



FAIR POLITICAL PRACTICES COMMISSION

December 19, 1997

Linda K. Groves
Chief Deputy City Clerk
City of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802

**Re: Your Request for Advice
Our File No. A-97-416**

Dear Ms. Groves:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Which provisions of Proposition M, the "Long Beach Campaign Reform Act," conflict with Proposition 208?

FACTS

On June 7, 1994, the electorate of the City of Long Beach voted into law Proposition M, the "Long Beach Campaign Reform Act." The legislation took effect on June 24, 1994, and was codified into the Long Beach Municipal Code as Chapter 2.01.

ANALYSIS

Proposition M establishes contribution limits and voluntary expenditure ceilings. In addition, Proposition M imposes an off-year ban on fundraising for campaign contributions and permits local elected officials to establish officeholder accounts. You would like to know what provisions of Proposition M conflict with Proposition 208.

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

The Act grants local agencies the power to enact certain ordinances that govern the financing of local elections. Section 81013 provides:

“Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail.”

In addition, section 85706 provides, in pertinent part:

“(a) Nothing in this act shall nullify contribution limitations or other campaign disclosures or prohibitions of any local jurisdiction that are as or more stringent than set forth in this act.

(b) The governing body of a local jurisdiction may impose lower contribution limitations or other campaign disclosures or prohibitions that are as or more stringent than set forth in this act. A local jurisdiction may impose higher contribution or expenditure limitations only by a vote of the people”

We have interpreted section 85706 to permit local jurisdictions that had higher contribution or expenditure limits in place before January 1, 1997, to remain in effect if the higher limitations were passed by a vote of the people. (*Mueller Advice Letter, No. A-96-353.*)

Provisions of Proposition M

1. Contribution Limitations

Proposition M (Long Beach Municipal Code § 2.01.310.A) imposes contribution limits on candidates for elected office that vary depending on the particular office for which the candidate is running. The contribution limit applicable to candidates for city council is \$250 per person per election. The contribution limit applicable to candidates for the office of city attorney, city auditor, or city prosecutor is \$350 per person per election. The contribution limit applicable to mayoral candidates is \$500 per person per election. Proposition M imposes contribution limits that are higher than the limits in Proposition 208. (Section 85301(a)-(b).) Pursuant to section 85706, a local jurisdiction may impose higher limits by a vote of the people. Thus, Long Beach Municipal Code section 2.01.310 does not conflict with Proposition 208.

Proposition M (Long Beach Municipal Code § 2.01.310.B) imposes limits on persons who contribute to committees that support or oppose candidates. The limits vary depending on the particular candidate the committee supports. The contribution limit applicable to committees that support or oppose candidates for city council is \$250 per person per election. The contribution limit applicable to committees that support or oppose candidates for the office of

city attorney, city auditor or city prosecutor is \$350 per person per election. The contribution limit applicable to committees that support or oppose mayoral candidates is \$500 per person per election. Proposition M imposes contribution limits that are more stringent than the limits in Proposition 208. (Section 85301(d).) Pursuant to section 85706, a local jurisdiction may impose limits that are as or more stringent than the limits in Proposition 208. Thus, Long Beach Municipal Code section 2.01.310 does not conflict with Proposition 208.

Proposition M (Long Beach Municipal Code § 2.01.330) provides that a contribution will not be considered received if it is not negotiated, deposited, or utilized and is returned to the donor within 30 days of receipt. However regulation 18531 (copy enclosed) provides that a contribution that exceeds the contribution limit will be deemed not to have been accepted if it is not deposited or negotiated and is returned to the donor within 14 days of receipt. Accordingly, Long Beach Municipal Code section 2.01.330 conflicts with Proposition 208. Please note that the Commission will be revisiting regulation 18531 in January 1998. Thus, our determination concerning Long Beach Municipal Code section 2.01.330 may change at that time.

Proposition M (Long Beach Municipal Code § 2.01.350.A) provides that a contribution by a husband and wife will be treated as separate contributions and will not be aggregated. This provision is consistent with a similar provision in Proposition 208. (Section 85308(a).) Proposition M (Long Beach Municipal Code § 2.01.350.B) also provides that contributions from children under the age of 18 will be treated as contributions from their parents and will be attributed proportionately to each parent. This provision is also consistent with a similar provision in Proposition 208. (Section 85308(b).)

Proposition M (Long Beach Municipal Code § 2.01.210.D) defines "person" for purposes of the contribution limits as the following:

"Any individual, organization, or political action committee whose contributions or expenditure activities are financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons."

