

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 13, 1997

Michael Rocco
Engineering & Utility Contractors Association
7041 Koll Center Parkway, #130
Pleasanton, California 94566

**Re: Your Request for Advice
Our File No. A-97-105**

Dear Mr. Rocco:

This letter is a response to your request for advice on behalf of the Engineering & Utility Contractors Association ("EUCA-PAC") regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

You have asked whether EUCA-PAC may re-issue a replacement check for a lost check that was written and mailed prior to the effective date of Proposition 208.

CONCLUSION

Because the check was not "received" by the candidate committee on or before December 31, 1996, any "replacement" check will be subject to the contribution limits and other provisions of Proposition 208.

ANALYSIS

Emergency regulation 18530.1(a) regarding the use of funds raised prior to January 1, 1997, provides as follows:

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

“Contributions deposited in a controlled committee prior to January 1, 1997, are not subject to the California Political Reform Act of 1996, if those funds are held in a controlled committee that was established pursuant to Section 84101 prior to January 1, 1997. . . .”²

Such funds are not subject to Proposition 208's contribution limits and are not subject to the other provisions of Proposition 208 until transferred into a new Proposition 208 committee formed after January 1, 1997.

The Act uses the term “contribution received” by a candidate or committee in the definition of the term contribution, the definition of a committee, and the section regarding cash and in-kind contributions (Sections 82015, 82013 and 84300, respectively). Further, Regulation 18421.1(c), regarding disclosure of the making and receipt of contributions, specifically defines when a monetary contribution is received as follows:

“A monetary contribution is ‘received’ on the date that the candidate or committee, or the agent of the candidate or committee, *obtains possession or control of the check* or other negotiable instrument by which the contribution is made. All contributions received by a person acting as an agent of a candidate or committee shall be reported to and disclosed by the candidate or committee, or by the committee’s treasurer, no later than the closing date of the next campaign statement that the committee or candidate is required to file.” (Emphasis added.)

Consistent with the Act and regulation 18421.1(c), contributions received by a candidate on or before December 31, 1996, are not subject to Proposition 208.

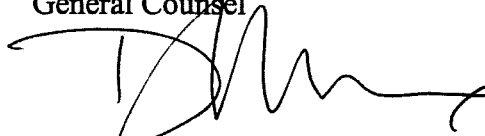
You indicate that EUCA-PAC issued a check in the amount of \$2,000 on December 20, 1996, to the Mazzoni for Assembly Committee. The check was mailed that same day. Upon reviewing your bank statement in February, you discovered that this check had not been returned to the bank. The campaign committee subsequently confirmed that it had not received the check. Because the Mazzoni for Assembly Committee did not obtain possession or control of the check before January 1, 1997, emergency regulation 18530.1(a) does not apply. Therefore, any replacement funds would be subject to the contribution limits and other provisions of Proposition 208.

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

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 'DM', with a large, sweeping initial 'D' and a smaller 'M'.

By: Deborah Maddux-Allison
Staff Counsel, Legal Division

SGC:DM:ak