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FAIR POLITICAL PRACTICES COMMISSION

March 18, 1997

Mr. James R. Sutton
Law Offices of Nielsen, Merksamer
Parrinello, Mueller & Naylor
591 Redwood Highway, #4000
Mill Valley, California 94941

**Re: Your Request for Advice
Our File No. I-97-079**

Dear Mr. Sutton:

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

FACTS

You represent several individuals and business entities that wish to make campaign contributions to local elected officials to help them pay off debts relating to their 1996 campaigns. Contributor A and Contributor B would like to contribute to a candidate who ran in a city, which has fewer than 100,000 residents and its own contribution limits, to help the candidate retire debt from a 1996 campaign. Under city law existing at the time, the contributors could each contribute up to \$250 to the candidate per election. Because the city's campaign ordinance was not adopted by the voters, however, contributions to candidates running in 1997 or later will be limited to \$100 per election pursuant to Proposition 208. The city council has not yet adopted voluntary expenditure ceilings.

QUESTIONS

Contributor A did not contribute to the candidate's 1996 election at all. How much may Contributor A now give? Contributor B contributed \$250 to the candidate's 1996 election. How much may Contributor B now give?

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329 (c)(3).)

CONCLUSION

Under the facts you described, Contributors A and B may each give \$100 to repay the local official's debt from a 1996 election.

ANALYSIS

You observe that though the *Johnson* Advice Letter, No. A-96-316a, concluded that candidates could raise funds to pay off 1996 campaign debts subject to Proposition 208's limits, it did not indicate how, or whether, this conclusion applies to cities and counties which had valid contribution limits in place in 1996. You ask several questions about what limit applies to contributions raised by local officials to pay off debts relating to their 1996 campaigns.

Section 85305 of the Act provides that despite the fundraising blackout periods, candidates may raise contributions at any time to pay off debt from elections that took place before Proposition 208 became effective. Section 85305(c) states:

“ 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.” (Emphasis added.)

Under section 85305(c), local elected officials seeking to pay off debts related to their 1996 campaigns may raise contributions at any time. They must raise the contributions subject to the contribution limits in section 85301 of the Act. Section 85301(a) sets forth the Act's \$100 per election contribution limit applicable to candidates in small jurisdictions:

“Except as provided in subdivision (a) of Section 85402 and Section 85706, no person, other than small contributor committees and political party committees, shall make to any candidate or the candidate's controlled committee for local office in districts with fewer than 100,000 residents, and no such candidate or the candidate's controlled committee shall accept from any person a

contribution or contributions totaling more than one hundred dollars (\$100) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.” (Emphasis added.)

There are several instances when the \$100 contribution limit for candidates in small jurisdictions may not apply. First, the contribution limit is raised to \$250 per election if a candidate accepts voluntary spending ceilings set by local ordinance pursuant to section 85400(c).² (Section 85402(a).) Second, a local jurisdiction may impose contribution limits higher than those contained in section 85301 by popular vote. (Section 85706(b).) Third, the contribution limit may be raised to \$500 per election if a candidate accepts spending limits under a charter city’s program that has voluntary spending limits and provides matching funds to candidates at the ratio of at least \$1 dollar of public funds to each \$3 dollars of matchable private contributions. (Section 85706(c).) Finally, a local jurisdiction may set lower contribution limits than those in section 85301, by popular vote or a vote of the governing body of the local jurisdiction. (Section 85706(b).)

Under the facts you presented, the city had not enacted voluntary spending limits or a voluntary spending limits/matching funds program. The city’s higher contribution limits (\$250) were preempted by Proposition 208 because the local ordinance was not adopted by the voters. Therefore, the higher contribution limits possible under section 85301 do not apply. The limit applicable to contributions raised by local officials in the jurisdiction you described, to pay off debt from a 1996 election, is \$100. Under Proposition 208, the \$100 limit applies both to your hypothetical Contributor A, who gave nothing in the 1996 election, and to Contributor B, who gave \$250, the maximum permitted under the local law.

You ask whether the answers to your questions would differ if the city’s contribution limit in place in 1996 was below Proposition 208’s limits; e.g., \$50 per election, or if the city’s prior contribution limit was adopted by voters (and therefore still valid) under Proposition 208? If the city had lower limits in effect, such as \$50 per election, a contributor who had given \$50 in the 1996 election could give another \$50 in 1997 to retire the debt under section 85305(c). Similarly, if the city had higher contribution limits in effect that were still valid because they were passed by the voters, such as \$250 per election, a contributor who had given \$250 in the 1996 election could give another \$250 in 1997 to retire debt from that election. (Section 85305(c).) In the *Johnson* Advice Letter, *supra*, at p. 4, we advised that under the Act, contributions made in connection with an election held prior to January 1, 1997, would not be aggregated with contributions made after January 1, 1997, by the same person to pay down a

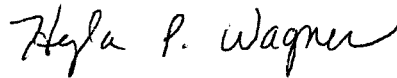
² Section 85400(c) provides: “Any local jurisdiction, municipality, or county may establish voluntary expenditure ceilings for candidates and controlled committees of such candidates for elective office not to exceed one dollar (\$1) per resident for each election in the district in which the candidate is seeking elective office. Voluntary expenditure ceilings may be set at lower levels by the local governing body.”

candidate's debt for that election. We do not have enough facts to indicate what aspects of campaign financing the local ordinance regulates. A candidate should check to make sure he or she is not violating a local campaign finance ordinance, however, before accepting a contribution for debt repayment from a donor who already gave the candidate the maximum permissible contribution for an election held before 1997.

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 cursive script that reads "Hyla P. Wagner".

By: Hyla P. Wagner
Staff Counsel, Legal Division

SGC:HPW:ak