



## FAIR POLITICAL PRACTICES COMMISSION

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April 20, 2001

C. April Boling, CPA  
7185 Navajo Road, Suite L  
San Diego, CA 92119

**Re: Your Request for Advice  
Our File No. A-01-059**

Dear Ms. Boling:

This letter is in response to your request for advice on behalf of Rep. Charlene Zettel<sup>1</sup> regarding various fundraising and expenditure provisions of the Political Reform Act (the "Act").<sup>2</sup>

### QUESTIONS

1. May Rep. Zettel, who is raising funds to pay the remaining debt from previous elections, raise additional funds beyond the outstanding net debt in the amount necessary to pay for the costs of raising and administering those funds?
2. May Rep. Zettel, who is raising funds to pay the remaining debt from previous elections and has opened a new controlled committee for her next election campaign, raise funds for officeholder expenses?
3. If Rep. Zettel makes a permitted contribution from her controlled committee for a previous election, which has outstanding debt, to a candidate controlled

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<sup>1</sup> You have stated that you are also the treasurer for several other controlled committees of officeholders. Please be advised that the advice contained in this letter, and any immunity arising therefrom, is limited to Rep. Zettel and the specific facts presented in your letter and in our subsequent telephone conversation on April 4, 2001.

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

committee of another individual, may she raise additional funds beyond the outstanding net debt in the amount of the contribution made?

4. If Rep. Zettel, who has accepted expenditure limits for her next election, makes a contribution from her new controlled committee to a candidate controlled committee of another individual, does the amount of the contribution count toward the expenditure limit for Rep. Zettel's election?

### CONCLUSIONS

1. Yes. In addition to the funds needed to pay outstanding debt from previous elections, Rep. Zettel may raise the amount necessary to pay the cost of raising and administering those funds.

2. Yes. Because Rep. Zettel is running for another term, funds for officeholder expenses may be raised into the controlled candidate committee established for the future election.

3. This is an issue that will be presented to the Commission by way of regulation at a future date. In the meantime, our advice is that Rep. Zettel not contribute to another candidate's controlled committee from her previous committee, which has outstanding debt.

4. No. Based on the enumerated list of "election-related activities," which the Commission has not yet determined is exclusive, a contribution from Rep. Zettel's controlled committee, established for her campaign for a future election, to the controlled committee of another candidate will not count toward the expenditure limits for Rep. Zettel's re-election campaign, as long as that expenditure is not directed at the election or re-election of the receiving candidate and not at Rep. Zettel's re-election.

### FACTS

You are the treasurer for Rep. Charlene Zettel's candidate controlled committees. Rep. Zettel is in her second term in the Assembly and plans to run for a third term. A new controlled committee has been opened for the next election.

Rep. Zettel's previous controlled committee has debt remaining from earlier elections, and she plans to fundraise to repay the outstanding debt.

### ANALYSIS

Your questions require analyses and interpretation of various portions of the Act added by Proposition 34. These are, therefore, largely issues of first impression.

*Question 1*

Government Code § 85316,<sup>3</sup> which was added by Proposition 34, states:

“A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.”

The Commission has, in the past, recognized the practical reality that there are costs associated with raising campaign funds. Proposition 208 required the establishment of a separate officeholder account to fund officeholder expenses, with the amount of funds raised for that purpose limited to \$10,000 per year. In connection with fundraising for an officeholder account, we advised that the official’s campaign committee could pay the fundraising expenses, and that the campaign committee’s expenditure for that purpose would not count toward the \$10,000 aggregate cap. (*Nutley Advice Letter*, No. A-97-486.)

Proposition 34 also acknowledged the costs associated with raising and administering funds. Section 85318 states:

“A candidate for state elective office may raise contributions for a general election prior to the primary election for the same elective state office if the candidate set [sic] aside these contributions and uses these contributions for the general election. If the candidate for state elective office is defeated in the primary election or otherwise withdraws from the general election, the general election funds shall be refunded to the contributors on a pro rata basis *less any expenses associated with the raising and administration of general election contributions.*”  
(emphasis added.)

In construing the meaning of a statute, reason and common sense are to be applied to interpreting the statute in such a way as to make it workable and reasonable, in accord with common sense and justice, and to avoid an absurd result. *American National Ins. Co. v. Low*, (2000) 84 Cal.App.4<sup>th</sup> 914, 924.

It is clear that the intent of section 85316 is to provide a vehicle to allow candidates the opportunity to retire campaign debt, but to prohibit the candidate from raising additional funds. It would not fulfill the intent of the statute to find that fundraising costs incurred counted toward the fundraising limit. To do so would, necessarily, require that a candidate could never retire all of the outstanding debt from a

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<sup>3</sup> All further statutory references are to the Government Code, unless otherwise specified.

previous election. Therefore, we conclude that, in addition to the funds needed to pay the outstanding debt, a candidate may raise funds in an amount necessary to pay the costs of raising and administering those funds. This interpretation most fully implements the intent of the statute.

### *Question 2*

As set forth above, under section 85316, an officeholder who is not seeking another term or office cannot raise funds after the date of the election, except to retire outstanding debt and, as indicated above, funds to pay the cost of fundraising. Since Rep. Zettel plans to seek a third term in the Assembly and has a committee for that purpose, she may use campaign funds from that committee for permissible officeholder expenses. (Sections 89510-89518.)

### *Question 3*

The Commission has not yet considered this issue, but will address it by future adoption of appropriate regulations. In the meantime, we advise that Rep. Zettel should not contribute to another candidate's controlled committee from her previous committee, which has outstanding debt.

### *Question 4*

The provisions related to the voluntary expenditure limits imposed by Proposition 34 are set forth at sections 85400 *et seq.* Section 85400(b) states:

“For purposes of this section ‘campaign expenditures’ has the same meaning as ‘election-related activities’ as defined in subparagraph (C) of paragraph (2) of subdivision (b) of Section 82015.”

Section 82015(b)(2)(C) provides:

“For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, ‘election-related activities’ shall include, *but are not limited to*, the following:

“(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

“(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's

election campaign, or the candidate's or his or her opponent's qualifications for elective office.

“(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

“(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii) or (iii), above.

“(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

“(vi) Preparing campaign budgets.

“(vii) Preparing campaign finance disclosure statements.

“(viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.” (emphasis added.)

The Commission has not yet determined whether this is the exclusive list of “election-related activities” for purposes of section 85400. The “election-related activities” described in the statute are all activities that are clearly directed toward the election or re-election of the candidate who has accepted the voluntary expenditure limits. Based on this enumerated list, we conclude that where the controlled committee of a candidate who has accepted those limits makes a contribution to the controlled committee of another candidate, as long as that expenditure is directed at the election or re-election of the receiving candidate and not at the election or re-election of the contributing candidate, it is not a campaign expenditure under section 85400 for the contributing candidate. Under those circumstances, the contribution would not count toward the expenditure limits of the contributing candidate.

Please note that the term “campaign expenditure” for purposes of section 84500 differs from the definition of “expenditure” in section 82025. (Reg. 18225.)

There will be an Interested Persons Meeting to discuss various issues related to Section 85316 on May 9, 2001, from 1:30-3:30, in the 8<sup>th</sup> Floor Hearing Room at the FPPC, which is located at 428 J Street.

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

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink that reads "Holly B. Armstrong". The signature is written in a cursive style with a large, prominent initial "H".

By: Holly Armstrong  
Staff Counsel, Legal Division

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