



FAIR POLITICAL PRACTICES COMMISSION

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December 18, 2001

Diane M. Fishburn
Olson, Hagel, Waters & Fishburn
Plaza Towers
555 Capitol Mall, Suite 1425
Sacramento, CA 95814-4602

**Re: Your Request for Advice
Our File No. A-01-282**

Dear Ms. Fishburn:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ On December 4, 2001, your office informed us that you request your advice on behalf of Senator John Burton.

QUESTIONS

1. Will Senator Burton, who is not listed on the March 2002 ballot be required to comply with § 85309(a)?
2. Does a similar analysis apply to primarily formed ballot measure committees?

CONCLUSIONS

1. No. Only candidates on the March 2002 ballot will be subject to § 85309(a) for the election cycle preceding the March 2002 election.
2. Yes.

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

FACTS

Your firm represents numerous electronic filers – including termed-out members of the California State Legislature, state senators who will not be up for reelection until 2004, and ballot measure committees primarily formed to support measures on the November 2002 ballot. You write with respect to the recently enacted § 85309 – the new 90-day online reporting requirement for contributions of \$1,000 or more. You ask if state officeholders who are not on the March 2002 ballot, and committees which are not primarily formed to support or oppose state measures on the March 2002 ballot (but are primarily formed to support state measures on the November ballot, for example) are required to comply with § 85309.

On December 4, 2001, your office supplemented your advice request. The letter has been amended to be a request for advice on behalf of Senator John Burton, President pro tem of the Senate. Due to term limits, Senator Burton cannot be listed on the ballot for a future term of office.

ANALYSIS

Section 85309, as amended by Senate Bill 34, provides in pertinent part:

“(a) In addition to any other report required by this title, a candidate for elective state office who is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution of one thousand dollars (\$1,000) or more received during an election cycle. Those reports shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 24 hours of receipt of the contribution.

“(b) In addition to any other report required by this title, any committee primarily formed to support or oppose one or more state ballot measures that is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution of one thousand dollars (\$1,000) or more received during an election cycle. Those reports shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 24 hours of receipt of the contribution.

“(c) In addition to any other report required by this title, a candidate for elective state office who is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution of five thousand dollars (\$5,000) or more received at any time other than during an election cycle. Those reports shall disclose the same information required by subdivision (a) of Section 84203

and shall be filed within 10 business days of receipt of the contribution.

“(d) In addition to any other report required by this title, a committee primarily formed to support or oppose a state ballot measure that is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution of five thousand dollars (\$5,000) or more received at any time other than during an election cycle. Those reports shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 10 business days of receipt of the contribution.”

Section 85204 defines “election cycle” for purposes of §§ 85309 and 85500,² as “the period of time commencing 90 days prior to an election and ending on the date of the election.” However, this definition, in the context of a requirement that candidates and committees primarily formed to support state ballot measures “shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution of one thousand dollars (\$1,000) or more received during an election cycle” is ambiguous. It is unclear whether the requirement attaches during any election, or just during the election in which the candidate or measure is actually on the ballot.

Where statutes are ambiguous, or susceptible to two meanings, analysis must turn to the rules of statutory construction. “[I]f a statute is capable of two reasonable constructions, it is ambiguous, and [the court] may examine its history and background and apparent purpose in an attempt to ascertain the most reasonable interpretation... [The court] must also examine the context in which the language appears, adopting the construction that best harmonizes the statute both internally and with related statutes.” (*State Farm Mutual Automobile Insurance Company v. Low* (2001) 92 Cal.App.4th 1169, 1178.)

In this case, the definition of “election cycle” was enacted as part of Proposition 34, as were §§ 85309 and 85500 which use the phrase.³ The only other section in the Act that uses the phrase “election cycle” was also added by Proposition 34, § 85204.5. It provides:

“With respect to special elections, the following terms have the following meanings:

“(a) ‘Special election cycle’ means the day on which the office becomes vacant until the day of the special election.

“(b) ‘Special runoff election cycle’ means the day after the special election until the day of the special runoff election.”

² Section 85500(a) provides additional requirements during an election cycle.

³ In each case, the Proposition 208 version was repealed and a new version enacted.

This definition of "special election cycle" is also susceptible to the interpretation that the filing requirement attaches whether the candidate or ballot measure is on the ballot in the special election or not, so long as it is a "special election cycle." A literal construction then requires that candidates and primarily formed committees monitor all election cycles and special election cycles, even those where the specific candidate or measure is not on the ballot, to ensure that during these periods they comply with the enhanced disclosure required by the statute.

While there is very little discussion of these provisions in the ballot pamphlet, the argument in favor of Proposition 34 did state: "Proposition 34 requires candidates and initiatives to disclose contributions of \$1,000 or more on the Internet within 24 hours for a full three months *before the end of the campaign.*" This suggests that the voters intended to apply this enhanced disclosure during the candidate's own campaign, and not every election. The alternative result appears to place a substantial burden on candidates and committees that goes beyond regulation of their "campaign."

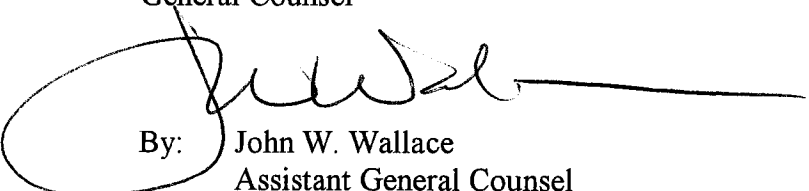
Based on these factors and rules of statutory construction, we would construe "election cycle" in the context of §§ 85309 and 85500 to mean the election cycle for the election in which the candidate or measure will be listed on the ballot.⁴

Please note, however, that the senator must comply with § 85309(c) until he terminates his status as a candidate for elective state office. The \$5,000 disclosure, recently added to the Act by the Legislature with SB 34, applies to "a candidate for elective state office who is required to file reports pursuant to Section 84605." The legislative history indicates that this requirement was intended to provide the public with important information regarding candidates that raise substantial year-round contributions. (Senate Third Reading Analysis, SB 34, as amended June 30, 2001.) Therefore, these candidates have to "file online or electronically with the Secretary of State a report disclosing receipt of a contribution of \$5,000 or more received at any time other than during an election cycle." Since this rule expressly applies "at any time other than during an election cycle" it would apply currently to the senator.

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

Sincerely,

Luisa Menchaca
General Counsel


By: John W. Wallace
Assistant General Counsel
Legal Division

⁴ The same would be true for subdivision (b) which applies to primarily formed committees.