

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 5, 1997

David Bauer
400 Capitol Mall, Suite 1560
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. A-97-068**

Dear Mr. Bauer:

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

QUESTIONS

1. May the committee, Friends of Bernie Richter, accept contributions to retire the current debt accumulated pre-1997 for an election after January 1, 1997, during the fundraising "blackout period" created by section 85305?
2. Must Mr. Richter file a notice of acceptance or rejection of voluntary expenditure ceilings prior to accepting contributions to retire the debt?

CONCLUSIONS

1. Yes. The committee may collect funds at any time to pay off that debt. However, the committee may not collect funds to pay off the loan in excess of the contribution limits of Section 85301. Please keep in mind that, assuming a \$500 limit, if a contributor gives Mr. Richter \$500 during the "blackout" period for the payment of campaign debts incurred before January 1, 1997, for a 2000 election, the contributor cannot contribute any additional funds for that same election.
2. Yes, Mr. Richter must file a statement of acceptance or rejection of the voluntary expenditure limits in section 85400 prior to accepting contributions to retire the debt.

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

FACTS

Assemblyman Bernie Richter filed forms 501 and 502 in 1996 for the year 2000 election for the office of State Senate. A form 410 was also filed with the Secretary of State in 1996 and contributions were accepted by the committee, Friends of Bernie Richter, before January 1, 1997. In addition, Assemblyman Richter made a loan to the committee from personal funds in 1996. There have not yet been any payments made by the committee and the only outstanding debt is to the assemblyman, so all funds received are still on hand, including those lent by Assemblyman Richter.

ANALYSIS

You ask under what circumstances off-year fundraising is permitted. Section 85305 states in relevant part:

“(c) No candidate or the controlled committee of such candidate shall accept contributions more than 90 days after the date of withdrawal, defeat, or election to office. Contributions accepted immediately following such an election or withdrawal and up to 90 days after that date shall be used only to pay outstanding bills or debts owed by the candidate or controlled committee. This section shall not apply to retiring debts incurred with respect to any election held prior to the effective date of this act, provided such funds are collected pursuant to the contribution limits specified in Article 3 (commencing with Section 85300) of this act, applied separately for each prior election for which debts are being retired, and such funds raised shall not count against the contribution limitations applicable for any election following the effective date of this act.

“(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.

“(e) Contributions pursuant to subdivisions (c) and (d) of this provision shall be considered contributions raised for the election in which the debts, fines, assessments, recounts, contests, audits, or tax liabilities were incurred and shall be subject to the contribution limits of that election.”

Only under certain circumstances may off-year fundraising occur. On December 30, 1996, pursuant to section 85305, the Commission decided that a candidate may raise funds during the off-year to pay campaign debts incurred on or before January 1, 1997, the effective date of Proposition 208. (Emergency Regulation 18530.7, copy enclosed.)² Therefore, off-year fundraising is permitted for payment of these campaign debts. However, regulation 18530.7(b)(1) states a candidate may not collect funds to pay off the loan in excess of the contribution limits of section 85301.

Mr. Richter, a candidate seeking election in 2000, can raise funds during the "black out period" within the contribution limits of section 85301, but only to pay campaign debts incurred before January 1, 1997. (Section 85305, Regulation 18530.7, *Johnson Advice Letter*, No. A-96-361(a), and *Ryan Advice Letter*, No. A-96-329.) He will be subject to the contribution limits of section 85301. Of course, once Mr. Richter raises the amount of the campaign debt during the "black out period," he may not raise any more funds until the "black out period" is lifted.

Exactly what the contribution limits of section 85301 are will differ in certain situations. Specifically, the contribution limits quantified in section 85301 are by its own language not applicable in two situations: 1) when a local jurisdiction imposes a different contribution limitation; and 2) when a candidate accepts the voluntary expenditure ceilings of section 85400. (Section 85301 and Section 85402.) Since Mr. Richter is running for a state office we are only concerned with the latter.

In determining whether the contribution limits in section 85301 will apply or the limits referenced in section 85301 and located in section 85402 will apply, the candidate must accept or reject the expenditure ceilings set in section 85400. In fact, section 85401 states that "Each candidate for office shall file a statement of acceptance or rejection of the voluntary expenditure ceilings in section 85400 before accepting any contributions."³ (Emphasis added.)

If Mr. Richter accepts the voluntary expenditure ceilings then he will be subject to contribution limits quantified in Section 85402. If Mr. Richter rejects the voluntary expenditure ceilings then he will be subject to the contribution limits quantified in section 85301. (Section 85401.) For example, if Mr. Richter is running for Senate and accepts the ceilings, then the applicable contribution limit will be five hundred dollars (\$500). (Section 85402(b).) However, if Mr. Richter declines the ceilings the applicable contribution limit will be two hundred-fifty dollars (\$250). (Section 85301(b).)

In summation, Mr. Richter may accept contribution limits during the "blackout period" to retire his campaign debt. However, he must first accept or reject the voluntary spending limits in

² Emergency regulations expire by operation of law 120 days after adoption. Regulations 18530.7 (and 18541) will expire on May 7, 1997. The Commission may adopt the regulation as a permanent regulation before the expiration date.

³ Please see emergency regulation 18541. (Copy enclosed.)

section 85400. This choice will also determine how much Mr. Richter may receive in contributions from each donor.

Also, please keep in mind that, assuming a \$500 limit, if a contributor gives Mr. Richter \$500 during the "blackout" period for the payment of campaign debts incurred before January 1, 1997, for a 2000 election, the contributor cannot contribute any additional funds for that same election. (Section 85305(e).)

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', written over a horizontal line.

By: Marte Castaños
Staff Counsel, Legal Division

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