



## FAIR POLITICAL PRACTICES COMMISSION

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August 9, 2001

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**Re: Your Request for Informal Assistance  
Our File No. I-01-144**

Dear Mr. Olson:

This letter is in response to your request for advice on behalf of various members of the State Legislature regarding how Proposition 34 amendments to the Political Reform Act (the "Act")<sup>1</sup>, particularly issues dealing with Government Code § 85316, will affect them. Since your request does not seek advice regarding a specific public official, and does not seek advice regarding a specific fundraising event, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTIONS

1. May a legislator serving his or her last term in office and not a candidate for future elective state office raise campaign contributions without limitation to pay debts incurred in connection with an election held prior to January 1, 2001?

1a. May the same legislator also raise contributions without limitation to pay for expenditures permitted by Government Code §§ 89511 through 89518?

2. May a legislator who is serving his or her last term in office and is not a candidate for future elective state office raise campaign contributions without limitation to pay for debts incurred in connection with a special election previously subject to the contribution limitations of Proposition 73?

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, 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. (Government Code § 83114; 2 Cal. Code of Regs. § 18329(c)(3).)

3. May a legislator who is serving his or her last term in office, is not a candidate for future elective state office and has no debt incurred in connection with an election held prior to January 1, 2001, raise campaign contributions without limitation to pay for expenditures permitted by Government Code §§ 89511 through 89518?

4. May a legislator who was elected to the Legislature prior to 2001 and is a candidate for re-election in 2002 to the same office, raise campaign contributions without limitation into a committee established for his or her pre-2001 election to pay for expenditures permitted by Government Code §§ 89511 through 89518, but not related to his or her future election?

4a. May the same candidate who is re-elected in 2002 continue to raise campaign contributions without limitation into the committee established for his or her pre-2001 election to the Legislature, to pay for expenditures permitted by Government Code §§ 89511 through 89518 related to the 2002 office to which he or she was re-elected?

5. May a legislator who was elected to the Legislature prior to 2001 and is a candidate for election in 2002 to the other house of the Legislature, raise campaign contributions without limitation into a committee established for his or her pre-2001 election to the Legislature, to pay for expenditures permitted by Government Code §§ 89511 through 89518, but not for expenses related to his or her future election?

6. May a legislator who was elected to the Legislature prior to 2001 and is a candidate for elective statewide office in 2002, raise campaign contributions without limitation into a committee established for his or her pre-2001 election to the Legislature, to pay for expenditures permitted by Government Code §§ 89511 through 89518, but not for expenses related to his or her future election?

### CONCLUSIONS

1. At its June 8, 2001 meeting, while considering proposed regulatory language interpreting Government Code § 85316<sup>3</sup>, the Commission decided that Section 85316 does not apply to elections that were held prior to January 1, 2001, and instructed staff to draft a proposed regulation consistent with that directive. Therefore, if the Commission adopts the proposed regulation, Section 85316's post-election fundraising limitation to the amount of "net debts outstanding" will permanently not apply to legislators who fundraise to pay for debts incurred for elections that took place prior to January 1, 2001.

1a. If the Commission adopts the proposed regulation, there will also be no limitation on the amount of funds that can be raised in connection with pre-2001 elections. Expenditures made with the funds raised, however, are subject to the

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

requirements of Sections 89511 – 89518 and other pertinent statutes, including implementing regulations.

2. At its July 9, 2001 meeting, the Commission clarified its June 8, 2001 decision, determining that the Proposition 73 special election contribution limits that had been in effect prior to January 1, 2001, would no longer remain in effect on or after January 1, 2001. The Commission expressly rescinded the *Bauer* Advice Letter, which had advised that the Proposition 73 limits for special elections were still in effect in post-January 1, 2001 fundraising. Therefore, the Proposition 73 special election contribution limits are currently not applicable to contributions made on or after January 1, 2001, and a legislator previously subject to those limits may raise campaign contributions without limitation to pay debts incurred in connection with a special election.

3. Because the Commission has decided that Section 85316 does not apply to elections that were held prior to January 1, 2001, Section 85316's post-election fundraising limitation to the amount of "net debts outstanding" currently does not apply to elections that took place prior to January 1, 2001. However, it is very likely that the answer to this question may be impacted by the Commission's decisions concerning proposed Regulation 18531.6 and decisions on other issues it will be considering in the next few months, including the "one-bank-account" rule and termination of committees.

