

SUPERSEDED IN PART

by: I-97-063(b)



RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

March 26, 1997

Richard A. Rosenthal
24509 Stagg Street
West Hills, California 91304

Re: Your Request for Advice
Our File No. I-97-063a

Dear Mr. Rosenthal:

This letter is a modification of our response to your request for advice regarding the campaign reform provisions of the Political Reform Act (the "Act").¹ We provided informal assistance to you on March 12, 1996. (*Rosenthal* Advice Letter, No. I-97-063.) This letter amends our previous response by deleting footnote # 5 which suggested that the off-year ban in section 85305 applies to a candidate's contributions of his or her personal funds to his or her controlled committee. It does not.

You are considering running for the Los Angeles Municipal Court and you would like to know what your duties are under the Act. Since your advice request does not provide any facts relating to a specific contribution, we are treating your request as one for informal assistance.²

QUESTIONS

1) What contribution limitations and restrictions apply to candidates for the Los Angeles Municipal Court? Specifically, is the Los Angeles Municipal Court considered a statewide office or a district of 100,000 or more residents?

2) May a family member give a monetary gift to a declared or undeclared candidate in excess of the contribution limits if there are no restrictions on the use of the gift even if the candidate then donates the funds as "his or her personal funds" to his campaign? Would the timing of the gift have an effect on whether this gift would be considered a contribution subject to the Act?

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(c)(3).)

3) May a candidate use community property funds as "his or her personal funds" that can be contributed to the campaign without being subject to the contribution restrictions of the Act?

CONCLUSIONS

1) For purposes of the contribution limitations and restrictions, the district of the Los Angeles Municipal Court is a district of 100,000 or more residents.

2) A monetary gift is a payment made for political purposes and is subject to the contribution limits if it is made to a declared or undeclared candidate and it has no restrictions on its use. A monetary gift is a contribution subject to the contribution limits if it is made to a person who is considering becoming a candidate if the donor knows the gift will be used for political purposes.

3) A candidate may contribute community property funds to his or her campaign. Such funds are not subject to the contribution limits as long as it is the candidate who directs and controls the community property funds.

ANALYSIS

Contribution Limitations and Restrictions

Proposition 208 establishes contribution limits for persons running for office in the State of California. Candidates for judicial office are subject to the contribution limits. (*Barbara Advice Letter, No. A-96-333, copy enclosed.*) The amount of the contribution limit depends upon the size of the district in which a candidate is running. You are considering becoming a candidate for the Los Angeles Municipal Court. The district of the Los Angeles Municipal Court is Los Angeles County. Los Angeles County has over 100,000 residents. Section 85301 provides that no candidate for local office in districts of 100,000 residents or more shall accept a "contribution or contributions totaling more than two hundred fifty dollars (\$250) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate." (Section 85301(b).)

Proposition 208 also contains restrictions on when contributions can be received. Presumably Los Angeles County has a population of 1,000,000 or more. Section 85305 provides that no candidate for local office in districts of 1,000,000 residents or more shall accept "contributions more than 12 months before any primary or special primary election, in the event there is no primary or special primary election, any regular election or special election in which the candidate is attempting to be on the ballot or is a write-in candidate." (Section 85305(b).)

Contributions from Family Members

The Act defines a contribution as any payment made for political purposes for which full and adequate consideration is not made to the donor. (Section 82015; Regulation 18215(a), copy

enclosed.) A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or if it is received by a candidate. (Regulation 18215(a)(1)(2).) Accordingly, any payments made to a declared candidate are presumed to be contributions. This presumption can be overcome if it is clear from the surrounding circumstances that the payment is received by the candidate for personal purposes. (Section 82015; Regulation 18215(c)(14).)

You want to know whether a family member may give a monetary gift³ to a *declared* candidate in excess of the contribution limits if there are no restrictions on the use of the gift. If there are no restrictions on the use of the gift, then the candidate can use the gift for political purposes. Therefore, it would not be clear from surrounding circumstances that the gift is received by the candidate for personal purposes, thus, the gift made by the family member to the declared candidate would be a contribution and subject to the limits.

You also want to know whether a family member may give a monetary gift to an *undeclared* candidate in excess of the contribution limits if there are no restrictions on the use of the gift. The Act defines a candidate⁴ as follows:

“[A]n individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or *who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. . . .*” (Section 82007, emphasis added.)

Accordingly, whether or not the candidate has announced his or her candidacy is not significant in determining whether the gift constitutes a contribution. Thus, under the same circumstances described above the gift made by the family member to an undeclared candidate would be a contribution and subject to the limits.

³ The word “gift” as used in this letter does not refer to the term “gift” as defined by section 82028. Please note, however, that candidates for judicial office are subject to the gift limits, as defined in section 82028. (Section 89503(b)(1).) Only gifts from enumerated family members are exempt from the gift limit. (Section 82028(b)(3).) You have not provided any facts indicating whether a “family member” as referred to in your letter is included in the gift limit exemption.

⁴ For purposes of the gift limits, a “candidate” is a person who has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy. (Section 89503(b).)

A person may be considering becoming a candidate but will not be considered a candidate under the Act if he or she has not received a contribution or made an expenditure with a view to bringing about his or her nomination or election. (Section 82007.) Such a person may receive a gift from a family member in excess of the contribution limits unless the gift qualifies as a contribution. As discussed above, the gift will be a contribution if the donor gives the gift for political purposes. If a donor knows that the gift will be used by the donee to contribute to his or her campaign, the gift will be a contribution and subject to the contribution limits.

Candidate Contributions from Personal Funds

The contribution limitations within Proposition 208 do not apply to a candidate's contributions of his or her personal funds to his or her campaign committee. (Section 85301(e).) A candidate's "personal funds" includes the candidate's interest in community property funds. Unlike candidate contributions, contributions from a candidate's spouse are subject to the contribution limits. (*Id.*) Consequently, community property funds used by a candidate to contribute to his or her campaign committee must be directed and managed by the candidate, not the candidate's spouse. For example, if the candidate wishes to make a contribution to his or her committee from a joint checking account containing community property funds, the candidate and not the candidate's spouse must endorse the check. (*See* Regulation 18533, copy enclosed.)

Sincerely,

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General Counsel



By: Julia Butcher
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Enclosures