidate may create additional committees such as officeholder accounts or committees to retire debt. Section 1207 of the Santa Ana charter limits candidates to one campaign committee and one contribution account out of which all expenditures for office must be made. Proposition 208 permits officeholders to open 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." (Section 85313(a).) These accounts are expressly distinguished in the statute from campaign accounts, although they do have the same disclosure as campaign accounts. (Section 85313.) Therefore, the officeholder provisions of Proposition 208 do not conflict with the Santa Ana charter provisions limiting the number of campaign accounts. Officeholders in Santa Ana may

open officeholder accounts pursuant to Section 85313.

The question of additional campaign accounts is somewhat more complicated. Santa Ana Charter section 1207 provides that a candidate for city office “shall have no more than one campaign committee and one campaign contribution account out of which all expenditures for the purpose of seeking such office shall be made.” As noted above, Section 85305 imposes an off-year ban on fundraising for elective office.

Section 85305(c) permits candidates to raise money during the off-year fundraising ban for limited purposes. The candidate may raise money to retire debts incurred prior to the effective date of Proposition 208. (Regulation 18530.7.)<sup>2</sup> The Act has a requirement, existing prior to the passage of Proposition 208, that each candidate must maintain only one campaign contribution account for each office for which the candidate is seeking election. (Section 85200-85201.) The Commission has advised that candidates may maintain campaign accounts formed prior to January 1, 1997, in order to retire debt pursuant to Section 85305. If candidates were restricted to maintaining only their *current* campaign accounts, they could not retire debt for old campaigns, as specifically provided for in the initiative. Therefore, candidates may continue to keep open one bank account each from prior elections for the purposes of retiring debt in those accounts. Once the debt is paid off, the candidate should terminate each old committee and close the bank account for each committee.

#### Small Contributor Committee Contribution Limitations

Proposition 208 provides a mechanism for large groups of small contributors to pool their resources to support candidates. These committees, called small contributor committees, must be in existence for at least six months before it makes contributions, must have a membership of at least 100 individuals, may not be controlled by a candidate, and may not receive contributions over \$50 from any person in a calendar year. (Section 85203.) In exchange for maintaining its small contributor committee status, the committee may make contributions “totaling more than two times the applicable contribution limit for persons prescribed in Section 85301 or 85402, whichever is applicable.”

Section 85301 sets variable contribution limits based on the size of the jurisdiction. Section 85402 doubles, or in the case of small jurisdictions more than doubles, the contribution limits if candidates accept spending limits. As a result, the small contributor committee limits vary depending on the size of the jurisdiction and whether the candidate accepts spending limits. Clearly the statute contemplated varying limits for small contributor committees. In the ballot pamphlet summary sent to all California’s voters, the Attorney General noted that “[c]ommittees of small contributors can contribute twice the limit.” Thus, the voters were expressly made

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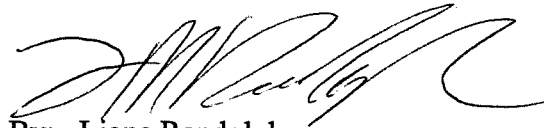
<sup>2</sup> Regulation 18530.7 is an emergency regulation passed by the Commission. The regulation expires on May 7, 1997, at which time the Commission may re-adopt the regulation without change, permit the regulation to expire, or adopt a modified version of the regulation.

aware that small contributor committees could contribute twice the variable contribution limit. Since local jurisdictions may set higher limits by a vote of the people, it would be consistent with the language, and the apparent intent of Proposition 208 as described in the ballot pamphlet, to permit small contributor committees to double the amount of their contributions, even where higher limits are in effect in local jurisdictions.

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 "Liane Randolph", written over a horizontal line.

By: Liane Randolph  
Staff Counsel, Legal Division

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