Proposition M further provides that two or more entities are deemed one person when any of the following apply:

"The entities share the majority of members of their boards of directors; or
The entities share two or more officers; or
The entities are owned or controlled by the same majority shareholder or shareholders; or
The entities are in a parent-subsidiary relationship."

In addition, an individual and any general partnership in which the individual is a general partner, or an individual and any corporation in which the individual owns a controlling interest, are considered one person under Proposition M. Proposition 208 has a similar provision that provides that any person established, financed, maintained or controlled by another person is affiliated with that person and that contributions made by affiliated entities are deemed to be made by a single person for purposes of the contribution limits. (Section 85311; Regulation 18531.1, copy enclosed.) Like Proposition M, regulation 18531.1 provides that persons are presumed affiliated under certain circumstances. It appears that the two provisions are consistent.

2. Off-Year Ban on Contributions

Proposition M (Long Beach Municipal Code § 2.01.320) provides that a candidate may only accept contributions during the election cycle in which the candidate intends to run for office. An "election cycle" is defined as the period beginning on January 1 of an odd-numbered year and ending with September 1 of the following year. (Long Beach Municipal Code § 2.01.210.B.) Elections in Long Beach are held in April during even-numbered years. Thus, Proposition M allows contributions to be accepted from 18 months before the election to five months after the election. The off-year ban in Proposition M is less restrictive than the off-year ban in Proposition 208. (Section 85305(a)-(b).) In applying section 85706, we have advised that Proposition 208's off-year ban on fundraising did not conflict with a similar local restriction passed by the voters even though the local restriction was less stringent. (*Carnevale* Advice Letter, No. A-97-104.) To reach that result, we interpreted the off-year ban to be a "contribution limitation." Accordingly, Long Beach Municipal Code section 2.01.320 does not conflict with Proposition 208.

3. Loans

Proposition M (Long Beach Municipal Code § 2.01.340.A) provides that a loan will be considered a contribution from the maker and the guarantor of the loan and will be subject to the contribution limitations. This provision is consistent with a similar provision in Proposition 208. (Section 85307(a).) Proposition M (Long Beach Municipal Code § 2.01.320.B) also provides that loans to a candidate must be made pursuant to a written agreement. The Act does not have a similar requirement. Long Beach Municipal Code section 2.01.320 does not conflict with Proposition 208 because it is a more stringent campaign prohibition and it does not prevent candidates from complying with the Act. (Sections 85706, 81013.)

Proposition M (Long Beach Municipal Code § 2.01.320.C) provides that loans made to a candidate by a commercial lending institution in the regular course of business and on the same terms available to members of the public and which are secured or guaranteed will not be subject to contribution limitations. This provision is consistent with a similar provision in the Act. (Section 84216(a).) Proposition M (Long Beach Municipal Code § 2.01.320.D) also provides that extensions of credit for a period of more than thirty days are subject to contribution

limitations. This provision is consistent with a similar provision in Proposition 208. (Section 85307(b); Regulation 18530.7, copy enclosed.)

Proposition M (Long Beach Municipal Code § 2.01.340.E) imposes limits on candidate loans. The limit varies depending on the particular candidate. The limit applicable to candidates for city council is \$10,000 per election. The limit applicable to candidates for the office of city attorney, city auditor or city prosecutor is \$15,000 per election. The limit applicable to mayoral candidates is \$25,000 per election. Proposition M imposes limits on candidate loans that are more stringent than those in Proposition 208 and that are also higher than those in Proposition 208. (See Section 85307(c) [imposing a \$20,000 limit on candidate loans applicable to all candidates except gubernatorial candidates].) Pursuant to section 85706, local jurisdictions may impose contribution limits that are more stringent. In addition, local jurisdictions may impose contribution limits that are less stringent by a vote of the people. Thus, Long Beach Municipal Code section 2.01.340.E does not conflict with Proposition 208.

4. Officeholder Accounts

Proposition M (Long Beach Municipal Code § 2.01.380.A) permits local elected officials to establish an officeholder account for expenses associated with holding office. Such funds may not be used in connection with a future election. In addition, aggregate contributions to the officeholder account must not exceed \$5,000 per year. The contribution limit applicable to officeholder accounts is \$500 per person per year. In comparing Long Beach Municipal Code section 2.01.340.A to a similar provision in Proposition 208, it appears the two provisions are consistent except the limitations on contributions. (Section 85313(a)-(b).) The aggregate contribution limit of \$5,000 is more stringent than the aggregate limit in section 85313. (See section 85313(a) [providing an aggregate limit of \$10,000].) In addition, the \$500 per person per year contribution limit is higher than the contribution limit in section 85313. (See Section 85313(b) [providing a contribution limit of \$250 per person per year].) Local jurisdictions may impose contribution limits that are more stringent than those in Proposition 208 and they may impose contribution limits that are less stringent if passed by a vote of the people. (Section 85706.) Accordingly, Long Beach Municipal Code section 2.01.380 does not conflict with Proposition 208.

