



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

August 7, 2001

Timothy W. Boyer, Chief Counsel
State Board of Equalization
Post Office Box 942879
Sacramento, CA 94279-0082

Re: Your Request for Advice
Our File No. A-01-106

Dear Mr. Boyer:

This letter is in response to your request for advice on behalf of members of the Board of Equalization regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

What is the operative date of Section 85702 to candidates for statewide elective office?

CONCLUSION

The operative date of Section 85702 to candidates for statewide elective office is November 6, 2002. Other provisions, however, of the Act in effect on or before January 1, 2001, also apply.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

ANALYSIS

Government Code section 85702, which was added as part of Proposition 34, states:

"An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer."

Section 83 of Proposition 34 provides that this act shall become operative on January 1, 2001. However, Chapter of the Government Code shall apply to candidates for statewide elective office beginning on and after November 6, 2002. Specifically, Section 83 states:

"This act shall become operative on January 1, 2001. However, Chapter 5 (commencing with Section 85100) of Title 9 of the Government Code, except subdivision (a) of Section 85309 of the Government Code, shall apply to candidates for statewide elective office beginning on and after November 6, 2002."

Accordingly, the effective date of the prohibitions contained in Section 85702 is January 1, 2001. As the law currently states, however, the effective date for *candidates for statewide elective office* is November 6, 2002. The term "statewide elective office" includes members of the Board of Equalization. (§ 82053.)

Your question warrants discussion of the effects of the interaction between the two operative dates pertaining to Section 85702. As discussed above, on the one hand a lobbyist is prohibited from making a contribution after January 1 of this year. On the other hand, a candidate for statewide office² is not prohibited from accepting such a contribution until November 6, 2002. Practically speaking, this may be a distinction without a difference, insofar as candidates for statewide office will not receive contributions from the law-abiding lobbyists who are registered to lobby those candidates, thus rendering the effective date discrepancy essentially meaningless.

While the Act does not provide any specific consequences to candidates for statewide elective office who accept contributions from lobbyists who, in so doing, violate Section 85702, Section 83116.5 prohibits anyone with filing or reporting obligations, such as a candidate for office, from aiding or abetting another in violation of any provision of the Act. Section 83116.5 states, in part:

"Any person who violates any provision of this title, who purposely or negligently causes any other person to violate any provision of

² Legislators are not statewide elective officers. Therefore, this section applies to them as of January 1, 2001.

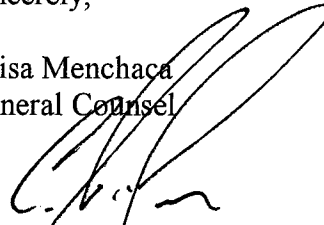
this title, or who aids and abets any other person in the violation of any provision of this title, shall be liable under the provisions of this chapter. However, this section shall apply only to persons who have filing or reporting obligations under this title, or who are compensated for services involving the planning, organizing, or directing any activity regulated or required by this title,"

Thus, a candidate's liability in the situation you pose depends on the conduct engaged in by the candidate or his or her staff. Moreover, we caution that the scope of our advice pertains only to the provisions of the Political Reform Act and does not include, and we render no opinion about, the applicability of other areas of law which may be implicated in the scenario you posit.

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
Staff Counsel,
Legal Division

CST:jg
I:\AdviceLtrs\01-106