



FAIR POLITICAL PRACTICES COMMISSION

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April 20, 2001

A. Kay Vinson, CMC
City of Murrieta
26442 Beckman Court
Murrieta, CA 92562

**Re: Your Request for Informal Assistance
Our File No. I-01-048**

Dear Ms. Vinson:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Since your request is general in nature and does not seek advice regarding a specific public official, we are treating your request as one for informal assistance.²

FACTS

The Murrieta City Council requests that the Commission review its ordinance proposing the addition of Chapter 2.05 to the Murrieta Municipal Code to determine whether it conflicts with the Political Reform Act. Chapter 2.05 establishes limitations on campaign contributions and fixes voluntary expenditure ceilings in connection with the city's elections. (Proposed Murrieta Municipal Code §§ 2.05.040, 2.05.050.) As expressly provided, the ordinance is intended to be a supplement and in no way to conflict with the Political Reform Act of 1974 and its implementing regulations. (Proposed Murrieta Municipal Code § 2.05.020.)

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

ANALYSIS

The Commission is charged with interpreting and enforcing the provisions of the Act, and may provide advice only with respect to those provisions. (Section 83114.) While the interpretation of local ordinances is thus generally beyond the scope of Commission advice (see *Kunkel* Advice Letter, No. I-89-598; *Zundel* Advice Letter, No. I-94-111), the Act does contain several provisions regarding the *interaction* of such ordinances with the Act. (Sections 81009.5, 81013 and 85703.) This advice necessarily must be limited to the application of those sections. (*Gawron* Advice Letter, No. I-89-550.)

The Act grants local agencies the power to enact certain ordinances that govern the financing of local elections. Section 81013 of the Act provides, in relevant part:

“Nothing in this title prevents ... any ... local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title.”

In addition, section 85703 provides:

“Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312.”

Section 85312 establishes the following exception to contributions and independent expenditures:

“... payments for communications ... to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or independent expenditures, provided those payments are not made for general public advertising”

Pursuant to Section 85703, local jurisdictions with ordinances that impose contribution limitations or prohibitions in connection with local elections must also provide for this exception in some fashion.

Although the Commission may neither interpret nor comment on the viability, enforceability, or constitutionality of a local ordinance, we are not constrained from identifying those provisions of Chapter 2.05 that may conflict with or impede a person's

compliance with the Act. (*Ketner* Advice Letter, No. I-93-464; *Zundel* Advice Letter, *supra.*)

We have provided the following comments on the provisions of Chapter 2.05:

Limitations on Campaign Contributions and Voluntary Expenditure Ceiling.

Chapter 2.05 imposes contribution limits on candidates for City of Murrieta elective office and their controlled committees that vary depending on whether the candidate agrees to limit campaign expenditures. (Proposed Murrieta Municipal Code §2.05.040 (B).) Candidates may either accept or reject voluntary expenditure ceilings, which are to be calculated based on the number of registered voters of the City of Murrieta. (Proposed Murrieta Municipal Code §2.05.050.)

In the November 2000 statewide general election, California's voters approved Proposition 34, which amended the Act effective January 1, 2001. The statutory changes significantly impact the duties and responsibilities of statewide and local officials, candidates, filing officers and others. Among other things, Proposition 34 establishes contribution limits and voluntary expenditure ceilings for certain candidates and committees. (Sections 85301-85303; Sections 85400-85403.)

The Commission has recently identified the provisions of Proposition 34 that are applicable to local candidates, committees and jurisdictions. Specifically, the Commission determined the statutes imposing contribution limits and voluntary expenditure ceilings speak to "candidates for elective state office" or "statewide elective office," and do not apply to local jurisdictions. (Emergency Regulation 18573.)³ Thus, the Act does not currently contain any operational contribution or expenditure limitations applicable to local candidates or their controlled committees with which these provisions of Chapter 2.05 might conflict. Accordingly, the contribution limits and voluntary expenditure ceilings in Chapter 2.05 do not prevent compliance nor do they conflict with the Act, provided, pursuant to Section 85703, the City excludes payments for communications among members as contributions or independent expenditures as set forth in Section 85312.⁴

Similarly, there are no provisions in the Act applicable to local jurisdictions that conflict with Section 2.05.040(E), which states that the limitations in Chapter 2.05 do not apply to a candidate's personal funds to his or her own controlled campaign committee on behalf of his or her own candidacy, but shall apply to contributions from the candidate's spouse. Therefore, this section is not in conflict nor does it prevent compliance with the Act.

