



## FAIR POLITICAL PRACTICES COMMISSION

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April 5, 2001

Kayla J. Gillan, General Counsel  
California Public Employees'  
Retirement System  
Post Office Box 942702  
Sacramento, CA 94229-2702

**Re: Your Request for Informal Assistance  
Our File No. I-01-018(a)**

Dear Ms. Gillan:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your request is made for the purpose of advising unnamed persons in the future, we are treating your request as one for informal assistance.<sup>2</sup> This letter incorporates an earlier letter (No. A-01-018) and includes new analysis pertaining to question number eight.

### QUESTIONS

1. If a prospective candidate contacts CalPERS looking for information regarding his or her obligations under the Political Reform Act, what sources of information and assistance can we tell him or her are available from the FPPC?
- 2a. Are candidates for the CalPERS Board subject to per election limits?
- 2b. Are candidates for the CalPERS Board subject to voluntary expenditure limits?
3. Is a CalPERS run-off election a separate election from the general election?

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (§83114; Reg. 18329, subd. (c)(3).)

4. If the answer to question 3 is yes, does a candidate for the CalPERS Board have to wait until he or she is selected to compete in a run-off to raise funds for the run-off?
5. Can candidates for the CalPERS Board use campaign funds raised on January 1, 2001? Do the candidates have to account for those funds?
6. If a candidate must return contributions of \$100 within 60 days, and the candidate does not have the contributor's name, address, occupation and employer on file, what does the candidate do if he or she is not able to locate the contributor to return the contribution?
7. Can the FPPC provide candidates for the CalPERS Board of Administration additional guidance on the meaning of Section 85311?
8. What are the filing deadlines and reporting periods when filing the Form 900 for the CalPERS 2001 general election?

### CONCLUSIONS

1. The Commission's website, Technical Assistance Division and Legal Division are available to candidates to inquire about their responsibilities under the Act.
- 2a. Yes, CalPERS candidates are subject to the Act's per-election contribution limits.
- 2b. No, CalPERS candidates are not subject to voluntary expenditure limits.
- 3., 4. The CalPERS run-off election is not a separate election from the regular CalPERS election for purposes of the contribution limitations.
5. Yes, candidates may use funds which they possessed on January 1, 2001, without attribution to specific contributors for purposes of the contribution limitations. Those funds, however, must be disclosed pursuant to statute and Commission regulations.
6. A candidate must remit to the state's General Fund any contributions which the candidate is unable to return to a contributor pursuant to Section 85700.
7. See analysis below.
8. See dates provided below.

## FACTS

CalPERS administers the public retirement system for California's state employees, classified school employees, and employees of public agencies who elect to contract with CalPERS. In this capacity, CalPERS holds in trust and is responsible for the investment of approximately \$155 billion. The CalPERS Board of Administration invests the bulk of these funds in the public markets; it also invests some of these funds in private equity and real estate.

By statute, the CalPERS Board consists of 13 members, of whom six are elected for four-year terms. These terms are staggered. In the first year of the cycle, CalPERS holds an election for the three seats representing active state, school, and local members. In the second year, CalPERS holds an election for the retiree representative. There is no election in the third year, and, in the fourth year, CalPERS holds an election for the two member-at-large positions. If a seat becomes vacant during a term, CalPERS conducts a special election.

## ANALYSIS

### 1. Question 1 – Additional Information for Prospective Candidates

A prospective candidate for the CalPERS Board has several sources of information available to him or her from the FPPC. For instance, the Commission's website, [www.fppc.ca.gov](http://www.fppc.ca.gov), contains up-to-date information on pending regulatory matters concerning all aspects of the Act. The website contains the agendas for past and future Commission meetings and instructions on how to obtain relevant materials. Question and Answer sheets designed to address common questions to the Commission are available, as well. For more particular advice, candidates may reach a Commission consultant and receive telephone advice by calling 866-ASK-FPPC. While this advice does not afford the immunity provided recipients of written advice, the telephone advice is ideal for routine questions that can be answered in a short time.

### 2a. Are the Candidates Subject to Per Election Limits?

Under the Act, candidates are subject to several rules. For example, they must file a statement of intention to be a candidate, and maintain a separate campaign bank account for each office to which they seek election. (Sections 85200, 85201.) In addition, they must file various campaign-related reports concerning the monetary activities of their committees. (See e.g., Sections 84100-84105, 84225.) Finally, they must comply with laws that restrict the handling and receipt of contributions, the making of expenditures, and the distribution of campaign literature. (Sections 84300-84309.)

As we advised CalPERS recently, the six elected members of the CalPERS Board are subject to all of the Act's statutes using the terms "elective office" or "elective state office," except Chapter 4, Article 2 as described in Section 84225(b). (*Gillan* Advice Letter, No. A-00-033.)

The contribution limits are set forth throughout Article 3 of Chapter 5 of the Act. For instance, Section 85301 sets forth limits (\$3,000 per election) on contributions from persons to, among others, candidates for elective state office. (§ 85301, subd. (a).) Similarly, Sections 85302 and 85303 restrict contributions to certain committees and political parties in the context of candidates for statewide elective office. (§§ 85302, subd. (a); 85303 subds. (a), (b).) Section 82024 defines “elective state office” to include members elected to the Board of Administration of the Public Employees’ Retirement System. (§ 82024.) Therefore, the CalPERS candidates are subject to the contribution limits set forth in Article 3.<sup>3</sup>

**2b. Are the Candidates Subject to Voluntary Expenditure Limits?**

Article 4 of Chapter 5 contains the Act’s provisions regarding voluntary expenditure ceilings. Generally speaking, this Article describes requirements and procedures with which candidates must abide to avail them of the benefits of campaigning under such limits. Section 85400 describes the limits for each office to which the provisions apply. Subdivision (a), however, excepts from “candidate[s] for elective state office” candidates for the “Board of Administration of the Public Employees’ Retirement System....” (§85400, subd. (a).) The remaining provisions contained in the Article are derivative of Section 85400. Because the limits of Section 85400 explicitly do not apply to CalPERS Board candidates, the provisions of Article 4 of Chapter 5 of the Act do not apply to those candidates.