Proposition M (Long Beach Municipal Code § 2.01.380.B [first sentence]) provides that officeholder accounts are considered to be a sub-account of the official's controlled campaign committee. However, regulation 18531.4 (copy enclosed), which interprets section 85313, provides that officeholder funds must be held in a single bank account that is separate from any campaign bank account established for election to office. Therefore, Long Beach Municipal Code Section 2.01.380.B conflicts with the Act. Proposition M (Long Beach Municipal Code § 2.01.380.B [second sentence]) also provides that solicitations for contributions to the officeholder account must be clearly designated as being made for such purposes. This provision is consistent with our interpretation of section 85313. (*Mathys* Advice Letter, No. A-97-062 [requiring solicitations to express that the contribution is for the official's officeholder account].)

5. Independent Expenditures

Proposition M (Long Beach Municipal Code § 2.01.610) imposes limits on contributions to independent expenditure committees that support or oppose candidates. The limits vary depending on the particular candidate an independent expenditure committee supports or opposes. If the committee supports or opposes candidates for city council, the applicable contribution limit is \$250 per person per election. If the committee supports or opposes candidates for the office of city attorney, city auditor or city prosecutor, the applicable contribution limit is \$300. If the committee supports or opposes mayoral candidates, the applicable contribution limit is \$250 per person per election. Long Beach Municipal Code section 2.01.610 imposes limits on contributions to independent expenditure committees that are higher than the limits in Proposition 208. (See Section 85500 [providing that if a committee makes independent expenditures of \$1,000 or more, it may not accept contributions in excess of \$250 per person per election].)² Section 85706 permits local jurisdictions to establish contribution limits that are higher than the limits in Proposition 208 if passed by a vote of the people. Therefore, Long Beach Municipal Code section 2.01.610 does not conflict with Proposition 208.

6. Surplus Funds

Proposition M (Long Beach Municipal Code § 2.01.1010) defines “surplus funds” as funds remaining in a controlled campaign committee at the end of the election cycle. Pursuant to Proposition M (Long Beach Municipal Code § 2.01.210.B), the election cycle ends five months after the election. However, Proposition 208 defines “surplus funds” as campaign funds in excess of expenses incurred for the campaign. (Section 89519.) Proposition 208 further provides that such funds must be distributed within 90 days after withdrawal, defeat, or election to office. (Section 89519.) Accordingly, Long Beach Municipal Code section 2.01.1010 conflicts with Proposition 208.

Proposition M (Long Beach Municipal Code § 2.01.1020) permits elected officials to retain \$5000 of surplus funds for expenditures associated with holding office. This provision is similar to a provision in Proposition 208. (See Section 89519(a) [permitting \$10,000 of surplus funds to be deposited in an officeholder account].) One difference between the two provisions is the amount the official may retain for officeholder expenses. We previously indicated that the aggregate contribution limit of \$5000 applicable to officeholder accounts did not conflict with Proposition 208. (Section 85706.) The amount in Long Beach Municipal Code Section 2.01.1020 that may be retained for officeholder expenses is tied to that aggregate contribution limit. Therefore, Long Beach Municipal Code section 2.01.1020 does not conflict with Proposition 208 regarding the amount officials are permitted to retain. However, as indicated earlier, officeholder expense funds must be deposited in an account that is separate from the campaign account. (Regulation 18531.4.) Thus, Long Beach Municipal Code section 2.01.1020

² The Commission will be considering a regulation that implements section 85500 at its January meeting.

conflicts with Proposition 208 to the extent that it allows officials to retain money intended only for officeholder expenses in their campaign accounts.

