

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

March 20, 1997

The Honorable Dick Ackerman  
Assembly Member, 72<sup>nd</sup> District  
California Legislature  
State Capitol  
Post Office Box 942849  
Sacramento, California 94249-0001

**Re: Your Request for Advice  
Our File No. A-97-065**

Dear Assembly Member Ackerman:

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

### QUESTIONS AND CONCLUSIONS

1. *Under the new section 85313, elected officials are allowed to establish an officeholder expense fund where the total contributions are limited to \$10,000 annually. If an elected official holds an event to raise money for the officeholder account, and the event expenses are \$2,000, is the elected official allowed to deduct the event overhead costs and retain \$10,000 for the officeholder account? (i.e., event costs \$2,000, the officeholder account will receive \$10,000, may a total of \$12,000 be raised).*

Section 85313(a) provides that officeholder expense funds may be used for expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer. Officeholder expense funds may not be used for campaign expenses. We interpret the permissible uses of funds under section 85313(a) to include conducting fundraising for the officeholder account. However, there is no provision in section 85313 for "netting out" fundraising expenses. Section 85313 states that the total aggregate contributions to an officeholder expense fund may not exceed \$10,000 in a calendar year. Presumably, the officeholder would have to pay the \$2,000 cost of the event from the officeholder account. Under section 85313, the officeholder may not raise and deposit in his or

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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.

her officeholder expense fund a total of \$12,000, then pay the \$2,000 event cost and net out this amount for a total of \$10,000 remaining in the officeholder account.

*2. If an officeholder signed a loan agreement prior to December 31, 1996, which accrues interest, may the officeholder raise money to pay off both the debt and the interest?*

Yes. The officeholder may raise funds to pay off both the principal and interest owing on a debt the officeholder incurred before December 31, 1996. Regulation 18530.7 provides that regardless of the off-year ban, funds may be collected at any time to retire a campaign debt incurred prior to the effective date of Proposition 208. However, funds collected on or after January 1, 1997, are subject to the contribution limits of section 85301.

*3. Under Proposition 208, an officeholder is permitted to accept contributions of \$250/\$500 per person per election. How does the Commission interpret the new Section 85301 regarding individuals who provide in-kind contributions (i.e., accounting services) to officeholders? May the services provided exceed the \$250/\$500 limit? For example, the accounting services provided to the officeholder include tracking receipts and expenditures for the officeholder's campaign committee and officeholder account.*

The contribution limits of Proposition 208 apply to both monetary and in-kind contributions of goods or services. (Sections 82044 and 82015; Regulation 18215). Therefore, in-kind contributions of goods or services to a candidate's campaign may not exceed the \$250/\$500 limits of section 85301 and 85402. In-kind contributions to an officeholder's expense fund may not exceed the \$250 per contributor and \$10,000 per year limits of section 85313. If, however, an individual is providing volunteer personal services to a candidate, the services are not considered a contribution to the candidate and do not need to be reported. (Section 82015 and Regulation 18215(c)(2).) Note that the exception for volunteer personal services only covers an individual's *own* volunteer services on behalf of a campaign. If an individual provides volunteer services to a campaign and enlists the assistance of his or her employees, the employees' services are not exempt from the definition of contribution if the employees' services are rendered for political purposes and exceed ten percent of their time in a calendar month. (Regulation 18423.)

*4. May an officeholder receive in-kind contributions (i.e., accounting services) during the blackout period? If an officeholder is allowed to receive in-kind contributions during the blackout period, what is the contribution limit?*

Section 85305 provides that candidates may not accept contributions before the fundraising window for the upcoming election opens (six months before the election in districts of fewer than a million residents, and twelve months before the election in districts of a million or more residents). In general, during the blackout period candidates are prohibited from accepting *any* contributions for an upcoming election, including in-kind contributions. However, the blackout period does not apply to an officeholder's acceptance of contributions to an officeholder account under section 85313.