**3. Is a CalPERS Run-Off Election Separate from the CalPERS General Election?**

Read together with question 4, we take this question to ask whether the Act treats those elections separately for the purposes of the contribution limits discussed above in section 2a of this letter.

Section 85318 allows a candidate for state elective office to raise contributions for a general election prior to the primary election for the same elective state office under certain circumstances. Section 85314 declares a special election and a special runoff election are separate elections for purposes of the contribution limits. Section 82022 defines “election” to mean “*any primary, general, special or recall election held in this state. The primary and general or special elections are separate elections for purposes of this title.*” While elected members of CalPERS hold “elective office,” a CalPERS election is not an election as defined in Section 82022. (§ 82022; *Gillan, supra*, at p.11.) Thus, a CalPERS election held outside its normal election cycle is not a “general,” “primary” or “special” election for purposes of Sections 85314 and 85318. Therefore, for purposes of the contribution limits set forth in Article 3 of Chapter 5, a CalPERS run-off election is not a separate election from the “general” election.

**4. (See answer to question 3.)**

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<sup>3</sup> With the exception of Section 85314, as discussed *infra* at section 3 of this letter.

**5. May Candidates for the CalPERS Board use Campaign Funds Raised on January 1, 2001? Do the Candidates Have to Account for those Funds?**

This question relates to the use of campaign funds in possession prior to the effective date of Proposition 34. Section 85306, subdivision (b), states that "a candidate for elective state office" who possesses campaign funds on January 1, 2001, may use those funds "to seek elective office without attributing the funds to specific contributors." As candidates for elective state office, CalPERS Board candidates are subject to Section 85306. Thus, CalPERS candidates may use those funds possessed on January 1, 2001, without attributing them to specific contributors for purposes of campaign contribution limits.

While funds possessed on January 1, 2001, need not be attributed to specific donors for purposes of the contribution limits, CalPERS Board candidates must nevertheless comply with the disclosure requirements of Section 84225 and regulations 18451 and 18452. (*Gillan Advice Letter, supra.*)

**6. Where a Contribution Must be Returned, What Does a Candidate Do if He or She is Unable to Locate the Contributor?**

Section 85700 states:

"A candidate or committee shall return within 60 days any contribution of one hundred dollars (\$100) or more for which the candidate or committee does not have on file in the records of the candidate or committee the name, address, occupation, and employer of the contributor."

We believe the intent of the statute is clear. Where the requisite information is not provided by the contributor, the recipient is not allowed to keep the contribution. While nothing in Section 85700 anticipates the event you pose, we believe allowing a candidate or committee to keep the contribution is inconsistent with the spirit, if not the letter, of the law. Instead, we find helpful the guidance of Section 84304 in the analogous situation of an anonymous contributor. That section states:

"No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totaling one hundred dollars (\$100) or more in a calendar year. An anonymous contribution of one hundred dollars (\$100) or more shall not be kept by the intended recipient but instead shall be promptly paid to the Secretary of State for deposit in the General Fund of the state."

A contributor who fails to adequately identify him or herself to the extent that they cannot be found, we believe, is similar to an anonymous contributor. Accordingly, a candidate or committee who is unable to locate a contributor to return a contribution

pursuant to Section 85700, shall promptly pay the amount of the contribution to the Secretary of State for deposit in the General Fund of the state.

**7. Can the Commission Provide Additional Guidance on Section 85311?**

Candidates with specific questions regarding Section 85311, aggregation of contributions by affiliated entities, are free to contact our Technical Assistance or Legal divisions for advice. Commission staff recently has proposed holding public meetings and possibly pursuing regulatory action with respect to Section 85311 later in the year. Candidates are encouraged to periodically check the Commission's website for updates on the review of that statute. Also, a candidate may notify the Commission that he or she wishes to add their name to the list of persons interested in receiving notices of Commission action in regard to Section 85311.

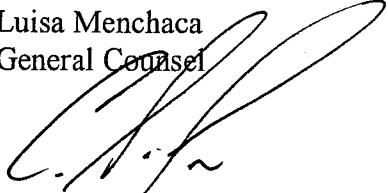
**8. What are the Filing Deadlines and Reporting Periods when Filing the Form 900 for the CalPERS General Election?**

Regulation 18452 governs the filing schedule for candidates for the CalPERS Board of Administration pursuant to Section 84225.<sup>4</sup> According to subdivision (b)(1) of the regulation, the first of two campaign statements must be filed no later than two days before the first day of the ballot period. According to documents provided by your staff, the ballot period commences October 1, 2001, for the 2001 election. Two days before October 1 is Saturday, September 29, 2001. Because the filing deadline falls on a Saturday, we move the deadline forward to the next business day, which makes the first report due not later than October 1, 2001. The period covered by this first report is from January 1 to September 26, 2001 (five days before the beginning of the ballot period). The second report, covering September 27, 2001 to December 31, 2001, shall be filed not later than January 10, 2002. (Reg. 18452, subd. (b)(1).)

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

Sincerely,

Luisa Menchaca  
General Counsel

  
By: C. Scott Tocher  
Counsel, Legal Division

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(Correction: March 28, 2002)

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<sup>4</sup> You have separate obligations to interpret Government Code Section 20096.5, subdivision (a). This presumes your calculations do not differ from ours.