

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

October 17, 1997

The Honorable Donna A. Little  
Presiding Judge  
San Francisco Municipal Court  
633 Folsom Street, Room 500  
San Francisco, California 94107-3600

**Re: Your Request for Informal Assistance  
Our File No. I-97-442**

Dear Judge Little:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> You are writing in your capacity as a municipal court judge and as the Chair of the California Judges' Association's Judicial Elections Committee. Because your letter presents questions of general concern to the municipal and superior court judiciary in this state, we are providing a written response even though the lack of specific facts do not allow us to provide a formal analysis. Consequently, we are treating your letter as a request for informal assistance, as required under Regulation 18329 (copy enclosed).<sup>2</sup> In the future, should you have particular facts that raise questions under the Act, we will be happy to provide a formal analysis. Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place.

With respect to the additional letter you forwarded to this office on September 18, 1997, we have processed it as a separate request for advice under the Act and will be responding to it according to the time limits allowed by statute.

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

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

## QUESTIONS AND GENERAL ANSWERS

### *Question No. 1*

*During the "blackout" period set forth in Government Code Section 85305(a), i.e., the period prior to six months before the primary election applicable to your county and most counties, may a candidate:*

- (a) Make contributions to his or her own committee?*
- (b) Make loans to his or her own committee?*
- (c) Make expenditures from his or her committee?*

The fundraising blackout period of Section 85305 does not apply to a candidate's contributions or loans of his or her personal funds to his or her own campaign committee. (*Moll Advice Letter, No. I-97-013; Shields Advice Letter, No. A-97-437.*) Further, the contribution limits of the Act do not apply to a candidate's contributions of his or her personal funds to his or her campaign committee. (Sections 85301(e) and 85307(c).) A candidate may lend personal funds to his or her committee but may not lend more than \$20,000 (\$50,000 for candidates for Governor) per election. (Section 85307.) Primary and general elections are defined in the Act as "separate elections." (Section 82022.)

The fundraising blackout periods only apply to the acceptance of campaign contributions, not to the making of campaign expenditures. (*Kaloogian Advice Letter, No. I-97-302.*)

### *Question No. 2*

*During the "blackout" period set forth in Government Code Section 85305(a), may a candidate's spouse:*

- (a) Make contributions to the candidate's committee?*
- (b) Make loans to the candidate's committee?*

The Act considers spouses as separate individuals for purposes of contribution limitations. (See Section 85308; Regulation 18533.) Therefore, a contribution made by a spouse of a candidate to the candidate or the candidate's controlled committee will be subject to the limitations set forth in Sections 85301 and 85402. (*Burgess Advice Letter, No. I-97-022.*) Even if the spouse makes the contribution from community property funds, the contribution will be subject to the limits of Sections 85301 and 85402, if the spouse signs the check on the account from which the community funds are drawn. (*Id.*) Please note by way of comparison that if the candidate makes a contribution to his or her campaign account from a community property account **and signs the check**, the candidate is considered the contributor, and no limits apply

since a candidate's "personal funds" include the candidate's interest in community property funds. (*Burgess* Advice Letter, *supra*; *Bertheau* Advice Letter, No. A-97-245; *Rosenthal* Advice Letter, No. A-97-063b.)

The above analysis is similar for loans made by a spouse of a candidate to the candidate or to his or her controlled committee. If the loan is made from separate property funds or from community property funds directed by the spouse alone, the loan will be considered a contribution subject to the restrictions set forth in Proposition 208. (See Sections 84216 and 85307 (loans treated as contributions); *Shields* Advice Letter, *supra*; *Burgess* Advice Letter, *supra*.)

### **Question No. 3**

*If the answer to 1(a), (b), or (c) above is "no," how does a candidate set up a committee during the "blackout" period, insofar as that would require establishing a bank account?*

Because the "blackout" period does not prohibit the making of expenditures by a candidate, a candidate may deposit his or her personal funds to establish a campaign bank account and a campaign committee. The personal funds used for this purpose must be reported by the candidate's committee.

### **Question No. 4**

*With regard to a committee established for an election held prior to 1997 (e.g., the 1996 election cycle), Government Section 85305 states:*

*"This section shall not apply to retiring debts incurred with respect to any election held prior to the effective date of this act, provided such funds are collected pursuant to the contribution limits specified in Article 3 ... of this act ...."*

*(a) Is it correct to conclude that in a district with more than 100,000 residents, a candidate for election in 1996 could not, during 1997, receive more than \$250 from a contributor (i.e., the doubling in Article 4 would not apply)?*

*(b) If the answer to 4(a) is "yes," are sums contributed by a particular individual to the committee before 1/1/97 included in the \$250 limit?*

*(c) Is there any time limit on when the committee established for an election prior to 1997 must cease accepting contributions, insofar as the section appears to suggest the 90 day limit does not apply? Also, is there any limitation as to what funds collected after 1/1/97 may be used for, as would apply under Section 85305(c), to new committees formed for upcoming elections?*

