



FAIR POLITICAL PRACTICES COMMISSION

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November 24, 1998

Kathy Larocque
Deputy County Counsel
Sonoma County
575 Administration Drive, Room 105-A
Santa Rosa, California 95403

**Re: Your Request for Advice
Our File No. I-98-262**

Dear Ms. Larocque:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Since you are not requesting advice on behalf of a particular official, we are treating your request as one for informal assistance.² (Regulation 18329(b)(2)(A).)

QUESTION

Do the transfer prohibitions in section 85304 apply to candidates in local jurisdictions that have contribution limits?

CONCLUSION

Before the passage of Proposition 208, section 85304 prohibited both the intra-candidate and the inter-candidate transfer of campaign funds. The intra-candidate transfer ban is invalid. During the injunction of Proposition 208, the inter-candidate transfer ban in section 85304 applies in special elections and in local jurisdictions with valid contribution limits.

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

² Informal assistance does not provide the requestor with the immunity conferred by formal written advice. (Regulation 18329(c)(3).)

ANALYSIS

Section 85304 prohibits a candidate from transferring campaign funds between his or her controlled committees. The statute also prohibits a candidate from transferring campaign funds to other candidates.

Specifically, section 85304 provides:

“No candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfers of funds between candidates or their controlled committees are prohibited.”

This provision was added to the Act by Proposition 73, a campaign finance reform measure on the June 1988 statewide primary ballot. Among other things, Proposition 73 established general election contribution limits based on a fiscal year cycle and special election contribution limits based on an election cycle.

In *Service Employees International Union v. Fair Political Practices Commission* (9th Cir. 1992) 955 F.2d 1312, cert. den. 505 U.S. 1230, the federal appellate court invalidated the intra-candidate transfer ban. (*Id.* at 1322.) The court also held that the contribution limits in Proposition 73 calculated on a fiscal year basis were unconstitutional. (*Id.* at 1321.) However, the court did not invalidate the special election limits that were based on an election cycle rather than a fiscal year cycle.

Turning to the inter-candidate transfer ban, the appellate court affirmed the district court's determination that the transfer prohibition between candidates does not prevent circumvention of contribution limits if no valid contribution limits are in effect. (*Id.* at 1322.) The court's decision, in effect, modified the scope of the inter-candidate transfer ban in section 85304. The court invalidated the inter-candidate transfer ban with regard to fiscal year contribution limits, but not with regard to limits based on an election cycle. As a result, the inter-candidate transfer prohibition remains applicable in special elections and in local jurisdictions that have contribution limits that are not based on a fiscal year.

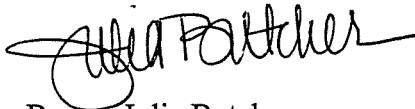
The transfer prohibitions in Section 85304 were recently repealed by Proposition 208, a campaign finance reform measure enacted by the voters in the November 1996 Statewide General Election. Among other things, Proposition 208 established statewide contribution limits and voluntary expenditure ceilings. Similar to Proposition 73, Proposition 208 included a prohibition on the transfer of campaign funds between candidates. (Section 85306.) Proposition 208 did not address intra-candidate transfers.

In *California Prolife Council Political Action Committee v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282, the federal district court enjoined enforcement of Proposition 208. This preliminary injunction remains in effect while the Commission appeals the decision to the Ninth Circuit Court of Appeals. The district court's injunction operates to delay or suspend the implementation of Proposition 208. (*Heart of Atlanta Motel, Inc. v. U.S.* (1964) 85 S.Ct. 1, 2.) Proposition 208 is therefore currently without effect. Consequently, the provisions of the Act repealed or amended by Proposition 208 are effective until the injunction is lifted. (*Huebscher* Advice Letter, No. A-98-100.)

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Staff Counsel, Legal Division

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