Under Proposition M (Long Beach Municipal Code § 2.01.1030), candidates must reimburse the Campaign Reform Account of the City of Long Beach up to the full amount of matching funds received by the candidate. (Long Beach Municipal Code § 2.01.1030.A.) If candidates have funds left after such reimbursement, candidates may make charitable donations pursuant to section 89515. (Long Beach Municipal Code § 2.01.1030.B.) If a candidate does not dispose of surplus funds by December 31 of the year of the election, the funds must be deposited into the Campaign Reform Account. Under Proposition 208, excess campaign funds may be deposited into an officeholder account, distributed to contributors on a pro rata basis, contributed to a political party, or distributed to the general fund of the jurisdiction for which the official ran for office. (Section 89519.) Long Beach Municipal Code section 2.01.1030.A is more restrictive than Proposition 208 regarding the disposal of surplus funds. A local jurisdiction may impose campaign prohibitions that are more stringent. (Section 85706.) Accordingly, Long Beach Municipal Code section 2.01.1030.A does not conflict with Proposition 208. However, section 89519 does not permit distribution to charitable organizations as prior law did. Thus, Long Beach Municipal Code section 2.01.1030.B conflicts with Proposition 208. Long Beach Municipal Code section 2.01.1030.C also conflicts with Proposition 208 because surplus funds must be distributed within 90 after the election.

7. Expenditure Ceilings and Matching Funds

Proposition M (Long Beach Municipal Code § 2.01.410) establishes voluntary spending limits involving matching funds. The Act does not preclude a local charter municipality from using public funds to finance local elections. (*Johnson v. Bradley* (1992) 4 Cal.4th 389.) Therefore, the matching funds program does not conflict with Proposition 208. (See Section 85706(c).) The voluntary expenditure ceilings vary depending on the particular candidate. The expenditure ceiling applicable to candidates for city council is \$40,000 in the primary election and \$20,000 in the runoff election. The expenditure ceiling applicable to candidates for the office of city attorney, city auditor or city prosecutor is \$100,000 in the primary election and \$50,000 in the runoff election. The expenditure ceiling applicable to mayoral candidates is \$200,000 in the primary election and \$100,000 in the runoff election. Proposition 208 permits local jurisdictions to establish voluntary expenditure ceilings that do not exceed \$1 per resident. (Section 85400(c).) Local jurisdictions may establish higher expenditure limits if passed by a vote of the people. (Section 85706.) Accordingly, Long Beach Municipal Code section 2.01.410 does not conflict with Proposition 208.

Proposition M (Long Beach Municipal Code § 2.01.510.A) requires local candidates to file a statement accepting or rejecting the voluntary spending limits. We recently advised that Long Beach Municipal Code section 2.01.510 does not conflict with Proposition 208. (*Powell Advice Letter*, No. A-97-419.) However, we noted that local candidates must file Form 500's pursuant to Proposition 208 in addition to filing the local acceptance or rejection statement. (Section 85401; Regulation 18541.)

Proposition M (Long Beach Municipal Code § 2.01.510.C) further provides that a local candidate who agrees to accept voluntary spending limits may change that decision if an opposing candidate files a statement of rejection. However, Proposition 208 only permits candidates to change their mind in two instances. (*Olson Advice Letter, No. A-97-229, copy enclosed.*) First, a candidate who has agreed or declined to accept the voluntary spending limits may change his or her mind if the candidate has not accepted any contributions. Second, a candidate who has declined to accept the voluntary spending limits in a primary election may within 14 days following that election accept the limits for the following runoff election. (Section 85401(c).) Accordingly, Long Beach Municipal Code section 2.01.510.C conflicts with Proposition 208.

8. Additional Disclosure Requirements

Proposition M (Long Beach Municipal Code §§ 2.01.340.B, 2.01.620, 2.01.720, 2.01.730) provides for additional disclosure requirements. The Act permits local jurisdictions to enact ordinances imposing additional or different filing obligations on candidates seeking elective office with the jurisdiction provided the additional requirements do not prevent a person from complying with the Act. (Section 81009.5, 81013.) The additional reporting obligations imposed by Proposition M do not conflict with the Act.

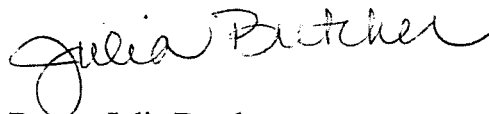
9. Duties of Filing Clerk

Proposition M (Long Beach Municipal Code § 2.01.810.B) provides that the city clerk must prescribe all necessary forms for filing statements and information. However, the Act provides that filing clerks must supply necessary forms and manuals prescribed by the Commission. (Section 81010.) Therefore section 2.01.810.B conflicts with the Act to the extent that it can be interpreted to require the city clerk to prescribe forms the Act requires candidates to file.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Staff Counsel, Legal Division

SGC:JB:jlw