



FAIR POLITICAL PRACTICES COMMISSION

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February 26, 2002

John A. Ramirez
Rutan & Tucker, LLP
Post Office Box 1950
Costa Mesa, CA 92628-1950

**Re: Your Request for Advice
Our File No. A-02-041**

Dear Mr. Ramirez:

This letter is in response to your request for advice on behalf of candidate Todd Spitzer regarding the contribution limit provisions of the Political Reform Act (the "Act").¹ Please note that the Commission does not provide advice relating to past conduct. (Regulation 18329(b)(8)(A), (c)(4)(A), copy enclosed.) Therefore, any conclusions contained herein apply only to prospective actions.

QUESTION

May a candidate for the state Assembly running in the November 2002 election contribute unlimited funds from his or her Assembly campaign committee to a committee organized on behalf of a candidate for the office of Governor running in the November 2002 election?

CONCLUSION

No. Pursuant to section 85305, the Assembly candidate may make a maximum contribution of \$3,000 to the gubernatorial candidate.

ANALYSIS

Government Code section 85305 provides as follows:

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

“A candidate for elective state office or committee controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of the limits set forth in subdivision (a) of Section 85301.”

Therefore, a candidate for state Assembly running in the November 2002 election may not contribute unlimited funds from his or her Assembly campaign committee to a committee organized for a candidate running for any elective state office. The Assembly candidate would be limited to making a contribution of \$3,000 to any other candidate for elective state office per election, meaning that the Assembly candidate could contribute \$3,000 for the primary election and \$3,000 for the general election.²

You also ask whether a different rule applies where the recipient of the contribution is a gubernatorial candidate. The express terms of section 85305 make no distinction between candidates for statewide elected office (such as Governor, Controller, or Secretary of State) and other candidates for elective state office.

You ask whether section 83 of Proposition 34 impacts this conclusion. Section 83 of Proposition 34 was amended by SB 34 on September 4, 2001. The amended version of Section 83 provides:

“This act shall become operative on January 1, 2001. However, Article 3 (commencing with Section 85300), except subdivisions (a) and (c) of Section 85309, Section 85319, Article 4 (commencing with Section 85400), and Article 6 (commencing with Section 85600), of Chapter 5 of Title 9 of the Government Code shall apply to candidates for statewide elective office beginning on and after November 6, 2002.”

Pursuant to section 83, the provisions of chapter 5 related to limitations on contributions, shall only apply to candidates for statewide elective office “beginning on and after November 6, 2002.” Since the 2002 election will be held on November 5, this means that a good portion of chapter 5 of the Act, including section 85305, is inapplicable to candidates for statewide elective office for the November 5, 2002 election.

However, section 85305 imposes no restrictions or liability on the recipient of the contribution. As applied to the maker, in this case, an Assembly candidate, this section is currently in effect.

² Please note, at the present time, the limit set forth in subdivision (a) of section 85301 is \$3,000 per election. However, pursuant to section 83124, the contribution limits set forth in section 85301, and other sections, are adjusted in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Hence, section 85305 does not reference a specific sum that candidates for statewide elective office may contribute to other candidates for statewide elective office, but rather references a statute that is already adjusted for inflation on a regular basis and which also contains a contribution limit.


In the *Miller* Advice Letter, No. A-01-168, we said that the Commission “has interpreted section 83 to mean that the contribution limits are lifted for contributors to candidates for statewide elective office contributing to campaigns for elections to be held prior to November 6, 2002.” (*Id.*) This was because sections 85301 and 85302 imposed duties and liabilities on the recipient of the contribution, clearly contrary to the purposes of section 83. It was problematic to exempt the recipient in a transaction and impose limits on the “maker” in the same transaction. This would, in effect, nullify the effect of section 83 on the statute.

In this case, section 85305 is simply a limit on the way that the maker may use his or her campaign funds, with no concomitant restriction on the recipient of the contribution. While section 83 may mandate that a candidate for statewide elective office be able to make contributions from campaign funds in excess of the \$3,000 limit, it does not limit the statute’s application to an Assembly candidate, irrespective of to whom he or she might “make” his or her contribution.

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