Section 85305(c) provides that the "blackout" periods set forth in subdivisions (a) and (b) of that section, do not apply to fundraising for purposes of retiring debt incurred with respect to any election held prior to the effective date of Proposition 208 (e.g., January 1, 1997). Subdivision (c) further provides, however, that contributions given to retire debt of a pre-January 1, 1997, election must be collected pursuant to the limits specified in Article 3 of the Act (commencing with Section 85300). In other words, a candidate may solicit contributions during the blackout period for purposes of retiring "old" debt, but those contributions would be subject to the limitations of Section 85300 et seq. Therefore, to answer subpart (a) of your Question No. 4, a candidate in a district of more than 100,000 residents would be limited to receiving no more than \$250 per person, per election, in contributions designed to reduce debt existing from a pre-January 1, 1997, election and the solicitation and acceptance of those contributions would not be prohibited by any blackout period. Additionally, please note that the Commission has determined that the \$25,000 aggregate limit of Section 85310 does **not** apply to pre-1997 debt collection for pre-1997 elections. (*Ramirez Advice Letter, No. A-97-262.*)

Answering subpart (b) of Question No. 4, monies received by a candidate prior to the effective date of Proposition 208 are not subject to the limits of Proposition 208. (*Leidigh Advice Letter, No. A-97-107.*) A monetary contribution is "received" on the date the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check. (Regulation 18421.1(c).) Therefore, an individual who contributed to a pre-1997 election may contribute an additional amount in 1997 for the same election. (*Johnson Advice Letter, No. A-97-316a.*)

Answering the first portion of subpart (c) of Question No. 4, Proposition 208, and specifically, Section 85305, do not place any time limitation on the receipt of contributions by committees established for elections held prior to January 1, 1997. With respect to the second portion of subpart (c), please be advised that numerous restrictions are imposed under Proposition 208 regarding use of contributions collected post-January 1, 1997, for use in elections held on or after that date. If your question is directed exclusively to Section 85305(c), that section mandates that contributions received after an election or withdrawal, and up to 90 days thereafter, may be used only to pay outstanding bills or debts owed by the candidate or his or her controlled committee or as enumerated in Section 85305(d).

#### ***Question No. 5***

*Does the portion of Government Code Section 85401, requiring a candidate to file a statement of acceptance or rejection of the voluntary expenditure ceilings before accepting contributions apply to contributions from the candidate or loans from the candidate, himself or herself, or contributions or loans from the candidate's spouse?*

Because contributions of a candidate's personal funds are not limited under Proposition 208, the goal of Section 85401 (to encourage candidates to accept spending limits by doubling contribution limits) is not furthered by requiring a candidate to file a statement of acceptance or rejection before accepting contributions or loans from himself or herself. As explained above,

however, contributions or loans from a spouse deriving from separate property funds or community property funds **not** directed by the candidate are regulated contributions. (See discussion, *supra*, pgs. 3-4.) Accordingly, Section 85401 must be followed before a contribution or loan from a spouse (of separate property funds or non-candidate directed community property funds) may be accepted.

**Question No. 6**

*Which, if any, of the voluntary expenditure ceilings contained in Government Code Section 85400 apply to (a) municipal court judges? (b) superior court judges?*

Neither the Act nor Proposition 208 explicitly makes reference to municipal or superior court judicial candidates. However, it has long been the position of this office that many provisions in the Act apply to these candidates (See *Newton* Advice Letter, No. A-90-113; *Hamilton* Advice Letter, No. A-88-141). With the addition of Proposition 208 to the Act, we have applied certain provisions of that law to judicial candidates, as well. (See *Tucker* Advice Letter, No. I-97-310; *Barbara* Advice Letter, No. A-96-333.) Even though we believe that Proposition 208 applies to and regulates judicial candidates, the inclusion of them in particular portions of Proposition 208 is not specifically set forth. For example, in regards to voluntary expenditure ceilings, nowhere in Section 85400 are ceilings for municipal and superior court judicial candidates expressly stated.

Section 85400 is, however, quite clear as to the voluntary expenditure ceilings applicable to Assembly, Senate, statewide and gubernatorial candidates. We believe that municipal and superior court judges fall quite naturally within the "local" category of Section 85400(c). Accordingly, we conclude that Section 85400(c) allowing local jurisdictions and others to establish voluntary expenditure ceilings at an amount not to exceed \$1.00 per resident "for candidates," includes municipal and superior court judicial races.

