

RAVI MEHTA
CHAIRMAN



SUPERSEDED IN PART

by I-97-547(Herr)

FAIR POLITICAL PRACTICES COMMISSION

September 16, 1997

Laurie Tabachnik, Director
Enforcement and Legal Affairs
City Ethics Commission
201 No. Los Angeles Street
L.A. Mall, Suite 2
Los Angeles, CA 90012

**Re: Your Request for Advice
Our File No. I-97-410**

Dear Ms. Tabachnik:

This letter is in response to your request for advice under the Political Reform Act (the "Act").¹ Since your letter does not refer to specific persons or events, your letter is considered a request for informal assistance. Informal assistance does not confer immunity under Section 83114. (Regulation 18329(c).)

QUESTIONS & ANSWERS

1. Does the candidate transfer ban apply to funds in pre-Prop. 208 accounts?

Yes. Proposition 208 which took effect January 1, 1997, provides that no candidate and no committee controlled by a candidate or officeholder, shall make any contribution to any other candidate running for office or his or her controlled committee. In addition, Regulation 18530.1(b) provides that contributions deposited in a controlled committee prior to January 1, 1997, "may not be transferred to other candidates or their controlled committees in violation of Government Code Section 85306." While a candidate or officeholder is prohibited from transferring his or her campaign funds to another candidate, the candidate or officeholder may make a contribution of his or her own personal funds to another candidate. (Section 85306.) (*Grindle* Advice Letter, No. I-97-083.)

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

2. Candidates for elected office in Los Angeles are required to file a form accepting or declining participation in the City's matching funds program. Participants in the program abide by spending limits, and all candidates file additional notification forms when they reach certain contribution and expenditure thresholds. Do candidates in Los Angeles need to file Form 500 as well?

Yes. Candidates for elected office in Los Angeles must also file the Form 500 in addition to any campaign filing to comply with a local rule. Proposition 208 requires candidates to declare that they either accept or reject local expenditure ceilings prior to accepting any contribution. Such a declaration is required only if the local jurisdiction has enacted such a local expenditure ceiling ordinance. If a local jurisdiction, through its own ordinance, requires a similar declaration be filed, candidates must comply with both the requirements of the local ordinance, as well as the provisions of Proposition 208.

3. If the voluntary expenditure limit is lifted, does Prop. 208's aggregate limit rise to 25% of the new limit, or is it always 25% of the original voluntary expenditure ceiling?

The 25% aggregate from non-individuals is based on the Act's recommended expenditure ceiling or a 25% aggregate of a valid local expenditure ceiling. Should a declining candidate have cash on hand, make expenditures or receive contributions in an amount which equals 75% of the expenditure ceiling, that expenditure ceiling will rise three times for a non-statewide candidate and two times for a statewide candidate. The 25% aggregate from non-individuals is based on the applicable expenditure ceiling for a specific election. Should the expenditure ceiling rise, the 25% aggregate from non-individuals as applied to the applicable expenditure ceiling for that specific election, will rise as well.

4. Under Prop. 208, candidates need not terminate within 90 days of the election, but must dispose of surplus funds within that time. Should a candidate receive a refund after the 90 days has expired, may a candidate deposit these funds into the campaign account if they are received after the 90 days or use these funds to retire debt?

If a candidate receives a refund 90 days after the election, that refund may be deposited into the campaign bank account and used to pay any remaining debt. If no debt remains, the funds become surplus and must be distributed to any political party, returned to contributors on a pro rata basis, or turned over to the General Fund.² In addition, candidates who are elected to office may deposit up to \$10,000 into an officeholder account. (Section 89519.)

Should a candidate receive a refund from a vendor, or a refund from a clerk for the filing fee or ballot statement after closing their campaign bank account, the campaign bank account may not need to be reopened under certain circumstances.

²We interpret the General Fund referenced in Section 89519(b) and §5313(e) to mean the General Fund of the State of California. (Jones Advice Letter, I-97-084.)

For instance, a candidate may deposit the refund into his or her personal bank account to repay any remaining debt owed to the candidate. (*Steadman* Advice Letter, I-93-252.) If no debt to the candidate remains, the refund becomes surplus and may be distributed in a manner allowable under Section 89519. The candidate may endorse the refund directly to a political party or to the State's General Fund, but if the candidate wishes to make a pro rata return to contributors, the check must be deposited into a campaign bank account for distribution to contributors. Additionally, an elected officeholder who has established an officeholder account may endorse the refund directly into his or her officeholder account, provided the officeholder has not exceeded the \$10,000 allowed to be raised for an officeholder account. The receipt and distribution of the refund must be reported on the candidate's campaign statement and, if the candidate has terminated his or her committee, an additional campaign statement must be filed to reflect the receipt of the refund as a miscellaneous increase to cash and the distribution of the refund as an expenditure.³

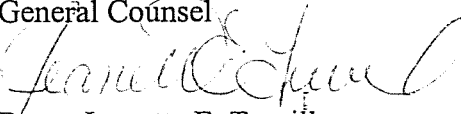
5. *Are all advice letters on FPPC's web site, and if not, what is available?*

Only the letters which interpret Proposition 208 can be found on the Commission's web site (www.fppc.ca.gov/fppc/) or on the fax-on-demand service (1-888-622-1151). The web-site and fax-on-demand service are updated on a weekly basis and you can obtain an index of the letters from the fax-on-demand. All of the advice letters issued by the Commission since 1984 are available through Westlaw. To subscribe to this service contact the West Group, 610 Opperman Drive, Eagan, MN 55123 or telephone them at (512) 687-7847.

I trust this answers your questions sufficiently. If you have further questions, or need to discuss this, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel


By: Jeanette E. Turvill
Political Reform Consultant
Technical Assistance Division

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³Candidates and officeholders who receive contributions or make expenditures totaling less than \$1,000 during a calendar year may file the Form 470, short form campaign statement. The expenditure of the refund will be counted toward the \$1,000 threshold. Should the expenditure total \$1,000 or more, the candidate or officeholder must file the Form 490, long form campaign statement. (*Steadman*, supra.)