

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

July 24, 1997

David Bauer
400 Capitol Mall, Suite 1560
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. A-97-348**

Dear Mr. Bauer:

This letter is a response to your request for advice on behalf of Assembly Member Scott Baugh regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. What constitutes "extensions of credit for a period of more than 30 days" pursuant to Section 85307(b)?
2. Are there contribution limits on extensions of credit for longer than 30 days for legal fees incurred in relation to a 1995 recall election?
3. Does the mere fact that a committee has not paid an invoice within 30 days imply that the creditor granted the longer term?
4. What collection efforts should be made by a creditor to provide evidence that credit terms were for no more than 30 days?
5. What violation has been committed by a committee under Section 85307(b) if it is unable, through diligent fundraising efforts, to pay a debt within 30 days?
6. Would it be a violation of Section 85307(b) for a printer to extend credit for a new job if a previous one was still unpaid after 30 days? In other words, does Section 85307 apply to a single event or to a single creditor?

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

7. If legal fees are billed to Assemblyman Baugh personally, must they be reported on Schedule F for the period incurred or may they be reported as current expenditures at the time the committee actually makes a payment?

8. If an extension of credit is not subject to any contribution limits, is the accrual of legal fees required to be reported other than on Schedule F since it appears that one could infer a contribution had been made by such credit terms?

CONCLUSIONS

1. Notwithstanding any contrary agreement between the parties, an extension of credit is deemed to begin on the earlier of two dates: (1) the date payment is due plus 15 days; or (2) 45 days from the date the goods or services were delivered. Under Section 85307(b), 30 days later the amount of the credit would be subject to the contribution limits of the Act.

2. No. There are no contribution limits on extensions of credit for longer than 30 days for legal fees incurred in relation to a 1995 recall election.

3. No. However, that does not change the answer to question #1. There is currently no exception to the rule enunciated in the answer to question #1.

4. There is currently no exception to the rule enunciated in the answer to question #1.

5. If a committee received an extension of credit for more than 30 days, then it may have violated any of the contribution limits of the Act. There is currently no exception to the rule enunciated in the answer to question #1.

6. If a candidate has an extension of credit for more than 30 days still outstanding, any additional credit given to the candidate by the creditor would be an additional contribution to the candidate.

7. If legal fees are billed to Assembly Member Baugh personally, they must be reported on Schedule F for the period incurred. The Act provides that an expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

8. No. If an extension of credit is not subject to any contribution limits because, for instance, it is for legal fees incurred in relation to a 1995 recall election, it does not need to be reported other than on Schedule F.

FACTS

You are treasurer for Assembly Member Scott Baugh. In the *Baugh* Advice Letter, No. A-97-113, we indicated that the Baugh for Assembly Committee could raise funds from donors in unlimited amounts to pay for legal expenses related to Assembly Member Baugh's activity in the 1995 recall election.

ANALYSIS

In the *Ammiano* Advice letter, No. A-97-128, "extension of credit," as used in Section 85307(b) was defined:

"Notwithstanding any contrary agreement between the parties, an extension of credit is deemed to begin on the earlier of two dates: (1) the date of the invoice² plus 15 days; or (2) 45 days from the date the goods or services were delivered. Under Section 85307(b), 30 days later the amount of the credit would be subject to the applicable contribution limits of Proposition 208."

An extension of credit for legal fees would be subject to this restriction and if the extension of credit was for more than 30 days, generally, it would be subject to the contribution limits of the Act. However, you represent Assembly Member Baugh, who according to the facts in the *Baugh* Advice Letter, No. A-97-113, has ongoing legal obligations for legal expenses relating to a 1995 recall election. In that letter, we advised Assembly Member Baugh that contributions to pay for those legal fees were not subject to any contribution limits because they were related to a recall election.³ Similarly, extensions of credit which become contributions pursuant to Section 85307(b) will not be subject to the contribution limits of the Act if they are incurred for legal expenses related to a recall election.

In questions #3-5 you ask a number of questions relating to whether or not a candidate's or creditor's intentions regarding an extension of credit is relevant to whether a violation of the Act has occurred pursuant to Section 85307(b) when read in conjunction with any of the contribution limits of the Act. At this time, evidence of intent is not relevant to the inquiry whether an extension of credit of more than 30 days has occurred and a contribution resulted. Rather, the definition of an "extension of credit" as defined in the *Ammiano* Advice Letter,

² This means the date specified in the invoice for payment.

³ The Commission has advised that contribution limits are not applicable in recall elections. (*Angus* Advice Letter, No. A-97-173; *Baugh* Advice Letter, *supra*; *Cohen* Advice Letter, No. I-96-364). However, the Commission may be reviewing this advice in the near future. An interested persons meeting regarding this issue will be held on August 6, 1997 at 3:00 p.m.

supra, is the guideline, without exception.⁴

In question #6 you ask whether a creditor may extend more credit to a candidate even though the candidate has failed to pay an extension of credit within 30 days. The plain language of Section 85307(b) does not clearly provide an answer to this question. However, it is clear from the provisions of Proposition 208, which amended the Act as of January 1, 1997, specifically, Sections 85301, 85305, and 85307, that Proposition 208 was meant to limit in-kind contributions and discourage the deficit financing of campaigns. Therefore we interpret Section 85307(b) to provide that when a candidate has an extension of credit for more than 30 days still outstanding from a creditor, any additional credit given to the candidate by the same creditor would be an additional contribution to the candidate by the creditor.⁵

Finally, you ask about the reporting requirements involving extensions of credit. Expenses you incur but do not pay during the period covered by a campaign statement are "expenditures" and must be reported on Schedule F. The Act provides that an expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier. (Section 82025.) Section 84211 requires that all expenditures made during the period covered by the campaign statement be disclosed on the campaign statement due at the end of the reporting period. Therefore, if legal fees are billed to Assembly Member Baugh personally, they must be reported on Schedule F for the period incurred. Secondly, extensions of credit for more than 30 days must be reported as contributions on Schedule C as non-monetary contributions received. However, extensions of credit for more than 30 days do not need to be reported when no contribution limit applies. For instance, ballot measure committees and Assembly Member Baugh's 1995 campaign committee that is raising funds for expenses related to a recall do not need to report extensions of credit for more than 30 days on Schedule C.

⁴ An interested persons meeting regarding these issues was held on July 16, 1997, and a regulation should be in front of the Commission in the coming months further defining an "extension of credit."

⁵ While Section 85307(b) does not explicitly define an extension of credit for more than 30 days into a contribution, Section 85307(b) does make the extension of credit subject to "all contribution limits." Therefore, for all practical purposes an extension of credit for more than 30 days is treated as a contribution by Proposition 208.

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