FAIR POLITICAL PRACTICES COMMISSION
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December 20, 2000

Cathleen C. Miller, Treasurer
Office of Congressman Gary Miller
721 So. Brea Canyon Road, Suite 7
Diamond Bar, CA 91789

Re: Your Request for Advice
Our File No. A–00-242

Dear Ms. Miller:

This letter is in response to your request for advice, on your own behalf and on behalf of Congressman Gary Miller, regarding provisions of the Political Reform Act (the "Act").[1]

QUESTION

What limits, if any, does the Act impose on transfers from a candidate's federal campaign committee to his controlled state committees for purposes of debt retirement?

FACTS

You are the campaign treasurer for Congressman Gary Miller, recently reeleeted to his seat from California's 41st Congressional District. Your FEC technical advisor has told you that, under federal law, Congressman Miller may transfer excess campaign funds from his federal committee into his two California committees, which are still open with outstanding debt. They are *Miller for Assembly*, ID No. 950268, from the congressman's 1995 state Assembly campaign, with an outstanding debt of $175,000, and *Committee to Elect Gary Miller*, ID No. 963090, which dates from the congressman's 1990 special election campaign for a state senate seat. Its outstanding debt is $539,433. Details of timing and the amount of any transfers from the federal committee are still undecided.

[1] Government Code sections 81000 – 91015. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

The Act does not regulate the activities of federal campaign committees, but it does regulate contributions to California committees, including contributions made by federal campaign committees. Portions of the Act governing such contributions will be changed by provisions of the recently passed Proposition 34, which take effect on January 1, 2001. We begin our analysis by outlining provisions of current law pertinent to your question, and will thereafter discuss amendments introduced by Proposition 34.

1. Current Law (1988 – 2000)

Contributions to candidates for state office were made subject to monetary limits after passage of Proposition 73 in 1988. These contribution limits varied by, among other things, the characterization of the contributor as a "person," a "political committee," or a "broad-based political committee." Because federal campaign committees could not be regulated as "recipient committees" under California law, they were viewed as "persons" for purposes of determining applicable contribution limits. (*Stark* Advice Letter, No. A-88-470; *Marsh* Advice Letter, No. I-89-056; *Riffenburgh* Advice Letter, No. A-90-761; *House* Advice Letter, No. A-92-111.)

The contribution limits of Proposition 73 were challenged as unconstitutional and were permanently enjoined in the ensuing litigation, with the exception of Section 85305 which provides – in pertinent part – as follows:

> "(c) Notwithstanding Section 85301 or 85303 the following contribution limitations shall apply during special election cycles and special runoff election cycles.
> (1) No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution or loan which would cause the total amount contributed or loaned by that person to that candidate, including contributions or loans to all committees controlled by the candidate, to exceed one thousand dollars ($1,000) during any special election cycle or special runoff election cycle."

This $1,000 contribution limit for special elections survived the Proposition 73 litigation, and continues to govern contributions to special election campaigns. Since the other contribution limits of Proposition 73 were struck down by the courts, and the contribution limits introduced in 1996 by Proposition 208 have also been enjoined, Section 85305 contains the *only* contribution limit currently in effect statewide.[2]

We have long advised that contributions from a candidate's federal committee to a special election committee (including special election committees controlled by a federal candidate) are subject to the $1,000 contribution limit imposed by Section 85305. (*Riffenburgh* Advice Letter, *supra*; Commission Memorandum re: Adoption of Proposed

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[2] Many local jurisdictions throughout California establish contribution limits for local elections, but neither of the committees in question were subject to local contribution limits.

(*Riffenburgh* Advice Letter, *supra*; Commission Memorandum re: Adoption of Proposed Regulation 18535, July 26, 1991 at p. 9; *Roberti* Advice Letter, No. I-92-108; *House* Advice Letter, *supra*.) As applied to transfers among committees controlled by a single candidate (that is, when applied to intra-candidate transfers), this advice must reflect the teaching of the courts on Proposition 73. The district court found that limitations on a candidate's transfer of campaign funds between committees controlled by the same candidate must be reviewed under the "strict scrutiny" applied by the courts to limitations on candidate expenditures, rather than under the less demanding standard of review applied to contribution limits.[3] The Ninth Circuit Court of Appeals concurred:[4]

> "We agree with the district court that the ban on intra-candidate transfers operates as an expenditure limitation because it limits the purposes for which money raised by a candidate may be spent."

