



FAIR POLITICAL PRACTICES COMMISSION

December 15, 1997

Rick Nash
Treasurer
Smith for Sheriff Campaign
Post Office Box 9348
Moreno Valley, California 92552

**Re: Your Request for Advice
Our File No. I-97-521**

Dear Mr. Nash:

This letter is in response to your request for advice regarding the provisions of 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 the immunity provided under Section 83114. (See Regulation 18329(c).)

QUESTIONS & CONCLUSIONS

1. When an individual signs a check on behalf of a business entity for the purpose of making a campaign contribution, must the contribution be aggregated with the individual's contribution from personal funds? Must the contribution also be aggregated with contributions from the personal funds of other individuals within the business entity?

Proposition 208 imposes limits on campaign contributions. (Section 85301-85304, 84309-85310.) Government Code section 85311 which was added to the Act by Proposition 208 provides as follows:

"All payments made by a person established, financed, maintained, or controlled by any business entity, labor organization, association, political party, or any other person or group of such persons shall be considered to be made by a single person."

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

Regulation 18531.1 (copy enclosed) interprets section 85311 and provides that contributions made by affiliated entities will be considered to be made by a single person for purposes of the contribution limits of the Act. (Section 18531.1(b).) Under the regulation, affiliated entities may together contribute up to the applicable contribution limit of any one of the affiliates, except that no single affiliate may contribute more than its own contribution limit.

You would like to know what individuals are considered to be affiliated with a business entity that makes campaign contributions. You have not described the particular business entity upon which your question is based. Thus, I can only provide the following guidelines. First, whether an individual signed a business check on behalf of a business entity for the purpose of making a contribution is not a relevant factor in determining whether the individual is affiliated with that business entity for purposes of the contribution limits.

Second, Regulation 18531.1 establishes a presumption of affiliation and provides an individual will be presumed to be affiliated with a business entity,

“(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 an 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 and control the activities of the entity or a person having control over such entity.

(4) A person directly or indirectly provides a majority of an entity's funds, services, or goods on a regular or ongoing basis, for less than full consideration. (Regulation 18531.1(d).)

Finally, if the contribution decisions of an entity are controlled by one individual, contributions made by the entity will be aggregated with contributions made by that individual. (Regulation 18531.1(e).) However, if two or more individuals control such decisions, no aggregation will occur unless subdivision (d), above, applies.

If an individual is presumed to be affiliated with a business entity, then contributions made by the individual from his or her personal account will be aggregated with contributions from the business entity for purposes of the contribution limits.

2. If a contribution is made from a joint checking account, must the contribution be attributed equally to each individual whose name is printed on the check, regardless of which person signed the check?

No. If a contribution is made from a joint checking account, the contribution shall only be attributed to the individual who signs the check, unless an accompanying document directs otherwise. (Regulation 18533, copy enclosed.)

Questions concerning joint checking accounts usually arise in the context of contributions from spouses. Generally, spouses are considered separate contributors. (Section 85308(a); *Dowling* Advice Letter, No. A-97-073.) Thus, when one spouse contributes from community property funds, such as a joint checking account for example, the contribution will only count against the spouse who directs the contribution. (*Margines* Advice Letter, No. A-97-279.) However, if each individual spouse whose name is printed on the check also signs the check, then the contribution is attributed equally to each spouse, unless an accompanying document signed by each individual directs otherwise.

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 "Julia Butcher". The signature is written in black ink and is positioned above the typed name and title.

By: Julia Butcher
Staff Counsel, Legal Division

SGC:JB:tls