



## FAIR POLITICAL PRACTICES COMMISSION

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March 31, 2000

Beth Reno  
Steve Peace For Secretary of State  
5205 Kearny Villa Way, Suite 210  
San Diego, CA 92123

**Re: Your Request for Advice  
Our File No. A-00-038**

Dear Ms. Reno:

This letter is a response to your request for advice on behalf of Senator Steve Peace regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Are only the contributions received or expenditures made in connection with the March 7<sup>th</sup> statewide primary election aggregated to determine whether the \$100,000 threshold has been met which triggers online electronic disclosure for a state elective officeholder?
2. Since Senator Peace is not being voted upon in either the March or November 2000 election, will any size contribution from one of his controlled committees to another candidate or ballot measure committee trigger either paper or online electronic filing of late contribution reports or pre-election statements?
3. Considering that Senator Peace is not being voted upon in either the March or November 2000 election, will any size transfer from one of his controlled committees to another of his controlled committees trigger either paper or online electronic filing of a late contribution report or pre-election statement?

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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.

## CONCLUSIONS

1. No. Whether or not the contributions are received or expenditures are made in connection with the election, if the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received during specified reporting periods by an elected state officer meets the thresholds set forth in Government Code section 84604(a)(1) for the March 2000 statewide direct primary, or 84605(a) for elections held after July 1, 2000, then online electronic filing of disclosure statements may be triggered.

2. Senator Peace is not required to file pre-election statements in connection with an election in which he is not being voted upon, unless during the specified reporting period, the Senator or any of his controlled committees makes any contribution to any committee required to file pre-election statements in connection with that election.

3. No. A transfer of funds between Senator Peace's own controlled committees is not considered a contribution, and does not trigger pre-election statements or late contribution reports. In addition, the termination of Senator Peace's committee on January 19, 2000, does not trigger online electronic disclosure because the termination statements were not filed "in connection with the 2000 state primary election," and were filed prior to the deadline for electronic filing of campaign statements.

## FACTS

Senator Steve Peace is currently an elected state officeholder. He will not be listed on the ballot for the March or November 2000 elections, but intends to run for the office of Secretary of State ("SOS") in 2002. Senator Peace has multiple controlled committees which were formed for his prior senate campaigns and his future SOS campaign. One of those committees was terminated effective January 19, 2000, by filing FPPC forms 415 and 490 with the SOS.

One of Senator Peace's controlled campaign committees has received more than \$100,000 in contributions since January 1, 1999. However, none of the contributions were intended for, nor were they used in connection with the March 7<sup>th</sup> primary election. In our phone conversation of March 3<sup>rd</sup>, you indicated that Senator Peace did not intend to make contributions from any of his committees for the March 7<sup>th</sup> election.

## ANALYSIS

### **Thresholds for Online Electronic Disclosure.**

In 1997, the Legislature passed SB 49, the Online Disclosure Act, mandating that the Secretary of State develop and implement an online electronic disclosure program for certain candidate and committee campaign statements filed in connection with the 2000 state primary election, and also for certain lobbying reports. The Online Disclosure Act provides threshold amounts for receipt and/or expenditures of funds by committees, which must be met to trigger electronic filing of statements.

Pursuant to section 86404(a)(1) of the Act, any candidate, officeholder or committee required to file statements in connection with a state elective office or state measure appearing on the 2000 statewide direct primary ballot is subject to online electronic filing of such statements, "... provided that the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received is \$100,000 or more." Totals are cumulated from January 1, 1999 through June 30, 2000.

The language in section 84604(a)(1) does not specifically indicate whether the total cumulative reportable amount of funds which are aggregated to meet the \$100,000 threshold are limited to those received or made in connection with the statewide primary. The FPPC has interpreted this provision to mean that *any* contribution received or expenditure made by the candidate or committee since January 1, 1999, is aggregated to meet the threshold; not only those which are received or made in connection with the statewide primary. This interpretation is supported by the fact that the language in section 84604(a)(2), which sets forth the threshold requirements for general purpose committees, specifically limits the funds that are to be cumulated to meet the threshold to those that are to meant "... to support or oppose candidates for any elective state office ... appearing on the 2000 statewide direct primary ballot."

You indicated that one of Senator Peace's controlled committees had received more than \$100,000 in contributions since January 1, 1999, but that none of those contributions were raised for, nor were they to be used in connection with, the March 7<sup>th</sup> statewide primary. Based on the Commission's interpretation of section 84604(a)(1), it appears that Senator Peace's committee met the required threshold which might ordinarily trigger online electronic disclosure. However, because Senator Peace was not being voted upon in the statewide primary and did not make any contributions in connection with the election, he did not trigger the filing of any statements related to the election, and currently has no obligation to file his upcoming semi-annual statements electronically; only a paper filing will be required.

