



RAVI MEHTA  
CHAIRMAN

## FAIR POLITICAL PRACTICES COMMISSION

August 11, 1997

Frederick Pownall  
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Sacramento, California 95814

**Re: Your Request for Advice  
Our File No. A-97-359**

Dear Mr. Pownall:

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

### QUESTION

May an incumbent California legislator who is a candidate for federal office solicit or accept a campaign contribution for his or her federal campaign which is from, through, or arranged by you, a registered state lobbyist who lobbies the Legislature?

### CONCLUSION

Yes. The provisions of the Act (including Section 85704) do not apply to a federal candidate conducting his or her federal campaign, even if he or she is simultaneously a California candidate. Note carefully that this advice applies only to campaign contributions from, through, or arranged by you to the federal campaign.

### FACTS

You are a registered state lobbyist who lobbies the Legislature. You are aware of an incumbent California legislator who is also a candidate for federal office. You wish to participate in that candidate's federal campaign fundraising in a manner which will result in campaign contributions to the federal campaign which are from, through, or arranged by you.

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

## ANALYSIS

Proposition 208, passed by the voters in November 1996, added Section 85704 to the Act.<sup>2</sup> Section 85704 places restrictions on contributions from, through or arranged by a registered lobbyist to a candidate whom the lobbyist will or is likely to lobby.

A careful reading of Section 85704 reveals that its restriction operates *indirectly* on lobbyists—it *directly* forbids *candidates* from accepting or soliciting campaign contributions from, through, or arranged by registered state or local lobbyists. The Act's definition of "candidate" expressly excludes federal candidates. (Section 82007.) It is well-settled that the Act does not apply to federal campaigns merely because they are conducted in California.

The interesting aspect of your question is that the federal candidate also happens to be an incumbent California legislator. However, we have advised in this context before. The *Olson* Advice Letter, No. A-97-242, pertains to an incumbent state senator who is running for Congress. We advised that two particular provisions of Proposition 208 do not apply to the Senator's fundraising for his federal campaign. (The provisions were Section 85305 (the fundraising "blackout" provision), and Section 85306 (the intercandidate transfer ban).)

Section 85704 does not forbid you from participating in the legislator/federal candidate's fundraising activities even if he or she will solicit or accept campaign contributions to his or her federal campaign from, through, or arranged by you. The Act simply does not apply to federal campaign activity, even if the federal candidate is also a state candidate.

Arguably, this advice undermines the clear intent of Section 85704, which is to sever the link between lobbyists and state candidates. To whatever extent a candidate is indeed beholden to the lobbyist "behind" a campaign contribution, this legislator/federal candidate will be beholden to you, a lobbyist, for some of his or her federal fundraising. As a state lobbyist, you may lobby this legislator on state matters. Preventing such a situation is, of course, the intent behind Section 85704. However, whatever the force of this argument, it cannot prevail against the plain language of the Act, which states that it does not apply to federal campaigning. (Section 82007.)

Please note that this advice applies only to federal fundraising. The legislator/federal candidate may not solicit or accept campaign contributions for *state* campaign committees from, through, or arranged by you or any other registered lobbyist. Also, please note that if the

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<sup>2</sup> Section 85704 provides:

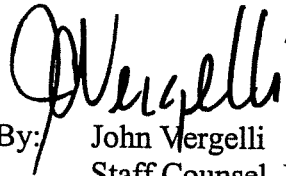
"No elected officeholder, candidate, or the candidate's controlled committee may solicit or accept a campaign contribution or contribution to an officeholder account from, through, or arranged by a registered state or local lobbyist if that lobbyist finances, engages, or is authorized to engage in lobbying the governmental agency for which the candidate is seeking election or the governmental agency of the officeholder."

legislator/federal candidate transfers campaign funds from his federal campaign to a state campaign committee, and if any of the transferred funds are attributable to contributions from, through, or arranged by you, a violation of Section 85704 may occur. As your advice request does not raise this issue, we do not resolve it conclusively; we merely bring it to your attention.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: John Vergelli  
Staff Counsel, Legal Division

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