SUPERSEDED BY 1998 AMENDMENTS TO REGULATION 18530

FAIR POLITICAL PRACTICES COMMISSION

February 5, 1998

Mr. William C. Vickrey
Administrative Director of the Courts
Judicial Council of California
303 Second Street, South Tower
San Francisco, California 94107-1366

Re: Your Request for Advice
Our File No. A-97-594

Dear Mr. Vickrey:

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

FACTS

As Administrative Director of the Courts of California, you are a constitutional officer appointed by the Judicial Council and perform functions delegated by the council and the Chief Justice of California. You direct the activities of the Administrative Office of the Courts ("AOC"), the staff agency to the council. In that capacity, you and AOC staff will receive requests for guidance from judicial branch employees as they strive to comply with the law and ethical standards governing the campaign activities in which judges and judicial staff may engage in the 1998 elections.

You also supervise the Director of the Center for Judicial Education and Research, who oversees the staff of the center. Under Rule 1029, California Rules of Court, the center is responsible for establishing and presenting educational programs for judicial officers and court staff. Pursuant to these legal responsibilities, the center will develop and present programs to educate judges and court staff about the law and the ethical guidelines governing permissible election activities. You have questions concerning section 85300, which is contained in the Act,

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

and various sections of the Government Code that are outside the Political Reform Act. (All statutory references are to the Government Code, unless otherwise indicated.)

It is your understanding that under California law, judges and judicial staff may participate in judicial campaign activities. (*Fort v. Civil Service Commission* (1964) 61 Cal.2d 331, 334-335.) However, you understand that sections 85300 and 19990(b) and (g) prohibit state employees from participating in campaign activities during work hours or using public resources for campaign activities. (See also, *California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730; *Stanson v. Mott* (1976) 17 Cal.3d 206, 209-210; *Fair Political Practices Commission v. Suitt* (1979) 90 Cal.App.3d 125, 130.)

You ask about section 8314, which makes it unlawful for any elected state officer, appointee, employee, or consultant to use or permit others to use state resources for a campaign activity. That section defines "campaign activity" as an activity constituting a contribution as defined in section 82015 or an expenditure as defined in section 82025. However, section 8314 states that "campaign activity" does not include "the incidental and minimal use of state resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities." (Section 8314(b)(2).) Thus, you conclude that section 8314 appears to allow incidental and minimal use of state resources for campaign purposes.

Finally, you observe that section 3208 states that except as provided in section 19990, the limitations in sections 3201-3209 "shall be the only restrictions on the political activities of state employees." Yet section 8314 provides additional limitations and direction on the political activities of state employees. You seek to clarify the relationship between section 3208 and sections 3201-3209, on the one hand, and section 8314 on the other.

QUESTIONS AND CONCLUSIONS

Numerous statutes and cases which you have cited above prohibit the use of public property, personnel, and funds for campaign purposes. Although these statutes and cases are interrelated, the Commission's authority is limited to interpretation of the Political Reform Act set forth in Government Code sections 81000-91014.[2] The Commission does not have the jurisdictional authority to interpret Government Code section 8314 or to advise you as to the relationship between Government Code section 3208 and 8314, as these statutes are outside the

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[2] As far as conflicts with other statutes, the Political Reform Act provides that nothing in the Act prevents the Legislature from imposing additional requirements on any person if the requirements do not prevent the person from complying with the Act. If any act of the Legislature conflicts with provisions of the Act, however, the Act prevails. (Section 81013.)

Political Reform Act. You may want to contact the Attorney General's office for an interpretation of these sections of the Government Code.

We will analyze the three specific questions you asked within the scope of the Political Reform Act.

1. ***May a member of a judge's staff who receives a phone call or letter asking about how to make a campaign contribution direct the inquiry to the judge's campaign staff?***

It does not violate section 85300 or any other provision of the Political Reform Act, for a member of a judge's staff who receives a phone call or letter asking about how to make a campaign contribution to direct the inquiry to the judge's campaign staff. (See analysis under question 2 below.)

2. ***Applying section 8314 and all other applicable law, is there any other "incidental and minimal" use of state resources for campaign activity that is lawful? If yes, what other incidental and minimal uses of state resources for campaign activity are lawful?***

As discussed above, the Commission cannot construe section 8314, or what constitutes "incidental and minimal" use of state resources under that section. However, section 85300 of the Political Reform Act contains a broad prohibition on the use of public moneys for seeking elective office. Section 85300 provides: "No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office."

Section 85300 became law as a result of the passage of Proposition 73. The language in the ballot arguments of Proposition 73 and Proposition 68 indicates that the provision appears as a rebuttal to the public financing of election campaigns proposed in Proposition 68. Therefore, where public moneys are spent to advocate or promote a particular candidate's election to public office, section 85300 is violated.

"Public moneys" is defined to include all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, district, or public agency therein, and all moneys, bonds, and evidence of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity. (Section 85102(e); Penal Code Section 426.) While this provision specifically refers only to the use of public money, it includes by implication all monetary costs associated with the use of staff services as well. (*People v. Sperl* (1976) 54 Cal.App.3d 640, 657.) Section 85300, therefore, prohibits the use of public moneys for the purpose of seeking elective office and any use of public resources for which charges are incurred and paid with public money.

Section 85300 creates a broad prohibition on the intentional use of public money for campaign related activity. However, we have advised that certain inadvertent, incidental, or de minimus uses of state resources, such as a staff member referring a call to the judge's campaign office or an isolated use of the office fax or copy machine, does not constitute a violation of section 85300.

3. ***Does any such incidental and minimal use of state resources have to be reported to the Fair Political Practices Commission or any other agency? If yes, which such uses, and by what means?***

As an outgrowth of litigation in the case *Fair Political Practices Commission v. Tom Suitt, supra*, the Commission adopted regulations requiring a candidate to report campaign contributions received from a state or local government agency. Those regulations are 2 Cal. Code Regs. Sections 18420 and 18423, copies of which are enclosed.

Regulation 18420 provides that any candidate or committee that receives contributions from a state or local government agency must report the receipt of those contributions. However, the incidental use of state resources described in the responses to questions 1 and 2 above would not be considered a contribution and therefore would not need to be reported.

Regulation 18420 further states that the payment by a state or local government agency of the salary or expenses of an employee may be considered a reportable contribution under certain circumstances. Pursuant to Regulations 18420 and 18423, if a public employee is performing campaign activities at the request of the employer on public time, and those campaign activities exceed 10 percent of the employee's compensated time in a given month, the employee's compensation is a reportable contribution.

The requirement that a candidate report campaign contributions received from a government agency, set forth in Regulation 18420, is somewhat confusing as it could lead a reader to believe that it is ***permissible*** for a candidate to receive campaign contributions from a government agency. Generally speaking, however, the use of public resources by a officeholder/candidate for private campaign purposes is ***illegal***. The prohibitions on the use of state resources for campaign purposes contained in section 85300, section 8314, and case law take precedence over the reporting requirement of Regulation 18420. The comment to Regulation 18420 emphasizes that the regulation should not be read as condoning or authorizing campaign-related activities by a state or local government agency, which under many circumstances may be illegal.

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

Sincerely,

Steven G. Churchwell
General Counsel

Hyla P. Wagner

By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosures
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