

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 4, 1997

The Honorable Dick Ackerman
California State Assembly
State Capitol
Post Office Box 942849
Sacramento, California 94249-0001

**Re: Your Request for Informal Assistance
Our File No. I-97-405**

Dear Assemblymember Ackerman:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Because your request was received in June and presents questions of general interest, we have decided to respond, even though your questions appear to be hypothetical. We are treating this as a request for informal assistance, as required under Regulation 18329 (copy enclosed).² Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place.

QUESTIONS

1. A contributor contributes to a legislator's campaign account for purposes of retiring debt for elections held prior to January 1, 1997. Assuming that the contributor does not contribute more than \$99.99 to that legislator for an election after January 1, 1997, may a contributor make an independent expenditure on behalf of the legislator without violating Government Code Section 85500(c)?
2. A contributor contributes \$250 to a legislator for the primary election. That same contributor contributes \$99.99 to the same legislator in the general election. May that same contributor make an independent expenditure on behalf of the legislator for that general election?

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

3. Government Code Section 85309 limits aggregate contributions from "other than individuals, small contributor committees, and political party committees" (non-individuals) to 25% of the voluntary expenditure limits. If an Assemblymember decides to raise \$300,000 for the 1998 general election, what amount may come from non-individuals: \$50,000 (25% of the \$200,000 voluntary expenditure ceiling for Assembly candidates) or \$75,000 (25% of the amount raised)?

4. The *Ramirez* Advice Letter, No. A-97-262, stated that Government Code Section 85309 limits the total amount of contributions from non-individuals to 25% of the voluntary expenditure limits for purposes of debt retirement. Between January 1 and May 7, 1997, while emergency regulation 18530.7 was in effect, an Assemblymember retired a portion of the debt by raising funds from non-individuals. As of today, an Assemblymember has debts from the November 1996 General Election. May an Assemblymember raise up to \$50,000 from non-individual donors for the general election debt regardless of amounts raised from non-individuals in 1996 and amounts raised from non-individuals while emergency regulation 18530.7 was in effect?

5. For purposes of debt retirement, may an Assemblymember raise up to 25% of the open primary voluntary expenditure limit, \$37,500, from non-individuals?

6. Regulation 18530.1 permits a legislator to use pre-Proposition 208 campaign funds for any purpose under Government Code Sections 89510-89518. May a legislator make contributions, using pre-Proposition 208 funds, to other political committees if such funds are not intended to be used to support candidates for political office?

CONCLUSIONS

1. Yes.
2. Yes.
3. The amount of contributions that may come from non-individuals is 25% of the voluntary expenditure ceiling for Assembly candidates. This amount is \$50,000.
4. The Assemblymember may raise up to \$50,000 from non-individual donors for the general election debt regardless of amounts raised from non-individuals in 1996 and amounts raised from non-individuals during the time emergency regulation 18530.7 was in effect.
5. Yes.
6. If a Legislator wishes to use campaign funds received prior to January 1, 1997, to make **contributions** after January 1, 1997, Proposition 208 would apply and may limit or restrict certain kinds of contributions. Because you have not provided any details as to the contributions to be made, we cannot determine when and if those contributions would be limited or restricted.

FACTS

You have provided no facts supporting your questions.

ANALYSIS

Question No. 1

Pursuant to Section 85305(c), contributions made after January 1, 1997, to retire debt remaining from an election held prior to January 1, 1997, are subject to the limitations of Proposition 208 but are not aggregated with contributions made for elections held or to be held after January 1, 1997. (*Johnson Advice Letter, No. A-96-316a.*) Therefore, as long as a contributor does not contribute to a candidate in excess of \$99.99 for any election held after January 1, 1997 (even if that same contributor has contributed after January 1, 1997, to retire pre-January 1, 1997 debt), the contributor may make independent expenditures on behalf of the candidate without being subject to the limitations of Section 85500(c).

Question No. 2

The primary and general elections are considered two separate elections. (Section 82022.) The limitation of Section 85500(c) applies only on a **per election** basis. Accordingly, if a contributor does not contribute more than \$99.99 to a candidate for the general election, he or she is not constrained by Section 85500(c) in making independent expenditures on behalf of the candidate even though the contributor contributed to the limits in the primary.