To avoid constitutional questions inherent in an overly restrictive interpretation of intra-candidate transfers under the contribution limit of Section 85305, we construed that provision as follows:

> "In interpreting the contribution limits imposed by Section 85305 for special elections, we have advised that transfers between a candidate's own accounts may not result in contributions to the special election account from any one contributor in excess of the contribution limits specified in that section." (*Roberti* Advice Letter, supra.)[5]

In other words, the candidate's committee was not *itself* limited to a contribution of $1,000; rather, it could transfer any and all contributions it had received, so long as no individual contribution exceeded $1,000. Soon after the *Roberti* Advice Letter, the Commission promulgated Regulation 18535(d) (copy enclosed), effectively codifying prior advice. Regulation 18535 specifically permits intra-candidate transfers into a special election committee, including transfers initiated after the date of the special election, so long as the transfers are made pursuant to subdivisions (a), (b), and (c) of that regulation. Subdivision (b) prescribes the attribution rules for such transfers, as follows:

> "(b) Unless otherwise prohibited by law, a candidate may transfer contributions from any other committee controlled by the candidate to the candidate's special election committee if all of the following apply:

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[3] *SEIU et al. v. FPPC*, 721 F.Supp. 1172 (E.D. Calif. 1989)

[4] *SEIU et al. v. FPPC*, 955 F. 2d 1312, 1322 (9th Cir. 1992)

[5] See also *Riffenburgh* Advice Letter, *supra*. The *House* Advice Letter, No. A-92-111, took a different approach, advising that a federal committee could not contribute more than $1,000 to a California special election committee. The *House* Advice Letter is hereby rescinded insofar as it departs from the advice contained in the *Roberti* and *Riffenburgh* Advice Letters.

> (1) The contributions transferred to the candidate's special election committee, when aggregated with all other contributions from, and transfers attributable to, the same contributor do not exceed the amount the contributor could have contributed to the special election committee for the special election, and, where required, the special runoff election, pursuant to Government Code Section 85305.
> (2) All contributions transferred to the special election committee are attributed to specific contributors to the transferring committee for the actual amount contributed. The fair market value of any inventory, equipment, or other assets to be transferred to the candidate's special election committee shall be similarly attributed to specific contributors at the time of transfer.
> (3) The contributions transferred to the special election committee do not include contributions received from any other candidate.

This regulation has not been construed to prohibit federal transfers to special election campaigns.

Finally, in cases not involving special or runoff elections, federal committees – "persons" under the Act – could permissibly contribute unlimited amounts to California campaigns. However, we have advised that a federal committee making contributions of $10,000 or more to a state committee, within a calendar year, becomes a "major donor" committee within the meaning of Section 82013(c), and incurs reporting obligations as such. (*Levin* Advice Letter, No. I-89-1989; *Weems* Advice Letter, No. A-91-326.)

2. *New Provisions Effective January 1, 2001*

Proposition 34 repeals the $1,000 contribution limit for special elections and, in so doing, eliminates the statutory basis (Section 85305) for Regulation 18535.[6] The measure introduces a new Section 85301, which limits to $3,000 (per election) the amount that any "person" may contribute to a candidate for state legislative office.[7] Section 85314 provides that the $3,000 contribution limit of Section 85301 applies to special elections for state legislative offices.

When the "persons" making and receiving a contribution are committees controlled by the same candidate, the intra-candidate transfer provision of Section 85306 provides attribution rules for *all* such transfers, similar to those prescribed by Proposition 73 for special elections:

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[6] The Commission is, of course, expected to adopt new regulations necessary and appropriate to the implementation of Proposition 34.

[7] A "per election" contribution limit typically allows a person to contribute to a given candidate up to the stated amount twice each election cycle – once for the primary and again for the general election.

"(a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a 'last in, first out' or 'first in, first out' accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302."

CONCLUSIONS

Before January 1, 2001, Congressman Miller may transfer excess funds from his congressional committee to either or both of his California committees. Transfers from his federal committee into his 1990 special election committee are subject to the $1,000 (per person) contribution limit of Section 85305(c)(1).[8] Transfers to this committee must be made pursuant to the terms of Regulation 18535; transferred funds must be attributed (on Schedule A-1 of Form 460) to individual donors to the federal committee, such that the amount attributed to each contributor to the special election committee does not exceed $1,000 in total. Transfers to the 1995 Assembly committee are *not* subject to Regulation 18535, and there is no requirement that monies transferred to that account be attributed to individual donors. If Congressman Miller transfers $10,000 or more into the 1995 Assembly committee, the federal committee will have to file a report as a major donor under Section 82013(c).

Proposition 34 is silent on the rules that govern transfers after January 1, 2001 to committees formed for elections held prior to that date. Specifically, the measure is unclear on whether such transfers would be subject to contribution limits in effect at the time of each election, or to the limits coming into effect in 2001. Our Commission will be meeting early in 2001 to address this and similar problems, and we cannot offer you advice on this point until the Commission announces its conclusion on the application of Proposition 34 to existing committees.

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

Sincerely,

Sue Ellen Wooldridge
General Counsel

Lawrence T. Woodlock

By: Lawrence T. Woodlock
Senior Commission Counsel

[8] If a donor is a California political committee, or a Proposition 73 "broad based political committee," that committee may take advantage of the higher contribution limits established for such committees at Sections 85305(c)(2) and (3). All other committees are subject to the $1,000 limit of Section 85305(c)(1).