



FAIR POLITICAL PRACTICES COMMISSION

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March 1, 2004

David Bauer
400 Capitol Mall, Suite 1560
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-03-292**

Dear Mr. Bauer:

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

QUESTIONS

1. Do the Act's contribution limits apply to contributions made to Tom McClintock's Committee to Stop the Car Tax?
2. If the Car Tax committee may lawfully accept contributions in excess of the Act's contribution limits, may the Car Tax committee use those funds to repay a debt, in the form of outstanding loans owed to the McClintock for Senate committee?

CONCLUSIONS

Questions 1 and 2: The contribution limits of section 85301 generally do not apply to contributions made to Tom McClintock's Committee to Stop the Car Tax, because those limits do not apply to ballot measure committees. However, section 85305 would limit the amount of a contribution made by a candidate for elective state office to this controlled committee. As for payments made by the Car Tax committee to the McClintock for Senate committee, so long as the funds repaid a legitimate loan creating an enforceable claim against the Car Tax committee, such payments (up to the amount owed on the loans) would be considered neither a "contribution" to the Senate committee, nor a "transfer" subject to the restrictions of section 85306.

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

FACTS

McClintock for Senate ("Senate committee"), a candidate committee originally formed for the 2000 election, and Tom McClintock's Committee to Stop the Car Tax ("Car Tax committee"), a ballot measure committee, are both committees controlled by Tom McClintock. In 1998 and 1999, the Senate committee loaned the Car Tax committee a total of approximately \$50,000. Those loans are still an outstanding debt of the Car Tax committee. In December 2000, prior to the January 1, 2001, implementation of Prop. 34, the 2000 Senate committee was redesignated for Senator McClintock's Senate re-election campaign for 2004.

You indicate that an undescribed donor may contribute to the Car Tax committee a sum in excess of the contribution limits applicable to his Senate committee, to enable the Car Tax committee to repay the debt owed to the Senate committee, and that a certain candidate committee may also be willing to do the same, if the Act permits the Car Tax committee to use those contributions to repay the Senate committee.

ANALYSIS

In general, the Act's contribution limits do not currently apply to candidate-controlled ballot measure committees (see, e.g. the *Kopp* Advice Letters, Nos. A-97-390 and A-97-390a, and the *Harrison* Advice Letter, No. A-03-201). However, contributions to this candidate-controlled committee, if made by another candidate for elective state office, are limited by section 85305, which provides that:

"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."

Regulation 18535, which implements section 85305, provides at subdivision (d) that the restrictions of this statute apply, with regard to both contributor *and* recipient, to candidates and their controlled committees. Thus, if the candidate committee which is planning a contribution to the Car Tax committee is controlled by a candidate for elective state office, any contribution to the Car Tax committee from that candidate's committee would be limited to the amount set forth at section 85301(a), because the Car Tax committee is a committee controlled by Senator McClintock, who is a candidate for elective state office.

An intra-candidate transfer of funds to the current Senate committee typically would be subject to the restrictions set forth in section 85306(a), which requires that the transferred monies be attributed as contributions from specific contributors, whose aggregated contributions may not exceed the Act's contribution limits.² However, although a loan and the forgiveness of a loan are both regarded as contributions,

² Section 85306(c) lifts the attribution requirement for campaign funds possessed by the Car Tax committee on November 6, 2002.

repayment of an outstanding loan is considered to be an "expenditure," and is neither a "contribution" nor a "transfer" subject to section 85306. (*Richman* Advice Letter, No. I-02-143.) Therefore, if the Car Tax committee repays a legitimate loan from the Senate committee, that repayment would be considered neither a contribution nor a transfer.

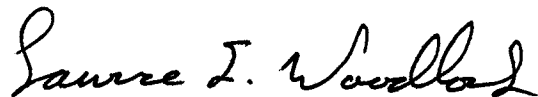
We have previously advised that a committee formed for a particular elective office may be "redesignated" for a future election to the same office, even when the committee bank account holds campaign funds or debts from the previous election, as was the case when Senator McClintock's 2000 election committee was redesignated for the 2004 contest. (See, e.g. the *Miller* Advice Letter, No. I-93-440.) Proposition 34 brought about a change in this rule, but it appears from your account of the facts that the redesignation of Senator McClintock's 2000 committee was proper and effective under the law prevailing at the time the 2000 Senate committee was redesignated.³

The use of one controlled committee to raise campaign funds for another controlled committee would ordinarily violate the Act's "one bank account" rule (section 85201), which requires that all campaign funds raised and spent for a particular campaign be raised and spent by a single committee established for that campaign. Among other purposes, this statute preserves the Act's contribution limits by prohibiting the use of a committee not subject to such limits (such as a ballot measure committee) as a fundraising vehicle for another committee that *is* subject to contribution limits. Again, however, under the specific circumstances you describe, section 85201 would not bar repayment by the Car Tax committee of its debt to the Senate committee, so long as that payment is neither a contribution nor a transfer, but the repayment of funds originally borrowed from the Senate committee in what we presume to have been a legitimate loan transaction creating an enforceable claim against the Car Tax committee.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

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³ Following the passage of Proposition 34, the Commission revised its regulations governing formation and termination of committees. In particular, regulation 18521(a) was amended effective May 26, 2002 to provide that a state candidate must establish a new committee, with a new campaign bank account, for election to each successive term of office.