

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 13, 1997

Kevin Dowling
27352 Marigold Court
Hayward, California 94545

**Re: Your Request for Advice
Our File No. A-97-073**

Dear Mr. Dowling:

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

QUESTIONS

1. What does the law say about contributions from parents? May parents give a candidate money and then may the candidate use it as his or her personal funds? What are the restrictions in this area?
2. What if a City does not have or does not adopt spending limits? What set of contribution limits apply? You stated that Hayward has 120,000 residents.
3. Could a public employees' union become a small contributor committee? Could a public employees' union be considered a lobbyist? You stated that the Hayward unions do not have full-time lobbyists.
4. Will Proposition 208 be in effect until/if a court rules against it? When is the court ruling expected?

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

CONCLUSION

1. Parental contributions are not distinguished from general contributions and are, therefore, in the absence of a local ordinance, subject to the limitations set forth in section 85301. Section 85301(b) would be applicable to your candidacy and would allow you to accept no more than two hundred fifty dollars (\$250) from each parent per election.
2. In the absence of a local ordinance, section 85301(b) would apply to your candidacy for the Hayward city council.
3. A public employees' union may form a small contributor committee if it meets the criteria of section 85203. However, it may not be considered a *lobbyist* pursuant to the definition in section 82039. Nevertheless, a public employees' union may be considered a lobbying firm or lobbyist employer if it meets the guidelines of either section 82038.5 or 82039.5.
4. As of the writing of this letter, Proposition 208 is in effect and to be followed. It is unknown when a court will cast a final ruling on the Proposition's validity.

ANALYSIS

Parental Contributions

A contribution is any payment made, among other things, 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 its function is to influence or attempt to influence the action of voters for or against the nomination or election of a candidate or if it is received by a candidate. (Regulation 18215(a)(1)(2).) The Political Reform Act does not distinguish between contributions made by general contributors and parental contributors. Therefore, any contribution made by a parent(s) will be governed by the limits set forth in local ordinance(s) or the Political Reform Act.²

Contributions to city council candidates, not subject to municipal spending limits,³ are governed by section 85301 because of the inability of such candidates to accept any voluntary expenditure ceilings. (See section 85400 [providing that voluntary expenditure ceilings apply to *Assembly candidates, Senate candidates, and local jurisdictions* with established voluntary expenditure ceilings].) Section 85301 allows city council members in districts with 100,000 or more residents to accept contributions not totaling more than two hundred fifty dollars (\$250) from each individual. (See Section 85308(a) [providing that contributions by a husband and wife

² Payments made to a candidate, as defined in section 82007, are presumed to be contributions. (Section 82015.)

³Section 85400(c).

will not be aggregated, thereby establishing that contributions will be totaled for each individual, even when such funds might come from the same bank account or financial interest].) Hence, as a candidate for city council, you would be able to accept a contribution of two hundred fifty dollars (\$250) from each parent, for a total of five hundred dollars (\$500) for each election.

Municipalities Not Adopting Voluntary Spending Limits

Municipalities may adopt voluntary spending limits pursuant to section 85400(c) of the Political Reform Act. In the absence of such an adoption, a candidate for Hayward city council would be subject to the contribution limitations set forth in section 85301(b). Section 85301(b) allows a candidate in a district of 100,000 or more residents, to accept contributions no more than two hundred fifty dollars (\$250) from any person for each election. This section would apply to your candidacy as a Hayward city councilmember because the City of Hayward has a population of approximately 120,000 residents and elects its council members *at large*.⁴

Public Employee Unions — Small Contributor Committee / Lobbyist

A. Small Contributor Committee

A small contributor committee is any committee that meets *all* of the following criteria: (a) it has a membership of at least 100 individuals; (b) all the contributions it receives do not total more than fifty dollars (\$50) per person each calendar year; (c) it has been in existence for at least six months; and, (d) it is not a candidate-controlled committee. (Section 85203; emphasis added). Therefore, a public employees' union that forms a committee that meets the previous criteria may be considered a small contributor committee. Any such committee must follow the filing requirements of the Act.

B. Lobbyist

A lobbyist is any *individual* who receives two thousand dollars (\$2,000) or more in a calendar month for non-travel expenses and whose principal duties as an employee are to directly or indirectly influence legislative or administrative action. (Section 82039; emphasis added.) The term individual as used in the Act pertains particularly to human beings. (*Mueller* Advice Letter, No. A-96-325, copy enclosed). Thus, a public employees' union would be excluded from being a "lobbyist." However, a public employees' union, meeting the criteria set forth in either section 82038.5 and/or 82039.5 may be considered either a lobbying firm or a lobbyist employer. You have not indicated that you represent the public employees' union. Therefore, you may want to contact them for more information regarding their lobbying status and/or future intentions.

⁴ The term "at large" is used to describe an election whereby the candidate(s) are elected by the entire population of a municipality (i.e., city council members are elected by the entire population of the city).

Effect of Proposition 208 During Litigation

The effective date of Proposition 208, the California Political Reform Act of 1996, is January 1, 1997. Proposition 208 will stay in effect until either: 1) a court invalidates it; 2) a court enjoins it; or, 3) the voters of California repeal it. As of the writing of this letter, Proposition 208 is in effect and to be followed. It is unknown when a court will cast a final ruling on the proposition's validity.

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 'D. White', with a large, sweeping flourish extending to the right.

By: Douglas White
Graduate Assistant, Legal Division

SGC:DW:ak

Enclosures