

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 21, 1997

Nancy Huntley
Election Technician
Office of County Clerk-Recorder
County of Stanislaus
Registrar of Voters
1021 "T" Street, Suite 101
Modesto, California 95354

**Re: Your Request for Advice
Our File No. A-97-186**

Dear Ms. Huntley:

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

QUESTION

A ballot measure to reorganize four school districts into three unified school districts will include on the same ballot an election for five governing board members for each of the "new" school districts should the reorganization measure pass. Are the individuals appearing on the ballot "candidates" subject to the contribution limits of Proposition 208?

CONCLUSION

Individuals appearing on the ballot are not subject to the contribution limitations of Proposition 208. These candidates have the same status as candidates in a recall election; that is, they are candidates subject to the disclosure requirements of the Act, but are not subject to contribution limitations.

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

FACTS

Stanislaus County School has placed a measure on a June 3, 1997 ballot. The measure would reorganize four school districts into three unified school districts. The measure also creates an election on the same ballot for five governing board members for each of the "new" school districts. If the measure fails, the contests for governing board members will be nullified.

ANALYSIS

The Act, as recently amended by Proposition 208, prohibits candidates from receiving contributions in excess of specific limits. (Section 85301.) A candidate is defined, *inter alia*, as "an individual who is listed on the ballot." (Section 82007.) Arguably, since the candidates for the "new" school districts' boards appear on the ballot, they could be considered candidates under the Act and thus subject to the contribution limitations in Section 85301.

However, Section 82043 defines a "measure" as:

"[A]ny constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot." (Section 82043.)

The United States Supreme Court has ruled that contribution limitations may not be applied to ballot measure campaigns. (*Citizens Against Rent Control v. City of Berkeley* (1981) 454 U.S. 290.) Proposition 208 has followed that decision and applied contribution limitations only to candidate elections, not ballot measures. (*See* Section 85301.)

The school district reorganization proposal is ballot measure. The individuals seeking election to the school boards are running as a part of the ballot measure. If the ballot measure fails, they will not be elected to office. This is similar to a recall. A recall is considered to be a ballot measure under the Act, and neither the target of the recall nor the potential replacements are subject to contribution limitations. (*Cohen* Advice Letter, I-96-364; *Roberti* Advice Letter, No. A-89-358.)² Therefore, we conclude that the school board candidates are not subject to the contribution limitations set forth in Section 85301.

² With the advent of Proposition 208's contribution limits, the Commission may need to revisit the issue of whether replacement candidate running for office as part of a recall attempt should be subject to the applicable limits.

This conclusion was also reached in the *Davidson* Advice Letter, A-97-103 (copy enclosed) with regard to Proposition 8, which established an elected charter commission in the City of Los Angeles. You should be aware that the *Davidson* advice letter will be reviewed by the Fair Political Practices Commission at its next meeting scheduled for Thursday, May 1, 1997. The Commission may reconsider the position taken in *Davidson*, which could affect the advice given to you in this letter.

Please also note that the individuals running for the board positions are not considered candidates for the purpose of contribution limitations, but are still considered candidates for all other purposes. Accordingly, they are subject to all of the disclosure requirements in Chapter 4 of the Act.

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 "D. Allison", written over a circular scribble.

By: Deborah Allison
Staff Counsel, Legal Division

SGC:DA:ak
enclosure