**Question No. 7**

*Does Government Code Section 89519, pertaining to "surplus" funds remaining 90 days after the election apply to committees formed for elections in 1996? If so, how does it apply? If not, is there any time limit on when these committees must distribute their remaining funds? Is there any limit on how these committees must distribute their remaining funds?*

Campaign funds that **became surplus** prior to January 1, 1997, are governed by the law in existence at that time. (*Johnson* Advice Letter, *supra*.)<sup>3</sup> The provision of the Act regulating such funds prior to the passage of Proposition 208 bears the same section number as the provision of Proposition 208 relating to surplus funds, Section 89519. For ease of reference, we

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<sup>3</sup> However, pursuant to Regulation 18519.4(a), campaign funds from the November 5, 1996, general election are subject to the new surplus funds rules of Section 89519.

will refer to the section in effect prior to Proposition 208 as "old" Section 89519 and the present section as "new" Section 89519.

Campaign funds received prior to January 1, 1997, and which became surplus prior to that date are governed by "old" Section 89519. (Regulation 18519.4(c); *Johnson, supra.*) Regulation 18519.4(c) and (d) (copy enclosed) specifies the allowed uses of campaign funds which became surplus prior to January 1, 1997.

Campaign funds received after January 1, 1997, and held in a committee formed after that date, become surplus according to the "new" Section 89519. Under that section, funds become surplus when they exceed expenses. Surplus funds must be distributed within 90 days after withdrawal, defeat, or election to office and may only be distributed to the candidate's officeholder account (limit of \$10,000), to a political party, returned to contributors on a pro rata basis, or turned over to the State's General Fund. (Section 89519(a) and (b).) If campaign funds received prior to January 1, 1997, are held by a committee formed prior to that date or held by an officeholder elected prior to that date, then the funds will become surplus when the officeholder leaves office (Regulation 18519(b)(1); *Craven Advice Letter, No. A-97-373*) and will be regulated at that time for distribution purposes by "new" Section 89519. (Regulation 18519(b)(1).)

Staff is also in the process of drafting a regulation to present to the Commission clarifying the definition of surplus funds under "new" Section 89519 and providing detail to the distribution process.

#### ***Question No. 8***

*Where are municipal court candidates now required to file the originals of the campaign finance disclosure forms? Where are municipal court judges required to file copies of such forms?*

Under Section 84215(d), a municipal court candidate must file the original and one copy of his or her campaign statement with the clerk of the county in which he or she is running for election. Additionally, two copies of this document shall be filed with the clerk of the county of the candidate's domicile if that county is different from the county in which he or she is running for election. A statement of acceptance or rejection of the voluntary expenditure ceilings must be filed with the Fair Political Practices Commission. (Section 85401 and Regulation 18541 (Form 500).) Form 501 (Candidate's Intention), Form 502 (Campaign Bank Account) and Form 410 (Statement of Organization) are to be filed with the Secretary of State; a copy of Form 410 must be sent to the local filing officer.

#### ***Question No. 9***

*Where are superior court candidates now required to file the originals of the campaign finance disclosure forms? Where are superior court judges now required to file the copies of the*

*campaign finance disclosure forms?*

Under Section 84215(b), a superior court candidate must file the original and one copy of his or her campaign statement with the Secretary of State's Office, two copies with the clerk of the county holding the largest number of voters, and two copies with the clerk of the county of the candidate's domicile. Statements of acceptance or rejection of the voluntary expenditure ceilings and the other forms referenced in the response to Question No. 8 shall be filed as described in response to Question No. 8.

**Question No. 10**

*If several partners or associates want to contribute to a particular judicial candidate, would their contributions be aggregated under Government Code Section 85311 for purposes of the contribution limits contained in Sections 85301 and 85402? If the answer to the preceding question is "yes," does it make a difference whether the contributor(s) are partners in the firm or associates (employee lawyers)?*

The answer to this question depends entirely upon an analysis of a specific fact pattern. However, generally, Regulation 18531.1 (copy enclosed) has two provisions that might apply to a law partnership or corporation. First, subdivision (d)(1) of the regulation would apply to contributions made by law corporations; subdivision (d)(1) provides,

“(d) If one or more of the following indicia of establishing, financing, maintaining or controlling exists, the entities involved will be presumed for purposes of this title to be affiliated.

(1) If during the twelve-month period prior to making a campaign contribution to a candidate, a person possesses either of the following with respect to another entity:

(A) Ownership of an interest of more than 50 percent in voting rights, shares or securities of the entity or of a person having control over such entity; or

(B) The authority, power, or ability to direct or control the activities of the entity or a person having control over such entity.”

Additionally, subdivision (e) of the regulation, applying to partnerships including law partnerships, states,

“(e) The contributions of any entity, such as a partnership, whose contribution decisions are controlled by one individual, shall be aggregated with contributions made by that individual. [NOTE: If two or more individuals control these decisions, no aggregation with any one individual's contributions will occur.]”

Contributions made by lawyers and/or their law firms falling within the ambit of the above two subdivisions would be aggregated for purposes of the limitations of Proposition 208.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in cursive script that reads "Lisa L. Ditora". The signature is written in black ink and has a long, sweeping tail that extends to the right.

By: Lisa L. Ditora  
Staff Counsel, Legal Division

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