Question No. 3

Section 85400(a) is clear that no candidate who accepts the expenditure ceilings may spend beyond the designated limits. For Assembly candidates, this amount (for the general election) is \$200,000. Section 85309 is also clear that contributions from non-individuals may not exceed 25% of the voluntary expenditure limits set forth in the Act (e.g., Section 85400). This limitation applies "whether or not the candidate agrees to the expenditure ceilings" (Section 85309.) Given the expenditure limit for Assembly candidates in the general election, contributions from non-individuals cannot exceed \$50,000.

Question No. 4

We stated in the *Ramirez Advice Letter, No. A-97-262*, that Section 85309 applies to debt reduction. (*Ramirez, pg. 4.*) However, we also stated that contributions received by a candidate (from either individuals or non-individuals) prior to January 1, 1997, to retire debt resulting from an election held before January 1, 1997, would not be regulated by Section 85309. (*Ramirez, pg. 5.*) Therefore, if an Assemblymember raised amounts from non-individuals in 1996 to retire debt from a 1996 election, those contributions will not be considered in applying the limit of Section 85309.

Emergency regulation 18530.7 (which expired by operation of law on May 8, 1997) provided in subdivision (b) that campaign debts incurred prior to January 1, 1997, were not governed by the limitations and restrictions of Proposition 208. In particular, this subdivision stated that the limitations on contributions from non-individuals under Section 85309 did **not** apply to monies received to reduce debt from a pre-January 1, 1997, election. The implicit application of the emergency regulation also included monies received after January 1, 1997, for purposes of retiring pre-January 1, 1997, debt.

Even though emergency regulation 18530.7 is no longer in effect (and, hence, any monies presently solicited to retire "old" debt would be subject to Section 85309), we conclude that contributions received from non-individuals, **during the time period the regulation was in effect**, will not be subject to the limitations of Section 85309. (*Bauer* Advice Letter, No. A-97-273.)

Consequently, an Assemblymember presently may raise up to \$50,000 from non-individuals (25% of the voluntary expenditure limits for a general election) without regard to amounts raised from non-individuals in 1996 or amounts raised under emergency regulation 18530.7.

Question No. 5

As discussed earlier, contributions made to retire debt which are received from non-individuals are subject to the limitations of Section 85309. (*Ramirez* Advice Letter, *supra*.) Section 85309 bases its limitations on the formulas set forth in Section 85400. Section 85400(b) states,

"In the event that the state adopts an open primary system, the voluntary expenditure ceilings for all state candidates in the primary election shall be increased by 50 percent."

Since California has adopted an open primary system, an Assemblymember may raise, from non-individuals, contributions to retire debt in an amount up to 25% of the open primary voluntary expenditure limit. This number is calculated by looking to the amount of the voluntary expenditure ceiling for Assembly candidates in the primary (\$100,000 pursuant to Section 85400(a)(1)), multiplying the \$100,000 figure by 50% (the increase allowed under Section 85400(b) for open primaries), and then multiplying the resulting total by 25% (the amount allowed for contributions by non-individuals under Section 85309). The mathematical calculation results in a limit of \$37,500.

Question No. 6

You inquire whether a Legislator may use campaign funds received prior to January 1, 1997, to make contributions "to other political committees if such funds are not intended to be used to support candidates for political office[.]"

Proposition 208 does not regulate monies received as contributions prior to the effective date of the law **unless** those monies are used **after** the effective date, and at that point, the applicability of Proposition 208 depends on the particular use. As you may be aware, there are numerous instances in which Proposition 208 may apply to regulate pre-Proposition 208 campaign funds used post January 1, 1997. Because you have not identified specific political committees to which the hypothetical Legislator wishes to contribute, nor the circumstances under which the contributions may occur, we cannot provide you with any specific guidance as to whether the contributions would be regulated, allowed or limited by Proposition 208.

If you have any other questions regarding this matter, please contact me at (916) 322-5660. Thank you also for your patience in awaiting this letter; we apologize for the confusion and delay.

Sincerely,

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General Counsel



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