

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 11, 1997

Gregory V. Moser
Foley Lardner Weissburg & Aronson
402 West Broadway, 23rd Floor
San Diego, California 92101-3542

**Re: Your Request for Advice
Our File No. A-97-423**

Dear Mr. Moser:

This letter is in response to your request for advice on behalf of Ben G. Clay and Nicole A. Clay regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May a lobbyist make a contribution to a city councilmember, or a committee formed in support of the city councilmember, for the purpose of opposing a recall of that city councilmember, if the lobbyist or partnership of which the lobbyist is a member, finances, engages, or is authorized to engage in lobbying the city and the city council to which that councilmember was elected?
2. May a lobbyist make a contribution to a city councilmember, for the purpose of supporting that officeholder's efforts to seek a seat in the United States Senate, if the lobbyist or the partnership of which the lobbyist is a member, finances, engages, or is authorized to engage in lobbying the city and the city council to which that councilmember was elected?
3. May a lobbyist make a contribution to a city councilmember, or a committee formed in support of the city councilmember, for the purpose of supporting that officeholder's efforts to seek a seat in the United States Senate, if the lobbyist or the partnership of which the lobbyist is a member, engages, or is authorized to engage in lobbying the Congress of the United States on behalf of other clients?

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

CONCLUSIONS

1. No. Given the well established definitions of “candidate,” “controlled committee,” “contribution,” and the mandate of Section 85202, Commission staff reads Section 85704 to prohibit a lobbyist from making a contribution to an officeholder who is the subject of a recall if that lobbyist finances, engages, or is authorized to engage in lobbying the governmental agency of the officeholder.

2. 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 a lobbyist to the federal campaign.

3. Yes. See answer to question 2.

FACTS

You are writing on behalf of Ben G. Clay and Nicole A. Clay, registered state and local lobbyists. Both are registered under a local municipal ordinance.

ANALYSIS

Lobbyist Contributions to an Officeholder Subject to a Recall.

Proposition 208 enacted Section 85704 which states:

“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.”²

Proposition 208 did not amend the definition of a candidate in Section 82007.³ A candidate is defined in the Act as, among other things, “any officeholder who is the subject of a recall election.” Neither did Proposition 208 amend the definition of a controlled committee in Section 82016. A controlled committee is defined in the Act as:

² Note that Section 85313(c) includes a complementary prohibition against soliciting or accepting donations to an officeholder account from, through, or arranged by a lobbyist.

³ The term “officeholder” is not defined in the Act. However, there is no reason to conclude in the instant case that the elected official that Mr. or Mrs. Clay wish to make a contribution to is not an officeholder.

“[A] committee which is controlled directly or indirectly by a candidate or state measure proponent or which acts jointly with a candidate, controlled committee or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee.”

A contribution is “any payment made for political purposes for which full and adequate consideration is not made to the donor.” A payment is made for “political purposes” if, among other things, a payment is received by a candidate or a controlled committee. (Regulation 18215.)

Section 85202, added by Proposition 208, states:

“Unless specifically superseded by this act, the definitions and provisions of the Political Reform Act of 1974, Government Code Sections 81000 *et seq.* shall govern the interpretation of this law.”

Given the well established definitions of “candidate,” “controlled committee,” “contribution,” and the mandate of Section 85202, Commission staff reads Section 85704 to prohibit a lobbyist from making a contribution to an officeholder who is the subject of a recall if that lobbyist finances, engages, or is authorized to engage in lobbying the government agency of the officeholder.⁴

Commission staff reaches this conclusion based on the plain language of Section 85704 and is supported by judiciary decisions that have upheld restrictions on political activity that specifically target lobbyists. (See, e.g., *Fair Political Practices Commission v. Superior Court* (1979) 25 Cal. 3d 33).⁵ We do not believe that our past advice that contribution limits are not applicable to officeholders subject to a recall is controlling here. (*Cohen* Advice Letter, No. I-96-364; *Roberti* Advice Letter, No. A-89-358; see generally *Citizens Against Rent Control v. City of Berkeley* (1981) 454 U.S. 290.)

⁴ In order to determine whether a lobbyist finances, engages, or is authorized to engage in lobbying a particular government agency please consult Regulation 18626 (copy enclosed).

⁵ The Supreme Court of California in *Fair Political Practices Commission, supra* also found that the governmental interests in the prevention of corruption and the appearance of corruption do not “warrant [the] total prohibition of *all* contributions by *all* lobbyists to *all* candidates.” (Emphasis added.) However, Section 85704 stops far short of this blanket prohibition, banning only contributions from a lobbyist to candidates that the lobbyist is likely to lobby.

Lobbyist Contributions to Federal Candidates

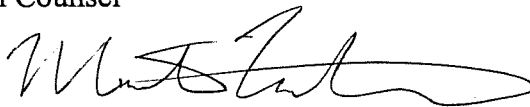
The Act's definition of "candidate" expressly excludes federal candidates. (Section 82007.) It is well-settled that the Act does not apply to federal campaigns merely because they are conducted in California. Commission staff has addressed the specific factual situation presented here in the *Pownall* Advice Letter, No. A-97-359 (copy enclosed). *Pownall* concluded that the Act simply does not apply to federal campaign activity, even if the federal candidate is also a candidate regulated by the Act.⁶ Therefore, Section 85704 does not forbid Mr. or Mrs. Clay from participating in the city councilmember/federal candidate's fundraising activities even if the city councilmember/federal candidate will solicit or accept campaign contributions to his or her federal campaign from, through, or arranged Mr. or Mrs. Clay.

Please note that this advice applies only to federal fundraising. The city councilmember/federal candidate may not solicit or accept campaign contributions by nonfederal California campaign committees from, through, or arranged by Mr. or Mrs. Clay. Also, please note that if the city councilmember/federal candidate transfers campaign funds from his or her federal campaign to a state campaign committee, and if any of the transferred funds are attributable to contributions from, through, or arranged by Mr. or Mrs. Clay, 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: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:tls
Enclosure

⁶ In *Pownall*, the federal candidate was also an incumbent California legislator.