

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 15, 1997

Gordon Wilcher
1241 North El Prado Drive
Ridgecrest, California 93555-2302

**Re: Your Request for Advice
Our File No. I-97-175**

Dear Mr. Wilcher:

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

QUESTION

1. *What is the definition of "contribution" under the Political Reform Act? Does the Act distinguish between solicited and unsolicited contributions? Are there any limits on the amount you may contribute to a candidate? Are there any limits on the amount you may contribute to a political party? What is the difference between a contribution and a gift?*

CONCLUSION

Payments received by a candidate are contributions or gifts. Payments made to support a candidate are contributions or independent expenditures.

Contribution

A "contribution" is a payment made for political purposes. (Section 82015; Regulation 18215 (copy enclosed).) A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or if it is received by or made at the behest of a candidate. (Regulation 18215(a)(1)(2).) Therefore, any payment made to a candidate is presumed to be a contribution unless an exception set forth in regulation 18215(c) applies.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations. In formal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

You have asked whether there is a difference between a contribution that is sent in response to a solicitation by a candidate and an unsolicited contribution. The term "contribution" as defined by section 82015 encompasses both solicited and unsolicited contributions.

Proposition 208, which went into effect January 1, 1997, limits the amount a person may contribute to candidates for elective office. The limits vary depending on the particular office a candidate is running for and whether the candidate has agreed to applicable voluntary spending limits. (Sections 85301, 85400, 85402.)

The contribution limit applicable to candidates running for statewide office² is \$500 per person per election. (Section 85301(c).) If a candidate for statewide office accepts voluntary spending limits, the contribution limit is \$1,000 per person per election. (Section 85402(c).) The contribution limit applicable to candidates running for legislative office³ and the Board of Equalization is \$250 per person per election. (Section 85301(b).) If a candidate for legislative office accepts voluntary spending limits, the contribution limit is \$500 per person per election. (Section 85402(b).) The contribution limit applicable to candidates running for office in districts of 100,000 residents or more is \$250 per person per election. (Section 85301(b).) If the district adopts and a candidate accepts voluntary spending limits, the contribution limit is \$500 per person per election. (Section 85402(b).) The contribution limit applicable to candidates running for local office in districts with fewer than 100,000 residents is \$100 per person per election. (Section 85301(a).) If the district adopts and a candidate accepts voluntary spending limits, the contribution limit is \$250 per person per election. (Section 85402(a).) In addition to contribution limitations, Proposition 208 places restrictions on when a candidate may accept a contribution. (Section 85305.)

With respect to contributions to political action committees, the contribution limit is \$500 per person per calendar year. (Section 85301(d).) The contribution limit applicable to contributions to political parties is \$5000 per person per calendar year. (Section 85303.)

Gift

There are various exceptions to the definition of contribution. For example, a payment received by a candidate is not a contribution if it is for personal purposes. Such a payment may be a gift or income to the candidate. (Regulation 18215(c)(14).) A gift is defined, in pertinent part, as "any payment to the extent that consideration of equal or greater value is not received."

² Candidates for statewide office include candidates for Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer and Superintendent of Public Instruction. (Section 82053.)

³ Candidates for legislative office include candidates for the California State Senate and the California State Assembly.

(Section 82028.) The Act imposes a \$290 limit on gifts to state or local officials including candidates running for state or local office from any single source. (Sections 89503.)

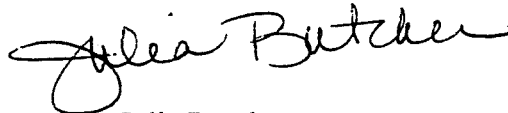
Independent Expenditures

An independent expenditure is defined, in relevant part, as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or taken as a whole and in context, unambiguously urges a particular result in an election but which is *not made to or at the behest* of the affected candidate. (Section 82031.) "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. (Regulation 18225.7, copy enclosed.) A payment made for a communication to support a candidate that is not made to or at the behest of the candidate is generally not limited by the Act. (Section 85500; *Buckley v. Valeo* (1976) 424 U.S. 1.)

I have enclosed a copy of Proposition 208, a chart detailing how Proposition 208 has amended the Act, and information on gift limits. If you have further questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Graduate Assistant, Legal Division

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Enclosures