5. *An officeholder has debt from the 1996 primary and general elections. A person desires to give \$250 for the primary election and \$250 for the general. For the purposes of retiring campaign debt, may the officeholder accept one \$500 check instead of two \$250 checks from the same party, if the funds are being deposited in the same account?*

Under section 85305(c), the contribution limits applicable to retiring debt from elections before January 1, 1997, apply separately to each election. The officeholder must use a reasonable method to attribute debt to the 1996 primary and general elections. (*Venable Advice Letter*, No. A-96-344.) The officeholder may accept one \$500 check instead of two \$250 checks from a contributor. Donors should indicate that the contributions are for the 1996 primary and general elections on the solicitation response card or on the check.<sup>2</sup>

6. *What are the Commission's rules for officeholders who accept contributions from parent companies and their subsidiaries? Is percentage control a factor?*

Section 85311, added by Proposition 208, provides that “[a]ll payments made by a person established, financed, maintained, or controlled by any business entity, labor organization, association, political party, or any other person or group of such persons shall be considered to be made by a single person.” The Commission will be considering a regulation regarding affiliated entities in the future.

7. *Proposition 208 puts limits on contributions of \$250/\$500 per person per election. Does Proposition 208 limit the ability of an individual lender to forgive an officeholder's debt in excess of \$250/\$500 in connection with an election held prior to January 1, 1997?*<sup>3</sup>

Yes. The forgiveness of a loan made by an individual to a candidate's campaign is a contribution. (Section 82015.) Under section 85305 and Regulation 18530.7, candidates may raise funds at any time to pay off debt incurred prior to January 1, 1997, but the funds must be raised under the contribution limits of section 85301. An individual who made a loan to a state assembly member for an election prior to January 1, 1997, may forgive up to \$250 of the loan. If the lender forgives more than this amount, the assembly member would be receiving a contribution in excess of the limits in section 85301 to pay down the debt, in violation of section 85305.

8. *An officeholder has a campaign committee for the 1996 general election. His account balance was zero on December 12, 1996. The campaign committee is audited by the*

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<sup>2</sup> The Commission may establish specific rules for allocating debt and receiving contributions for different elections in the future.

<sup>3</sup> We interpret your question to mean a loan by an individual to a candidate's campaign, not an extension of credit by a vendor.

*Commission after January 1, 1997. May the officeholder raise money in 1997 to pay for audit related expenses?*

Yes, regardless of the fundraising blackout periods, Proposition 208 provides that a candidate may raise contributions at any time to pay for audit related expenses. The funds must be collected pursuant to the contribution limits of section 85301. Section 85305(d) provides as follows:

“(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.” (Emphasis added.)

*9. The officeholder is holding an event and sends a company an invitation. The company sends a check for \$250 to the officeholder. May the company designate their lobbyist (not an employee) to attend the officeholder's event?*

Yes. The Commission tentatively decided at its March 1997 meeting to interpret sections 85704 and 85313(c) to allow an organization to designate its lobbyist to attend fundraising type events where the ticket to the event is purchased with organization funds. Although we expect no changes in this interpretation, we advise you to follow this matter until the Commission issues regulations on the subject.

*10. (a) Under the Commission's special election rules, officeholders are required to have a contribution limit disclaimer on printed material. Has the Commission adopted a disclaimer for the Proposition 208 contribution limits? If so, what language would you recommend?*

The special election contribution limits of Proposition 73 (section 85305, repealed 1997) stated that “[n]o person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution” that would exceed \$1,000 during any special election cycle. Proposition 73's contribution limits specifically prohibited the solicitation of contributions in excess of the limits. In light of this, the Commission required candidates to put a disclaimer on their fundraising materials. Regulation 18532, enacted in response to Proposition 73's limits, provides as follows:

“A written solicitation for contributions will not be deemed a solicitation for contributions or loans in excess of the contribution limits, within the meaning of Section 85305 [repealed 1997], if the written solicitation includes a notice to the potential contributor, on each page or fold where contributions are solicited, that the request is not for a contribution or loan in excess of the contribution limits. The notice should include a brief statement about the applicable limits. The following statement shall be deemed to be an adequate notice:

The Political Reform Act places a limit on the amount of contributions (including loans) made by a contributor. This is not a request for a contribution in excess of these limits. In most cases the limit is \$1,000.

The notice shall be in 10-point type and in the same color or contrast as the statement requesting contributions.”

