

RAVI MEHTA
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FAIR POLITICAL PRACTICES COMMISSION

April 8, 1997

The Honorable Scott Baugh
Assembly Member, 87th District
California Legislature
State Capitol, Room 4009
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. A-97-113**

Dear Assembly Member Baugh:

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

QUESTIONS

1. What contribution limits apply to you considering that you have debts from three different elections held prior to January 1, 1997?
2. What contribution limits apply to you considering that you have ongoing legal obligations stemming from a 1995 recall election?
3. Does a donor's willingness to contribute to retire debt or pay for legal fees affect the donor's ability to contribute for an election after January 1, 1997?

CONCLUSIONS

1. You may raise contributions in unlimited amounts to pay off debt resulting from the 1995 recall election provided that the total amount raised does not exceed the aggregate debt resulting from that election. Also, you may raise an additional \$250 for the March 1996 primary election and an additional \$250 for the November 1996 general election from the same source.

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

Finally, you may raise an additional \$250 for your officeholder account from the same source, subject to the restrictions of Section 85313.

2. You may raise funds in any amount sufficient to pay for attorney's fees and fines referenced in Section 85305(d).

3. No. If an individual or political action committee makes a contribution in 1997 to retire a debt that was incurred by a legislator prior to 1997 or to pay legal expenses pursuant to Section 85305(d), that contribution does not count against that individual's or that political committee's aggregate contribution limits for the 1998 election cycle.

FACTS

You have two committees with debt: "Baugh For Assembly" and "Friends of Scott Baugh." The "Baugh for Assembly" committee acquired debt in connection with the 1995 recall election. The "Friends of Scott Baugh" committee acquired debt in connection with the March 1996 primary election and the November 1996 general election. In addition, you have ongoing legal obligations in connection with the 1995 recall election.

ANALYSIS

Analysis - Question #1

Proposition 208 became effective January 1, 1997. Among other things, Proposition 208 established contribution limits. In districts of 100,000 or more residents, any candidate who does not agree to spending limits may not accept a contribution of more than \$250 per election. However, a recall election is considered to be a ballot measure under the Act and candidates running in a recall election are not subject to the contribution limitations in Section 85301. (*Davidson* Advice Letter, No. I-97-103; *Cohen* Advice Letter, I-96-364; *Roberti* Advice Letter, No. A-89-358.)

Proposition 208 also established restrictions on the timing of fundraising. Section 85305, in pertinent part, states:

“(c) 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.

* * *

“(e) Contributions pursuant to subdivisions (c) and (d) of this provision shall be considered contributions raised for the election in which the debts, fines, assessments, recounts, contests, audits, or tax liabilities were incurred and shall be subject to the contribution limits of that election.”

Only under certain circumstances may off-year fundraising occur. On December 30, 1996, pursuant to Section 85305, the Commission decided that a candidate may raise funds during the off-year to pay campaign debts incurred on or before January 1, 1997, the effective date of Proposition 208. (Emergency Regulation 18530.7.)² However, Regulation 18530.7(b)(1) states that a candidate may not collect funds to pay off the loan in excess of the contribution limits of Section 85301.

With regard to debt incurred for the three elections prior to January 1, 1997, you may raise funds at any time provided that you raise them within the limits of Section 85301 and that the aggregate amount collected does not exceed the debt. The contribution limit for the March 1996 primary election is \$250 and the contribution limit for the November 1996 general election is \$250. (Section 85301(b).) The contribution limits of Section 85301 do not apply to the March 1995, recall election since the limits do not apply to recall elections. Therefore, contributions may be received in unlimited amounts to pay off the debt incurred as a result of the March 1995 recall election, provided that the total amount received does not exceed the aggregate amount of the debt of that election. In summation, any individual or political committee could contribute a \$250 check for each of the 1996 elections and another check, not limited to \$250, for the recall election.

Analysis - Question #2

Section 85305(d) states that you may raise funds during the off-year to pay for certain attorney's fees and fines provided such funds are collected pursuant to the contribution limits of the Act. Specifically, Section 85305(d) provides:

“(d) Notwithstanding subdivision (c), funds may be collected at any time to pay for attorney's fees for litigation or administrative

² Emergency regulations expire by operation of law 120 days from adoption. The Commission may adopt an emergency regulation as a permanent regulation before the expiration date. (Regulation 18312.) The regulation is noticed for adoption at the Commission's May meeting.

action which arises directly out of a candidate's or elected officer's alleged violation of state or local campaign, disclosure, or election laws or for a fine or assessment imposed by any governmental agency for violations of this act or this title, or for a recount or contest of the validity of an election, or for any expense directly associated with an external audit or unresolved tax liability of the campaign by the candidate or the candidate's controlled committee; provided such funds are collected pursuant to the contribution limits of this act."

The limits of article 3 apply to contributions raised to pay legal expenses contemplated by Section 85305(d).³ (*Hiltachk* Advice Letter, A-97-129.) However, the contribution limits of article 3 do not apply to recall elections. Therefore, there is no individual limit on contributions to pay for legal expenses associated with that election provided that the aggregate amount collected⁴ does not exceed the total amount of legal expenses to be incurred. Further, any person could contribute to this fund, even those who contribute to relieve any of the other campaign debts discussed above.

Finally, any contributor discussed above could, in addition, contribute \$250 to your officeholder account. However, the officeholder account is subject to an aggregate limit of \$10,000 per year. Section 85313 limits the use of officeholder account funds to expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer. Finally, those funds may not be used in connection with any campaign for elective office or ballot measure. (Section 85313(b).)

Analysis - Question #3

If an individual or political committee makes a contribution in 1997 to retire a debt that was incurred by a legislator prior to 1997, that contribution does not count against that person's aggregate contribution limits for the 1998 election cycle. (*Johnson* Advice Letter, No. A-96-316a; *Bovée* Advice Letter, No. A-97-043.) Similarly, if an individual or political action committee makes a contribution to pay legal expenses pursuant to Section 85305(d), that contribution does not count against that individual's or that political action committee's aggregate contribution limits for the 1998 election cycle.


³ Please note that such expenses are limited to those expressly covered by Section 85305(d). You have not provided information regarding exactly what legal obligations you have resulting from the March 1995, recall election. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

⁴ Funds raised pursuant to Section 85305(d) should not be deposited into an officeholder account. (*Avila* Advice Letter, No. A-96-355.)

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 'Marte Castaños', with a long horizontal flourish extending to the right.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:ak