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FAIR POLITICAL PRACTICES COMMISSION

April 2, 1997

Ms. Shirley L. Grindle
Chairman, Orange County
Campaign Finance Reform Committee
5021 E. Glen Arran
Orange, California 92869

**Re: Your Request for Advice
Our File No. I-97-083**

Dear Ms. Grindle:

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

QUESTIONS AND CONCLUSIONS

You ask the following questions with respect to two situations: (a) campaign funds that were received by an officeholder or a candidate's controlled committee between January 1, 1989, and December 31, 1996, and (b) campaign funds that were received by an officeholder's or a candidate's controlled committee after January 1, 1997.

1. *May campaign funds received before or after the effective date of Proposition 208 be used to make campaign contributions to other candidates?*

No. Proposition 208 enacted a ban on the transfer of funds from one candidate's controlled committee to another candidate's controlled committee. Section 85306 provides that "[n]o candidate and no committee controlled by a candidate or officeholder, other than a political party committee, shall make any contribution to any other candidate running for office or his or her controlled committee." In addition, emergency regulation 18530.1(b)² (copy enclosed) provides that contributions deposited in a controlled committee prior to January 1, 1997, "may

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 formal written advice. (Section 83114; Regulation 18329(c)(3).)

² Emergency regulations expire by operation of law 120 days after adoption. Regulation 18530.1 will expire on May 7, 1997, however, the Commission may adopt it as a permanent regulation before that date.

not be transferred to other candidates or their controlled committees in violation of Government Code Section 85306.” While a candidate or officeholder is prohibited from transferring his or her campaign funds to another candidate, the candidate or officeholder may make a contribution of his or her own personal funds to another candidate. (Section 85306.)

2. *May campaign funds received before or after January 1, 1997, be used to make independent expenditures for or against other candidates?*

Under the Act as amended by Proposition 208, a candidate’s or an officeholder’s controlled committee may make independent expenditures. (*Forcier* Advice Letter, No. I-89-058 and *Huebscher* Advice Letter, No. A-97-089.)³ You may want to review section 85500 added by Proposition 208 (copy enclosed) which describes when expenditures are considered to be “independent” and when they are considered to be “coordinated” with a candidate. In addition, section 85500(b) provides that any committee that makes independent expenditures of \$1,000 or more supporting or opposing a candidate may not accept any contributions over \$250 per election. Note that funds subject to Proposition 208’s new surplus rules (as discussed below), and funds raised within 90 days after an election may not be used to make independent expenditures. (Sections 89519 and 85305(c).)

3. *May surplus funds be used to make independent expenditures for or against other candidates?*

Under Proposition 208’s new surplus funds rules, candidates may not use surplus funds to make independent expenditures. (*Huebscher* Advice Letter, No. A-97-089.) Under section 89519, candidates may use campaign funds remaining after an election to pay outstanding campaign debts arising from that election. If a candidate controlled committee has surplus campaign funds remaining after the election, the candidate must dispose of these funds as required by new section 89519. Section 89519 defines surplus campaign funds as “[a]ny campaign funds in excess of expenses incurred for the campaign or for expenses specified in subdivision (d) of Section 85305 [attorney’s fees].” Under section 89519, the candidate must distribute all surplus campaign funds within 90 days after his or her withdrawal, defeat, or election to office. A candidate who is elected to office, may deposit up to \$10,000 of surplus funds in his or her officeholder account. The candidate must distribute any remaining surplus funds to a political party, to contributors on a pro rata basis, or to the state’s General Fund.

With respect to campaign funds received prior to January 1, 1997, that have not yet become surplus, emergency regulation 18519.4 provides as follows:

“(b) Campaign Funds Held by Officeholders that Have Not Yet Become Surplus.

³ We do not interpret section 89510(b) or Regulation 18524(a) to prohibit a candidate’s controlled committee from making independent expenditures.

(1) Campaign funds received prior to January 1, 1997, that are held by an elected officer and have not yet become surplus because the elected officer has not been defeated or left office, may be used for any lawful purpose under Government Code sections 89510-89518 or transferred to a committee for a future election of the elected officer pursuant to 2 Cal. Code of Regs. Section 18530.1 regarding carryover of funds. Unless spent or transferred to a committee for a future election, these funds will become surplus on the date the elected officer leaves office and will be subject to the surplus rules of Government Code section 89519 at that time.”

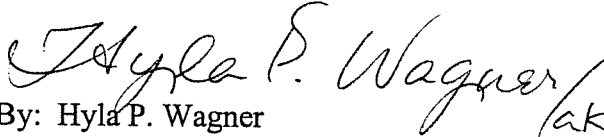
If an officeholder has campaign funds received prior to January 1, 1997, which are not yet considered surplus, regulation 18519.4 above, provides that the funds will become surplus on the date he or she leaves office. The funds will be subject to Proposition 208's new surplus rules at that time and may not be used to make independent expenditures.

“Old” surplus campaign funds that were received and became surplus prior to January 1, 1997, are governed by the surplus rules in effect at the time the funds were received. (Emergency regulation 18519.4(c) and (d).)⁴ A candidate or officeholder may use such “old” surplus campaign funds to make independent expenditures, as this use was not prohibited under the old surplus rules.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel


By: Hyla P. Wagner
Staff Counsel, Legal Division

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⁴ With respect to “old” surplus funds, although emergency regulation 18519.4 focuses on when funds became surplus, rather than when they were received, the regulation as proposed for permanent adoption focuses on when the funds were received.