

RAVI MEHTA
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FAIR POLITICAL PRACTICES COMMISSION

March 11, 1997

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**Re: Your Request for Advice
Our File No. I-97-095**

Dear Mr. Vinatieri:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Since your advice request does not name specific officials, we are treating your request as one for informal assistance.²

QUESTIONS

1. Does Proposition 208 apply to local jurisdictions?
2. Does Proposition 208 restrict independent expenditures from being made in support of a candidate or elected official?

CONCLUSIONS

1. Yes, many of Proposition 208's provisions apply to local jurisdictions. I have enclosed the text of Proposition 208 and a summary of Proposition 208 compiled by the Commission for your perusal.
2. No. Proposition 208 does not limit the amount of independent expenditures that can be made in support of a candidate. However, Proposition 208 does explicate the definition of independent expenditure.

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329, subd. (c)(3).)

ANALYSIS

1. **Proposition 208 Applies to Local Jurisdictions**

Please be aware that Proposition 208 is applicable to local jurisdictions. For instance, contributions in local races in districts with fewer than 100,000 residents are generally limited to \$100 for those candidates who do not agree to spending limits and \$250 to those candidates who do agree to spending limits. (Sections 85301 and 85402.)

Section 85706, added by Proposition 208, does grant local jurisdictions a degree of autonomy to enact their own body of campaign finance provisions:

“(a) Nothing in this Act shall nullify contribution limitations or other disclosures or prohibitions of any local jurisdiction that are as or more stringent than set forth in this Act.

(b) The governing body of a local jurisdiction may impose lower contribution limitations or other campaign disclosures or prohibitions that are as or more stringent than set forth in this Act. A local jurisdiction may impose higher contribution or expenditure limitations only by a vote of the people

(c) . . . [protects local programs involving the use of matching funds.]”

The verb “may impose” in the last section of subsection (b) has been interpreted to include previously enacted ordinances. (*Mueller* Advice Letter, No. A-96-353.)

Hopefully, this will assist you in understanding Proposition 208's effect on local jurisdictions. Of course, you should feel free to call or write the Commission with specific questions about the Act and Proposition 208.

2. **Independent Expenditures**

Proposition 208 does not limit the amount of independent expenditures that can be made by a person in support of a candidate.³ Prior to the passage of Proposition of 208, the Act defined an independent expenditure as a payment for a communication that supports or opposes a candidate which is not made to or at the behest of the candidate. (Section 82031.) Regulation

³ The Act does limit how much can be contributed to an independent expenditure committee. (See section 85500(b).)

18225.7 defines “made at the behest of.”⁴ Proposition 208 does not change the definition of “independent expenditure” in section 82031 or the definition of “made at the behest of” in regulation 18225.7. However, Proposition 208 explicates the definition of independent expenditure in “Chapter 5. Limitations on Contributions.” of the Act. (*Bauer Advice Letter*, No. I-97-069.)

Section 85304 of Chapter 5, added by Proposition 208, states, “Any expenditures made by a political party committee in support of a candidate shall be considered contributions to the candidate.” (Section 85304.) Section 85500(c) of Chapter 5, added by Proposition 208 states, “Any contributor that makes a contribution of one hundred dollars or more per election to a candidate for elective office *shall be considered to be acting in concert* with that candidate and shall not make independent expenditures and contributions which in combination exceed the amounts set forth in Section 85301 in support of that candidate or in opposition to that candidate’s opponent or opponents. (Section 85500(c) [Emphasis added].) Also, section 85500(d) of Chapter 5, added by Proposition 208, states:

“(d) An expenditure shall not be considered independent, and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made either:

- (1) With the cooperation of, or in consultation with, any candidate or any authorized committee or agent of the candidate.
- (2) In concert with, or at the request or suggestion of, any

⁴ Regulation 18225.7:

“(a) ‘Made at the behest of’ means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code Section 82031.

(b) An expenditure is presumed to be at the behest of a candidate or committee if it is:

- (1) Based on information about the candidate’s or committee’s campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or
- (2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.

(c) An expenditure is not made at the behest of a candidate or committee merely when:

- (1) A person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or the candidate’s agents concerning the expenditure; or
- (2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate’s agents.”

candidate or any authorized committee or agent of the candidate.

(3) Under any arrangement, coordination, or direction with respect to the candidate or the candidate's agent and the person making the expenditure.

(4) By a candidate or officeholder supporting another candidate or officeholder of the same political party running for a seat in the same legislative body of the candidate or officeholder.

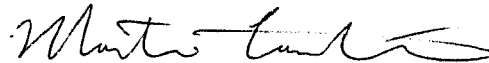
For purposes of this section, the person making the expenditure shall include any officer, director, employee, or agent of that person."

In short, Proposition 208 does not limit the amount of independent expenditures that can be made in support of a candidate. However, Proposition 208 does explicate the definition of independent expenditure.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Marte Castaños
Staff Counsel, Legal Division

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