



FAIR POLITICAL PRACTICES COMMISSION

December 18, 1997

The Honorable Ross Johnson
California State Senate
State Capitol, Room 5087
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. I-97-537**

Dear Senator Johnson:

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

QUESTIONS AND CONCLUSIONS

1. *Can funds be raised by an officeholder during the blackout period to pay an administrative fine incurred in the previous election cycle even if the officeholder has no debt?*

We requested further facts to answer this question, which your staff provided as follows. After a 1996 election, an officeholder has \$15,000 leftover in a committee (the "1996 Committee"). The monies in the 1996 Committee are pre-1997 funds. The 1996 Committee has no debt. The officeholder's committee incurred an administrative fine of \$5,000 arising out of the officeholder's 1996 election. You ask whether the officeholder may leave the pre-1997 funds in the 1996 Committee and raise new funds under section 85305(d) to pay the fine.

Proposition 208 establishes fundraising cycles for each election. A state legislative candidate's fundraising begins six months before the primary election and ends 90 days following the candidate's withdrawal, defeat, or election to office in the primary or general election. (Section 85305(a) and (c).) Regardless of the fundraising blackout periods, Proposition 208 permits candidates to raise funds at any time for the limited purposes of retiring debt from elections that took place before January 1, 1997, and paying certain legal expenses. Section 85305(c)-(e) provides as follows:

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

“(c) No candidate or the controlled committee of such candidate shall accept contributions more than 90 days after the date of withdrawal, defeat, or election to office. Contributions accepted immediately following such an election or withdrawal and up to 90 days after that date shall be used only to pay outstanding bills or debts owed by the candidate or controlled committee.

* * *

(d) Notwithstanding subdivision (c), *funds may be collected at any time to pay* for attorney’s fees for litigation or administrative action which arises directly out of a candidate’s or elected officer’s alleged violation of state or local campaign, disclosure, or election laws or *for a fine or assessment imposed by any governmental agency for violations of this act or this title*, or for a recount or contest of the validity of an election, or for any expense directly associated with an external audit or unresolved tax liability of the campaign by the candidate or the candidate’s controlled committee; provided such funds are collected pursuant to the contribution limits of this act.

(e) Contributions pursuant to subdivisions (c) and (d) of this provision shall be considered contributions raised for the election in which the debts, fines, assessments, recounts, contests, audits, or tax liabilities were incurred and shall be subject to the contribution limits of that election.” (Emphasis added.)

Proposition 208 provides that a candidate must stop fundraising for a particular election and distribute all surplus funds within 90 days after the election. Under Proposition 208, a candidate will have distributed all the committee’s funds following an election and will not have funds on hand to pay legal expenses that may arise. Therefore, section 85305(d) permits a candidate to collect funds at any time (including during the blackout period) to pay certain legal expenses, provided the candidate collects the funds pursuant to the contribution limits of the Act.

A question similar to yours was addressed in the *Weldy* Advice Letter, No. A-97-332. In the *Weldy* letter, the Carole Migden for Assembly Committee was audited by the Franchise Tax Board on behalf of the Fair Political Practices Commission for the period relating to the 1996 primary and the 1996 general election. The committee spent cash on hand to pay for all audit related expenses, such as photocopying, database costs, and accounting services. The committee’s treasurer asked whether the Carole Migden for Assembly Committee could raise funds under section 85305(d) to pay for expenses directly related to the external audit of the committee, when it had already paid those expenses with existing campaign funds. The Commission advised that the committee could not. It stated that “[s]ection 85305(d) does not allow for fundraising during the blackout period for ‘any expense directly associated with an external audit,’ when the expense has already been paid by the committee that incurred the expense.”

Similarly here, where the 1996 Committee has ample funds to pay the fine, it cannot conduct new fundraising under section 85305(d), simply to preserve the pre-1997 money. The \$5,000 administrative fine was incurred in connection with the 1996 election and must be paid with existing 1996 Committee funds.

2. *Section 85303 states that candidates may "distribute any surplus, residual, or unexpended campaign funds to a political party committee." Surplus funds are defined in section 89519, yet residual and unexpended campaign funds are not included in that section. As a result, may a candidate make unlimited contributions of residual and unexpended campaign funds to a political party committee? Would the unexpended campaign funds be defined as funds held in a candidate's controlled committee?*

Proposition 208 limits contributions to political party committees to \$5,000 per calendar year per person. Section 85303 provides as follows:

"No person shall give in the aggregate to political party committees of the same political party, and no such party committees combined shall accept from any person, a contribution or contributions totaling more than five thousand dollars (\$5,000) per calendar year; except a candidate may distribute any surplus, residual, or unexpended campaign funds to a political party committee." (Emphasis added.)

