RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

April 29, 1997

Mr. John Bovée
The Bovée Company
1127 11th Street, Suite 226
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-97-172

Dear Mr. Bovée:

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

QUESTIONS AND CONCLUSIONS

1. *May a member of the State Legislature who has past campaign debt from several different election cycles prior to 1996, raise the legal limit of $250 for each of those past elections? For example, if a State Assembly Member has a $100,000 deficit from the November 1996 general election, a $50,000 deficit from the March 1996 primary election, and a $75,000 deficit from the November 1994 general election, can that Member solicit three separate $250 contributions from the same individual for each of those past elections?*

Yes. With respect to repaying debts from elections held before January 1, 1997, section 85305 enacted by Proposition 208, provides as follows:

> "(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

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

> 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.
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> (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."
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> Section 85305(c) and (e).
> Emphasis added.

Section 85305(c) specifically states that the contribution limits applicable to retiring debts incurred with respect to any election held before January 1, 1997, apply separately to each election. (*Venable* Advice Letter, No. A-96-344.)

2. *Does the use of a disclaimer on a fundraising invitation, such as "This Invitation is Not Intended for Registered Lobbyists," absolve a Member of the Assembly or Senate from any wrongdoing under Proposition 208 if they mistakenly send a fundraising invitation to a lobbyist?*

No. Section 85704 prohibits candidates, elected officeholders, or their controlled committees from soliciting contributions from, through or arranged by a registered lobbyist. Under this provision, candidates, officeholders and their committee staff have a duty to diligently review fundraising, mailing and contact lists to avoid soliciting lobbyists. While the use of a disclaimer such as you described or that described in the *Ackerman* Advice Letter, No. A-97-065,[2] would be some evidence that a fundraising mailing was not intended to reach lobbyists, it does not relieve a candidate and his or her campaign staff of the duty to thoroughly review fundraising and contact lists to avoid soliciting lobbyists.

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[2] In the *Ackerman* Advice Letter, *supra*, the requestor proposed the following disclaimer: "The Political Reform Act prohibits this committee from soliciting or accepting a campaign contribution from or arranged by a lobbyist who finances, engages, or is authorized to engage in lobbying the [name of agency of officeholder and/or name of agency to which election is sought]. This is not a request for a contribution from a lobbyist."

3. *If a legislator formally agrees to the spending limits as outlined under Proposition 208, may that legislator then raise contributions in amounts of $500 for the elimination of his deficit from an election that occurred before 1997?*

No. A legislator may not avail himself or herself of the higher limits provided in section 85402 for candidates who agree to expenditure limits, when fundraising to repay debt from an election that occurred before January 1, 1997, because the option of choosing to abide by the spending limits did not exist at the time the election took place. Therefore, the $250 contribution limit of section 85301(b) applies.

4. *If the legislator has loaned his 1998 campaign money prior to the January 1, 1997, implementation date of Proposition 208, and if that legislator has formally accepted the campaign spending limits under Proposition 208, may that legislator then raise contributions in increments of $500 to pay off that 1998 deficit?*

Yes. If a legislator files a statement accepting the voluntary spending limits for the 1998 election, the legislator may raise contributions of $500 per person to pay off the debt incurred before January 1, 1997, for the 1998 election. Under Regulation 18530.7, funds may be raised at any time to repay debt incurred before January 1, 1997. Regulation 18530.7(a)(1) provides as follows:

> "(1) No Off-Year Ban. Funds may be collected at any time to retire a campaign debt incurred prior to the effective date of the California Political Reform Act of 1996. However, funds collected on or after January 1, 1997, are subject to the contribution limits of Article 3, Chapter 5 of Title 9, Government Code Section 85301."[3]

Under Emergency Regulation 18541,[3] the legislator must file a statement accepting the voluntary spending limits with the Commission.

5. *What are the Proposition 208 limits on in-kind contributions? What are the limits on in-kind contributions for deficit reduction?*

Proposition 208 imposes various monetary limits on contributions to candidates and committees in Article 3. In-kind contributions of goods or services are simply one form of contributions. (Sections 82044 and 82015; Regulation 18215.) In-kind contributions are subject to the same limits that apply to monetary contributions under the Act, as amended by Proposition

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[3] Emergency regulations expire by operation of law 120 days after adoption. Regulations 18541 and 18530.7 will expire on May 6, 1997, and May 7, 1997, respectively. The Commission may adopt the regulations as permanent regulations before the expiration dates.

208. The recipient must value in-kind contributions at the fair market value of the goods or services received. (Section 82025.5)

6. *Under Proposition 208, may a non-profit foundation, trade association or other group still invite a legislator to speak to that group and pay for his meal and travel?*

Proposition 208 did not amend the Act's honoraria, gift, and travel sections. (Sections 89501-89506.) To the extent that those sections permit payment for an official's travel in connection with a speech given by the official, the rules are unchanged. Enclosed for your information is a fact sheet on the gift, honoraria, and travel rules applicable to elected state officials.

7. *Under Proposition 208, may funds raised under the deficit reduction rules for years prior to 1997 be used for purposes other than just deficit reduction? If so, what are those other purposes?*

No. Funds raised under section 85305(c) and Regulation 18530.7(a)(1) to repay a debt incurred prior to January 1, 1997, must be used for the purpose of repaying the debt. Funds raised to repay old debt under section 85305(c) may cover the necessary costs of fundraising for the debt repayment.

8. *Under Proposition 208, may a Member of the Assembly or Senate open a Congressional campaign account, raise money under the Proposition 208 guidelines during 1997 for that Congressional campaign account, and then transfer that money back into a State Assembly or Senate campaign account?*

No. Your question implies an intention to evade the fundraising blackout period imposed by section 85305. There are no "Proposition 208 guidelines" that apply to fundraising for a Congressional campaign account. The $1,000 and $5,000 limits of federal election law for contributions from individuals and political committees, respectively, apply to fundraising for a Congressional campaign. A Member of the Assembly or Senate may not open a Congressional campaign account, raise funds at the $250 or $500 contribution limits of Proposition 208 during 1997, and transfer the funds back to a State Assembly or Senate campaign account. The Commission has not yet considered whether a legitimate Congressional candidate who lost a race could later "cleanse" and transfer any surplus funds into a California campaign account regulated by Proposition 208.

If you have any other questions regarding this matter, please contact me at (916) 322-5660. For your information, the Commission's advice letters are available on Westlaw, and

advice letters interpreting Proposition 208 are available on the Commission's fax-on-demand service (1-888-622-1151). The most recent index to the fax-on-demand service is enclosed.

Sincerely,

Steven G. Churchwell
General Counsel

Hyla P. Wagner

By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosures
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