The Commission has interpreted the language in section 84605(a) of the Act similarly. This section provides that, beginning with the reporting period which starts on July 1, 2000, any candidate required to file statements in connection with a statewide office is subject to online electronic filing of such statements, provided that the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received since January 1, 2000, is \$50,000 or more. Like the aggregation requirement of contributions and expenditures in section 84604(a)(1), the funds that must be aggregated to determine whether the \$50,000 threshold has been met are *not* limited only to those received or made in connection with any specific election.

The above discussion of Senator Peace's responsibilities regarding online electronic disclosure reflects the law as it exists today. Senator Ross Johnson introduced an emergency bill, SB 1874, on February 24, 2000, which proposes to amend Section 86404. (Copy enclosed.) Should the bill pass in its present form, it will require candidates and committees that were not required to file pre-election statements in connection with the March 7<sup>th</sup> primary election to file their semi-annual statements electronically on July 31<sup>st</sup> if they have met the \$100,000 threshold by June 30, 2000.

### **Pre-election Statements and Late Contribution Reports.**

The Act provides that officeholders, candidates and committees must file periodic disclosure reports as required by Sections 84200 et seq. In addition to regular semi-annual reports, a committee that engages in activity in connection with an election may trigger the filing of "preelection" or "late contribution" reports, depending on the amount and type of activity.

Generally there are two "preelection" statements which are required to be filed before an election by certain elected officers, candidates and committees involved in the election. During an even-numbered year, an elected state officeholder who is not being voted upon in the statewide direct primary or general election is required to file preelection statements in connection with the election only if, during the period covered by the statement, the candidate or his/her controlled committee(s) has made any contribution to any committee required to report receipts, expenditures, or contributions, or makes any independent expenditures. (84200.5(a).)

A "late contribution" is any contribution which totals, in the aggregate, \$1,000 or more and is made to or received by a candidate, his or her controlled committee, or a committee primarily formed to support or oppose a candidate or measure within the sixteen days immediately preceding the election in which the candidate or measure is to be voted on. (Section 82036.) Section 84203(a) requires each candidate or committee that makes or receives a late contribution to report it within 24 hours.

Pursuant to our phone conversation of March 3, 2000, you stated that neither Senator Peace nor any of his controlled committees had made, nor did they intend to make, any contributions or independent expenditures in connection with the statewide primary. Since the trigger for both the preelection statements and late contribution reports relates to activity in connection with an election, and Senator Peace and his committees were not actively involved in the statewide primary, no such statements - either paper or electronically filed - would have been required of Senator Peace or his committees.

### **Intra-candidate Transfers.**

In June of 1988, Proposition 73 was adopted by the people of California. Originally, Proposition 73 banned intra-candidate transfers. In the litigation challenging Proposition 73, the ban on transfers among a candidate's own committees was struck down. (*Service Employees International Union v. Fair Political Practices Commission*, 955 F.2d 1312 (9<sup>th</sup> Cir. 1991), affirming *Service Employees International Union v. Fair Political Practices Commission*, 747 F.Supp. 580, 591 (E.D. Cal. 1990).) With limited exceptions, a candidate may now transfer funds and assets among the candidate's own controlled committees.<sup>2</sup>

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<sup>2</sup> Pursuant to Section 85919, an intra-candidate transfer of "surplus funds" is prohibited, and an intra-candidate transfer of funds to the candidate's committee for a special election is subject to the requirements set forth in Section 85305 and FPPC Regulation 18535.

It is longstanding advice that a transfer of funds between committees controlled by a single candidate is not considered a contribution for purposes of Section 84200.5. (*Fishburn* Advice Letter, No. I-92-162.) Therefore, a transfer of any amount between Senator Peace's controlled committees would not trigger the filing of a preelection statement, so long as none of his controlled committees made contributions or independent expenditures to support or oppose other candidates or committees within the preelection period.

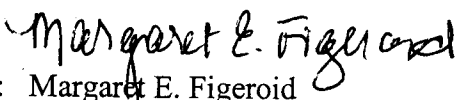
Similarly, since intra-candidate transfers of funds are not considered to be contributions, a transfer of \$1,000 or more between a candidate's controlled committees made during the late filing period sixteen days immediately preceding an election will not trigger the filing of a late contribution report. (*Whitney* Advice Letter, No. A-83-212.)

You also stated that Senator Peace terminated one of his controlled committees effective January 19, 2000. The termination of a controlled committee requires that certain forms be filed which reflect the final activities of the committee. (Section 84212.) As stated above, Senator Peace's committees had met the \$100,000 threshold in the designated period pursuant to the provisions of section 84604(a)(1), but had no requirement to file electronically. In addition, because the termination statements, FPPC forms 415 and 490, were not filed "in connection with the 2000 state primary election," and were filed prior to the deadline for electronic filing of campaign statements, online electronic filing of these statements was not triggered.

If you have any questions on this matter, please feel free to contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
Assistant General Counsel

  
By: Margaret E. Figeroid  
Political Reform Consultant

Enclosure