Under Proposition 208, a candidate must distribute all surplus campaign funds within 90 days after his or her withdrawal, defeat, or election to office. A candidate may donate surplus campaign funds to a political party in excess of the \$5,000 per calendar year limit. Section 89519 provides as follows:

"Any campaign funds in excess of expenses incurred for the campaign or for expenses specified in subdivision (d) of Section 85305, received by or on behalf of an individual who seeks nomination for election, or election to office, shall be deemed to be surplus campaign funds and shall be distributed within 90 days after withdrawal, defeat, or election to office in the following manner:

(a) No more than ten thousand dollars (\$10,000) may be deposited in the candidate's officeholder account; except such surplus from a campaign fund for the general election shall not be deposited into the officeholder account within 60 days immediately following the election.

(b) Any remaining surplus funds shall be distributed to any political party, returned to contributors on a pro rata basis, or turned over to the General Fund."

Section 85303 states that contributions to political party committees are limited to \$5,000 per person per calendar year, "except that a candidate may distribute any surplus, residual, or unexpended campaign funds to a political party committee." A candidate is included within the Act's definition of "person." (Section 82047.) Despite the discrepancy in wording (section 85303 refers to "surplus, residual, or unexpended campaign funds" while section 89519 uses the term "surplus campaign funds"), we interpret the language in section 85303 providing that a candidate "may distribute any surplus, residual, or unexpended campaign funds to a political party committee" to refer to a candidate's distribution of surplus funds under section 89519. Read together sections 85303 and 89519 mean that while a candidate's contributions to a political party are generally limited to \$5,000 per year just like any other contributor, a candidate may distribute surplus campaign funds in excess of this amount to a political party. To interpret it otherwise would mean that there was no limit on a candidate's transfer of unexpended campaign funds to a political party committee. Such an interpretation is contrary to the transfer ban of section 85306 and would result in evasion of the \$5,000 per calendar year per person limit on contributions to political party committees.²

3. Is there any provision of the Political Reform Act which prohibits independent expenditure committees from coordinating their activities with other independent expenditure committees? For example, independent expenditure committees A, B, C, D, E, F and G coordinate their efforts in support of Senate candidate Jones. They are all independent from Jones' committee. A and B would pay for mailers, C and D would pay for radio advertising, E and F would pay for television advertising and G would fund a "get out and vote" effort. Is this type of coordination effort permitted under the Act?

We are unable to answer your question specifically because you have asked a hypothetical question, and have not provided any facts about on whose behalf you are seeking advice or the candidate or independent expenditure committees involved. Under the Act, a requestor may seek advice about his or her own duties under the Act, but not about the duties of a third party. Further, the request must provide all facts that are material to consideration of the question and not be purely hypothetical. (Regulation 18329(b)(1)(B) and (b)(8)(B-D).)

In general, however, the Act's definition of independent expenditure and section 85500 provide that independent expenditures may not be coordinated with the candidate or an agent of the candidate's campaign. (Section 82031; Regulation 18225.7.) They do not restrict one or more PACs from acting together in making independent expenditures as long as these expenditures are not coordinated with the candidate or an agent of the candidate. Regulation 18225.7 provides that an expenditure is presumed to be coordinated with the candidate if (1) the expenditure is based on information about the candidate's or committee's campaign needs or

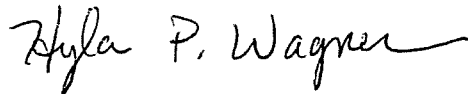
² We presume your question applies to funds raised after January 1, 1997. Under Regulation 18519.4, an officeholder may declare any funds or assets which were held by the officeholder's committee as of December 31, 1996, to be surplus under new section 89519 and distribute it to a political party, to the general fund, or pro rata to contributors.

plans provided to the expending person by the candidate, the candidate's committee, or their agents, or (2) the expenditure is made by an agent of the candidate or the candidate's committee. The *Borden* Advice Letter, No. A-97-320, addressed the making of joint independent expenditures by two organizations that are not affiliated, the California Farm Bureau Federation and Western Growers. We advised that the Act does not restrict two or more committees that are not affiliated from making joint independent expenditures supporting or opposing a candidate.

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

Sincerely,

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General Counsel



By: Hyla P. Wagner
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SGC:HPW:jlw