

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 4, 1997

Jonathan S. Fuhrman, Treasurer
Molina for Supervisor Committee
3220 E. Sierra Madre Blvd.
Pasadena, California 91107

**Re: Your Request for Advice
Our File No. A-97-403**

Dear Mr. Fuhrman:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts as they have been presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Are you precluded from acting as the Treasurer for the various committees controlled by Supervisor Gloria Molina ("Ms. Molina") by virtue of Section 85705?

CONCLUSION

No provision of the Act precludes or prohibits you from continuing as the Treasurer for Ms. Molina's committees. However, your activities as Treasurer must comply with the Act, including Section 85705. Whether your compliance with the Act renders you unable to fulfill your duties as Treasurer is a determination that can be made only by you and Ms. Molina.

FACTS

You are the Treasurer for several committees controlled by Ms. Molina. You have been the Treasurer for all of Ms. Molina's committees since her election to the Los Angeles City Council in 1987 and then to the Los Angeles Board of Supervisors in 1991.

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

You also serve as a Commissioner on the Los Angeles County Citizens' Economy and Efficiency Commission, having been appointed to that Commission in 1991 upon Ms. Molina's recommendation. You also serve as a Commissioner on the County's Data Processing and Telecommunications Advisory Committee, having been appointed in 1995. These appointments were made by the entire Los Angeles Board of Supervisors upon Ms. Molina's motion.

In your role as Treasurer, you advise and guide Ms. Molina's committees to ensure compliance with the disclosure requirements. You review and sign periodic disclosure statements, and review and approve the process through which reporting information is collected, stored and reported. You periodically review bank statements to ensure accurate financial reporting. You do not personally solicit or accept contributions and you do not handle, receive, record or deposit checks or other contributions received by any committee. In addition, you do not sign fundraising letters or make "pitches" at fundraising events. However, your name is printed on all the committees' return envelopes and is also included at the bottom of all letters, including fundraising letters published by the committees. You are also often listed on the sidebar of letters as the Treasurer of Ms. Molina's committees. Although you do approve letters and return envelopes for compliance issues (e.g., IRS disclaimers and designations for occupation and employer information), you do not approve letters for content or fundraising strategy.

ANALYSIS

The Prohibitions of Section 85705 as applied to you generally.

Proposition 208 enacted a new prohibition on contributions from governmental appointees to the officeholders who appointed them. Section 85705 provides as follows:

"No person appointed to a public board or commission or as Trustee of the California State University or Regent of the University of California during tenure in office shall donate to, or solicit or accept any campaign contribution for, any committee controlled by the person who made the appointment to that office or any other entity with the intent that the recipient of the donation be any committee controlled by such person who made the appointment."

Other than persons appointed as a Trustee of the California State University or as a Regent of the University of California (factors which are not relevant here), the prohibition set forth in Section 85705 applies only to persons appointed to **public boards or commissions**. In your letter, you treat as established the fact that the Los Angeles County Citizens' Economy and Efficiency Commission and the Los Angeles County Data Processing and Telecommunications Advisory Committee are both public boards or commissions. Because nothing in your letter

would indicate these two entities are **not** public boards or commissions, and because the Commission does not independently gather facts to support conclusions reached in advice letters, we will assume that the commission and committee on which you serve are public, and thus, Section 85705 applies to you.² If this assumption is inaccurate, please be advised that our advice may alter based upon different facts.

Section 85705 prohibits an appointee from contributing to (or soliciting or accepting contributions on behalf of) the officeholder who appointed him or her. Many questions have been presented to this office seeking clarification regarding the identity of the "appointing person" when that "person" consists of a group of people such as a city council. We have advised previously that if an entire city council has the power to appoint, and does appoint, an individual to a public board or commission, then the "appointing person" is the entire city council. (*Abdelnour* Advice Letter, No. A-97-164; *Petzold* Advice Letter, No. I-97-212.) When the entire city council is the "appointing person," the appointee may not, under Section 85705, contribute to or solicit or accept contributions on behalf of **any** member of the city council. (*Id.*)³ This prohibition applies without regard to whether a particular councilmember voted yes, voted no, abstained, or was absent during the vote to appoint. (*Abdelnour* Advice Letter, *supra.*) We believe the analysis pertaining to the appointing actions of a city council applies equally to the appointing actions of a board of supervisors such as the Los Angeles County Board of Supervisors.

You do not state whether Ms. Molina participated in the specific vote to appoint you to the positions you presently hold. However, as mentioned above, her participation in the vote is not necessary to include her within the ambit of Section 85705. As long as Ms. Molina was a member of the board when your appointment was made, you may not contribute to her or solicit or accept contributions on her behalf.

The Prohibitions of Section 85705 as applied to you as Treasurer.

In the *Vasquez-Connolly* Advice Letter, No. A-97-181, we opined that an appointee may potentially violate Section 85705 by acting as a treasurer of a committee even if the appointee is not actually engaged in fundraising activities. We stated in that letter that the mere acts of opening envelopes containing contribution checks and logging those checks into a committee's records would constitute "accepting" contributions in violation of Section 85705. (*Id.* at pg. 3.)

² This assumption is bolstered by the recent *Lyons* Advice Letter, No. A-97-203, wherein we stated that the term "public board or commission" may include either formal or informal city committees which have decision making authority.

³ The facts of your letter indicate that the entire Los Angeles Board of Supervisors made the decision to appoint you. This is an important point since if the board's actions were simply to ratify or confirm an appointment made by someone else, then the prohibition of Section 85705 would not apply to the entire board, but only to the person(s) making the appointment. (*Taylor* Advice Letter, No. A-97-275.)

It is important to note at this juncture that the purpose behind Section 85705 is to minimize the appearance of corruption and impropriety which exists when financial relationships occur between officeholders and the persons appointed by them. (*Moll* Advice Letter, No. A-97-161.) Section 85705 seeks to accomplish this minimization by prohibiting **anything** that looks as though it might be fundraising on behalf of an officeholder by his or her appointee. Even though you have apparently taken care to ensure that you do not actively participate in fundraising matters for Ms. Molina, the appearance of your name on letters and envelopes which would be used for solicitation purposes violates the "Chinese Wall" intended by Section 85705.

Accordingly, we would advise that your name be removed from all correspondence, literature, documents or anything else that would be used for solicitation or fundraising purposes. Again, in order to comply with Section 85705, you may not engage in any conduct which could be interpreted as contributing to Ms. Molina or fundraising on her behalf.⁴

You conclude in your letter that even if certain of your activities as Treasurer would be prohibited under Section 85705, you ought to be "grandfathered" out of any application of the Section because of your longstanding service as Treasurer to Ms. Molina's committees. Unfortunately, no statutory "grandfathering" or exemption clause exists to relieve you of the requirements of Section 85705.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lisa L. Ditora
Staff Counsel, Legal Division

SGC:LLD:jlw

⁴ You mention that you do "return envelopes for compliance issues" To the extent these envelopes are returned to contributors and contain dialogue from you, this action would also be prohibited by Section 85705. Please also be aware that nothing in the Act requires a treasurer's name to appear on any mailing.