4. Under current Commission regulations, this action is permissible.

4a. This question will also inevitably be impacted by decisions currently before the Commission for consideration, such as the termination of committees regulation. Section 85316 and proposed Regulation 18531.6 permit fundraising for an election held on or after January 1, 2001, to pay for debt. Therefore, to the extent that fundraising to a pre-2001 committee results in circumvention of this section or any other provision of the Act and implementing regulations, the answer is no.

5 & 6. Questions 5 and 6 are the same question, since both questions expressly state that the expenditures paid from the pre-2001 election committee will not be for expenses related to the candidate's future election. The answer to both questions under the current version of the regulations is "Yes." The legislator may raise campaign contributions without limitation into committees established for his or her pre-2001 election to the Legislature to pay for expenditures permitted by Sections 89511-89518. However, the answers to these questions may be impacted by the Commission's decisions on one or more issues it will be considering in the next few months, including issues related to the "one-bank-account" rule and termination of committees.

## FACTS

You represent many members of the State Legislature and provide counsel with respect to their duties as candidates and officeholders under the Political Reform Act.

## ANALYSIS

Government Code § 85316 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.”

While considering proposed regulation 18531.6 at its June 8, 2001 meeting, the Commission decided that this provision of Proposition 34 does not apply to elections that were held prior to January 1, 2001, specifically with respect to the post-election fundraising limitation of net debts outstanding. The Commission further clarified its decision regarding pre-January 1, 2001 elections at its July 9, 2001 meeting, by specifically determining that the previous Proposition 73 limits for special elections were no longer in effect in post-January 1, 2001 fundraising.

It must be noted, however, that the Commission's decisions were part of the discussion on a regulation presented at the June and July 2001 Commission meetings for pre-notice discussion. The regulation is not final until it is formally adopted by the Commission. It is expected that this regulation will be up for adoption at the Commission's September 10, 2001 meeting. At that time, the Commission may reconsider this issue and other issues relating to Section 85316. Therefore, you should seek further assistance once the regulation is adopted, if necessary.

It should also be noted that the Commission will soon be considering amendment and/or adoption of regulations related to use of funds and termination of committees that very well may impact many of the questions to which you seek answers. Therefore, you should seek further assistance once those regulations are amended and/or adopted, if necessary, as well.

With this framework in mind, we provide the following general answers to your questions:

### *Question 1*

**1. May a legislator serving his or her last term in office and not a candidate for future elective state office raise campaign contributions without limitation to pay debts incurred in connection with an election held prior to January 1, 2001?**

At its June 8, 2001 meeting, the Commission decided that this provision of Proposition 34 does not apply to elections that were held prior to January 1, 2001, specifically with respect to the post-election fundraising limitation to the amount of “net debts outstanding.” Therefore, a legislator currently serving his or her last term in office will be able to raise contributions without limitation to pay debts incurred in connection with an election held prior to January 1, 2001.

*Question 1a*

**1a. May the same legislator also raise contributions without limitation to pay for expenditures permitted by Government Code §§ 89511 through 89518?**

Sections 89511 through 89518 set forth permissible uses of campaign funds and include, but are not limited to, what are commonly called "officeholder expenses." Prior to the passage of Proposition 34, there was no limitation on post-election fundraising for officeholder expenses. Since the Commission has decided that the provision governing post-election fundraising does not apply to elections held prior to January 1, 2001, Section 85316 does not limit the uses to which post-election funds raised in connection with pre-January 1, 2001 elections may be allocated, other than those already imposed by the Act and its implementing regulations, such as Regulation 18525 and Emergency Regulation 18536, and Sections 85301 and 85302.

*Question 2*

**2. May a legislator who is serving his or her last term in office and is not a candidate for future elective state office raise campaign contributions without limitation to pay for debts incurred in connection with a special election previously subject to the contribution limitations of Proposition 73?**

At its July 9, 2001 meeting, the Commission decided that the Proposition 73 special election contribution limits that had been in effect prior to January 1, 2001 would no longer remain in effect on or after January 1, 2001. The Commission expressly rescinded the *Bauer* advice letter, which had advised that the Proposition 73 limits for special elections were still in effect in post-January 1, 2001 fundraising. Therefore, our current advice is that the Proposition 73 special election contribution limits that had been in effect prior to January 1, 2001 will no longer remain in effect on or after January 1, 2001.

However, this decision is subject to the Commission's final adoption of a regulation that codifies this decision. The proposed regulation is expected to be discussed at the Commission's meeting on September 10, 2001. Therefore, pending final adoption of a regulation codifying the decision, a legislator with debts incurred in a special election previously subject to the contribution limits of Proposition 73 may raise campaign contributions without limitation to pay debts from that election.