³ The Commission at its January 2001 meeting adopted Emergency Regulation 18573, which identifies provisions of Proposition 34 applicable to local candidates, committees and jurisdictions. Emergency regulations expire automatically 120 days after adoption unless permanently adopted by the Commission.

⁴ The Commission will consider issues related to Section 85312 in the near future. An interested persons meeting is scheduled to be held in May 2001.

Contribution

Section 2.050.030(A) defines contribution for purposes of Chapter 2.05 as “. . . any payment made for political purposes for which full and adequate consideration is not made to the donor.” This section provides a stricter definition of contribution than the Act because it does not allow for any exceptions. However, as stated above, local jurisdictions must comply with Section 85312. (Section 85703.) Because Section 85312 of the Act provides that certain payments for communications to members of an organization are not contributions, Section 2.05.030(A) of the proposed ordinance should be modified or interpreted to reflect this exception.

Section 2.05.030(A)(1)(b) further defines “contribution” to include “cash,” without any limitation as to amount or form. The Act prohibits making or receiving cash contributions of one hundred dollars or more. (Section 84300(a).) The Commission has interpreted cash to include money orders and cashier’s checks. (*Avila* Advice Letter No. I-99-006.) Because Chapter 2.05 is intended as a supplement to the Act, provisions of the Act not specifically set forth in Chapter 2.05 are presumed to be in effect and enforceable in order to avoid any conflict between the state and local laws. Therefore, cash contributions contemplated under Chapter 2.05 are subject to the relevant restrictions set forth in the Act and its implementing regulations.

Pursuant to Section 2.05.030(A)(1)(c), the definition of “contribution” also includes “[a] loan or an extension of credit for more than 30 days, other than loans from financial institutions given in the normal course of business.”

The Fair Political Practices Commission initially adopted Regulation 18530.7 in 1997, pursuant to Proposition 208, to clarify the term “extensions of credit” referred to in Government Code section 85307. Proposition 34 subsequently repealed and added Government Code section 85307, which also pertains to extensions of credit. At its March 2001 meeting, the Commission formally repealed those regulations that lack a statutory basis due to the repeal of certain provisions of Proposition 208, including Regulation 18530.7. Consequently, at the present time there is nothing in the implementing regulations related to extensions of credit that is specifically applicable to local jurisdictions. Accordingly, defining extensions of credit for more than 30 days as a contribution in Chapter 2.05 neither prevents compliance nor does it conflict with the Act at this time.

The Commission will consider drafting a new regulation interpreting Government Code section 85307, as added by Proposition 34. Some of the definitions in the repealed regulation may be retained in a newly proposed regulation. Should the Commission adopt a regulation concerning extensions of credit that governs local jurisdictions and differs from Section 2.05.030(A)(1)(b), this section may be in conflict with state law. It is anticipated that an interested persons meeting will be held in May 2001 to discuss issues related to extensions of credit. Information regarding interested persons meetings is posted on our Web site at www.fppc.ca.gov as it becomes available.

City Council Candidate

The definition of "City Council Candidate" set forth in Section 2.05.030(B) essentially mirrors the language used in Section 82007 to define "Candidate." Chapter 2.05 merely substitutes "Murrieta City Council" candidate or "City Council Member" where the term candidate is used in the Act. Therefore, the definition of "City Council Candidate" does not conflict, nor does it prevent compliance with, the Act because Murrieta City Council candidates and members are subject to all provisions of the Act applicable to "candidates."

Declaration of Candidacy

Proposed Murrieta Municipal Code section 2.05.040(A) provides that no persons may make and no candidates for City of Murrieta elective office and their controlled committees may solicit or accept campaign contributions until the nomination period for the impending election has opened. Currently Sections 85200 and 85201 of the Act restrict when a person may make or a candidate may solicit or accept contributions in connection with a future election. Section 85200 requires a candidate to file a statement of intention to be a candidate for a specific office prior to the solicitation or receipt of any contribution or loan in connection with that office. In addition, Section 85201 requires a candidate to establish a campaign contribution account upon the filing of the statement of intention. All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee must be deposited in the account.