The new contribution limits of Proposition 208 state that “no person ... shall make to any candidate or the candidate’s controlled committee ... and no such candidate or the candidate’s controlled committee shall accept from any person a contribution or contributions totaling more than” the specific limit for each election. (Sections 85301 and 85402.) While Proposition 208 does not specifically prohibit solicitation of contributions in excess of the limits, it is a violation for a person to make a contribution or for a candidate to accept a contribution in excess of the applicable limits. Under Proposition 208, contribution limits vary for different jurisdictions, and many contributors will be unaware of the limit that applies to a particular candidate’s election. Although candidates are not currently required by regulation to do so, we advise candidates to place a notice similar to that set forth in Regulation 18532 on their fundraising materials. The notice should state the specific contribution limit that applies to the candidate’s election. The Commission staff may propose amendments to Regulation 18532 in the future to require notice of Proposition 208's contribution limits to appear on candidates’ fundraising solicitations.

*(b) Section 85704 prohibits the solicitation of contributions from, through or arranged by a registered lobbyist. Section 82039 changes the definition of lobbyist. Even with a thorough review of mailing and/or contact lists, the potential for inadvertently soliciting a lobbyist may be likely. Would the following notice or disclaimer on a written solicitation be accepted by the Commission as evidence the solicitation is not prohibited under Section 85704:*

*"The Political Reform Act prohibits this committee from soliciting or accepting a campaign contribution from or arranged by a lobbyist who finances, engages, or is authorized to engage in lobbying the [name of agency of officeholder and/or*

*name of agency to which election is sought]. This is not a request for a contribution from a lobbyist."*<sup>4</sup>

Section 85704 prohibits candidates, elected officeholders, or their controlled committees from soliciting contributions from, through or arranged by a registered lobbyist. Under this provision, candidates, officeholders and their committee staff have a duty to diligently review fundraising, mailing and contact lists to avoid soliciting lobbyists. While the above disclaimer would be some evidence that a fundraising mailing was not intended to reach lobbyists, it does not relieve a candidate and his or her campaign staff of the duty to thoroughly review fundraising and contact lists to avoid soliciting lobbyists.

11. *An officeholder is raising money to retire November 1996 election debt in the amount of \$250 per person. May the officeholder collect \$250 from individuals on an annual basis, or is it per election cycle or is the contribution on a lifetime basis?*

Under section 85305(c), contributions to retire debt from elections held prior to January 1, 1997, may be collected at any time subject to the contribution limits in section 85301. The contribution limit applicable to a state legislator is \$250. Section 85305(e) states that the contribution limits apply on a *per election* basis. Thus, an officeholder who is raising contributions to retire debt from the November 1996 election may collect one contribution of \$250 from each contributor for the purposes of retiring debt for that election.

12. *An officeholder has \$20,000 in their campaign account on December 31, 1996. The officeholder assumed \$15,000 in debt for party campaign expenses on December 31, 1996. May the officeholder raise new money to pay off the debt in 1997?*

Pursuant to emergency Regulation 18530.7, if an officeholder incurred campaign debt prior to January 1, 1997, the officeholder may collect funds in 1997 to retire that debt. Debt that an officeholder legally assumed prior to January 1, 1997, would be treated the same as a debt incurred by the officeholder's campaign committee prior to that date. As with any loan, the officeholder would need to have documentation showing his assumption of the debt prior to January 1, 1997. The officeholder must collect funds to retire the debt subject to the contribution limits of section 85301. In addition, the officeholder must ensure that contributors are aware that their contributions are being made to pay off a preexisting debt and that the funds collected are used *solely* to pay off that debt. Contributors should note on the solicitation response card or the check that the contribution is made to pay off a specific debt.

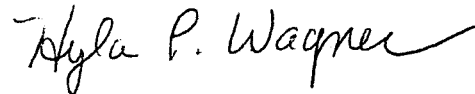
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<sup>4</sup> The language you suggested was modified slightly to conform more closely to section 85704.

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 that reads "Hyla P. Wagner". The signature is written in a cursive style with a long, sweeping tail on the letter "e".

By: Hyla P. Wagner  
Staff Counsel, Legal Division

SGC:HPW:ak