*Question 3*

**3. May a legislator who is serving his or her last term in office, is not a candidate for future elective state office and has no debt incurred in connection with an election held prior to January 1, 2001, raise campaign contributions without limitation to pay for expenditures permitted by Government Code §§ 89511 through 89518?**

Because the Commission decided that Section 85316 does not apply to elections held prior to January 1, 2001, and specifically decided that the post-election fundraising limitation to the amount of "net debts outstanding" did not apply, it would appear that the legislator's debt, or lack thereof, is irrelevant to her ability to raise campaign contributions post-election. However, the answer to this question will also very likely be impacted by the Commission's decisions on issues it is currently considering, or which it will consider in the next few months, such as issues related to the termination of committees.

*Question 4*

**4. May a legislator who was elected to the Legislature prior to 2001 and is a candidate for re-election in 2002 to the same office raise campaign contributions without limitation into a committee established for his or her pre-2001 election to pay for expenditures permitted by Government Code §§ 89511 through 89518, but not related to his or her future election?**

This is essentially the same question as that stated in Question 1a, the only difference being that this legislator, although he or she was elected in an election held prior to January 1, 2001, is not precluded by term limits from running for further elective office. The Commission's decision with respect to the applicability of Section 85316 was not limited to termed-out legislators. Rather, its decision was that Section 85316 did not apply to elections that were held prior to January 1, 2001. Therefore, the fact that the legislator is eligible, and intends to run for re-election to the same office in 2002, does not preclude him or her from raising campaign contributions without limitation into his or her committee established for his or her pre-2001 election, to pay for expenditures permitted by Sections 89511 through 89518. Note that the question expressly directs us to assume that such expenditures will not be used for expenses related to his or her future election.

*Question 4a*

**4a. May the same candidate who is re-elected in 2002 continue to raise campaign contributions without limitation into the committee established for her pre-2001 election to the Legislature, to pay for expenditures permitted by Government Code §§ 89511 through 89518, related to the 2002 office to which he or she was re-elected?**

Sections 89511 through 89518 are problematic in the context of officeholder expenses, because expenditures permitted under those sections are not limited to officeholder expenses, but also include campaign expenses. Moreover, Section 85316 and proposed Regulation 18531.6 permit fundraising for an election held on or after January 1, 2001, only for the payment of debt. Therefore, to the extent that fundraising to a pre-2001 committee results in circumvention of this section or any other provision of the Act and implementing regulations, the answer is no.

*Questions 5 and 6*

**5. May a legislator who was elected to the Legislature prior to 2001 and is a candidate for election in 2002 to the other house of the Legislature, raise campaign contributions without limitation into a committee established for his or her pre-2001 election to the Legislature, to pay for expenditures permitted by Government Code §§ 89511 through 89518, but not for expenses related to his or her future election?**

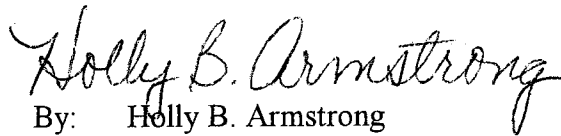
**6. May a legislator who was elected to the Legislature prior to 2001 and is a candidate for elective statewide office in 2002, raise campaign contributions without limitation into a committee established for his or her pre-2001 election to the Legislature, to pay for expenditures permitted by Government Code §§ 89511 through 89518, but not for expenses related to his or her future election?**

Questions 5 and 6 both carry the proviso that, “[f]or purposes of answering questions . . . 5 and 6, assume that expenditures paid from her pre-2001 election committee will not be for expenses related to her future election.” This proviso effectively limits such expenditures to officeholder expenses for the office to which he or she was elected in the pre-2001 election. Therefore, the two questions are, essentially, the same, the only difference being the office for which the legislator is a candidate in the 2002 election. However, since the legislator was elected in an election held prior to January 1, 2001, Section 85316 does not apply. Therefore, the office for which the legislator is a candidate in 2002 is irrelevant to his or her ability to raise contributions into the pre-2001 committee for use to pay expenditures permitted by Sections 89511 through 89518, for the office to which he or she was elected in the pre-2001 election. As with many of the other questions dealing with officeholder expenses, the answer to this question may be impacted by the Commission’s decisions on issues related to the termination of committees, which it will be considering within the next few months.

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

Sincerely,

Luisa Menchaca  
General Counsel

  
By: Holly B. Armstrong  
Staff Counsel, Legal Division

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Enclosure: Reg. 18329