There is currently no provision in the Act restricting when, in relation to a future election, a statement of intention to be a candidate for a particular election may be filed. Therefore, proposed Murrieta Municipal Code section 2.03.040(A) does not conflict with the Act because it is a more stringent campaign prohibition and it does not prevent candidates from complying with the Act. (Sections 85703, 81013.)

Return of Contributions

As to returning contributions, Chapter 2.05 provides as follows:

"A contribution will not be considered received or accepted if it is not negotiated or deposited, and in addition it is returned to the donor within fourteen (14) days of receipt."
(Proposed Murrieta Municipal Code section 2.05.040(C).)

Generally, a contribution that has been received must be reported on the candidate's or committee's campaign statement. (Section 84211 et. seq.) For reporting purposes, Regulation 18421.1(c) sets forth when a monetary contribution is received:

"(c) A monetary contribution is "received" on the date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is

made. All contributions received by a person acting as an agent of a candidate or committee shall be reported to and disclosed by the candidate or committee, or by the committee's treasurer, no later than the closing date of the next campaign statement that the committee or candidate is required to file."

There is a narrow exception to the general rule requiring reporting of contributions received. Section 84211(q) provides

"A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported."

Additionally, Section 84203(c), which regulates the reporting of returned "late contributions," states:⁵

"A late contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor within 24 hours of its receipt."

Adherence to Section 2.05.040(C) may prevent a person's compliance with the above reporting requirements under the Act. For example, under the Act, any contribution *received*, which is not negotiated and is returned within 14 days of receipt, but after the closing date of the next campaign statement the committee is required to file, and late contributions returned more than 24 hours after receipt, must be reported. In contrast, under Section 2.05.040(C), any contribution returned within 14 days would not be deemed either received or accepted, and therefore would not have to be reported. This would be the case whether or not the contribution was received before, but returned after the closing date of the campaign statement on which the contribution would otherwise be reported. In addition, late contributions returned more than 24 hours after receipt, but within the 14 day time frame set forth in Section 2.05.040(C), may not have to be reported. Therefore, Section 2.05.040(C) conflicts with the reporting requirements of the Act. (Section 81013.)

It is anticipated that the Commission will consider amending or adopting new regulations clarifying the issues related to the return of contributions for reporting purposes and for purposes of contribution limits later this year. Please visit our Web site at www.fppc.ca.gov for information regarding future Commission meetings.

⁵ "Late contribution" means any contribution which totals \$1,000 or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure within the 16 days immediately preceding the date of the election at which the candidate or measure is to be voted on. (Section 82036.)

Family Contributions

Proposed Murrieta Municipal Code section 2.05.040(D) provides:

“Contributions by a husband and wife shall be treated as contributions by separate persons and shall not be aggregated. Contributions by children under eighteen years of age shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent).”

Section 85308 of the Act governs family contributions:

"(a) Contributions made by a husband and wife may not be aggregated.

"(b) A contribution made by a child under 18 years of age is presumed to be a contribution from the parent or guardian of the child."


At its March 2001 meeting, the Commission concluded that Section 85308 establishes a rebuttable presumption that a contribution from a minor shall be attributed to the minor's parents.⁶ The City of Murrieta asks whether proposed Murrieta Municipal Code section 2.05.040(D) conflicts with Government Code section 85308. A critical consideration is whether the City of Murrieta interprets this provision governing family contributions as a contribution limitation or prohibition, which would bring it within the scope of Section 85703. Section 85703 of the Act allows local jurisdictions to establish their own contribution limitations or prohibitions in certain circumstances. The Commission cannot provide advice as to whether the two provisions are in conflict until the City of Murrieta renders its interpretation as to the character of the section.

⁶ The Commission considered this issue with respect to the Los Angeles Charter and Municipal Code at its March 2001 Commission meeting, when it reviewed the *Pelham* Opinion request. It is expected that the Commission will adopt a written opinion at its May 2001 meeting.

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

Sincerely,

Luisa Menchaca
General Counsel


By: Margaret Figeroid
Political Reform Consultant
Legal Division

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