



FAIR POLITICAL PRACTICES COMMISSION

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April 30, 2004

Kirk Knight
John Campbell for Senate
2732 Cohasset Road, Suite A
Chico, CA 95973

**Re: Your Request for Advice
Our File No. A-04-088**

Dear Mr. Knight:

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

QUESTION

May the John Campbell for Senate committee (Assemblymember John Campbell's successful March 2004 Senate primary election committee) use funds that have been designated for the 2004 general election to pay primary election debt?

CONCLUSION

The John Campbell for Senate committee may not use funds that have been designated for the 2004 general election to pay primary election debt, unless the aggregate of any contributions attributed to a single contributor, when combined with all the contributions made by that contributor to the primary election, do not exceed the applicable primary election contribution limit.

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

FACTS

John Campbell was a successful candidate for the Senate in the March 2004 primary. Only one campaign committee exists for the John Campbell for Senate campaign. He has debt incurred in connection with the primary election. He would like to know if he may use funds that have been designated for the general 2004 election to pay debt incurred during the primary 2004 election.

ANALYSIS

Proposition 34, passed by the voters at the statewide general election of November 2000, added contribution limits, voluntary expenditure limits and made other major changes to campaigning for office as regulated by the Act. Under the "per election" scheme of Proposition 34, with a few exceptions, each election is considered a separate "closed system" with respect to fundraising and expenditure of funds.

For example, section 85301 provides:

"(a) A person, other than a small contributor committee or political party committee, may not make to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office may not accept from a person, any contribution totaling more than three thousand dollars (\$3,000) *per election*.

"(b) Except to a candidate for Governor, a person, other than a small contributor committee or political party committee, may not make to any candidate for statewide elective office, and except a candidate for Governor, a candidate for statewide elective office may not accept from a person other than a small contributor committee or a political party committee, any contribution totaling more than five thousand dollars (\$5,000) *per election*.

"(c) A person, other than a small contributor committee or political party committee, may not make to any candidate for Governor, and a candidate for governor may not accept from any person other than a small contributor committee or political party committee, any contribution totaling more than twenty thousand dollars (\$20,000) *per election*.

"(d) The provisions of this section do not apply to a candidate's contributions of his or her personal funds to his or her own campaign." (Emphasis added.)

Primary and General Elections

Section 82022 defines an "election" as "any *primary, general, special* or recall election held in this state. The *primary and general* or special elections are separate elections for purposes of this title." (Emphasis added.) Thus, separate contribution limits apply to primary and general elections (sections 85301 and 85302), even though the primary and general elections are for the same office. Thus, two different contributions (up to the applicable limits) are permitted from each contributor for each election. In addition, there are separate expenditure limits for each election. (Section 85400(a)(2).)

As originally adopted, section 85318 provided:

"A candidate for state elective office may raise contributions for a general election prior to the primary election for the same elective state office if the candidate set aside these contributions and uses these contributions for the general election. If the candidate for state elective office is defeated in the primary election or otherwise withdraws from the general election, the general election funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election contributions."

A year after the adoption of Proposition 34, Senate Bill No. 34 (2001-2002 Reg. Sess.) made further revision to the Proposition 34 sections of the Act. Section 85318 was amended to include new language. The SB 34 amendment, in pertinent part, added the following: "Notwithstanding Section 85201, candidates for elective state office may establish separate campaign contribution accounts for the primary and general elections or special primary and special general elections."

This amendment was intended to clarify the Proposition 34 contribution limits scheme in light of the existing "one bank account" rule in the Act. That rule requires that all contributions or loans made to a candidate, or to the candidate's controlled committee have to be deposited in a single campaign bank account; all campaign expenditures have to be made from the appropriate campaign bank account; and that contributions deposited into the campaign account must be used only for expenses associated with the specific office to which the candidate seeks election, or the election expenses associated with holding that office. (Section 85201.)

According to the Assembly Floor Analysis dated July 1, 2001, the amendment was intended to clarify that a candidate for elective state office "is authorized ... to raise contributions for a general election prior to the primary election for the same elective state office, if the candidate sets aside these contributions *and uses these contributions for the general election.*" (Emphasis added.)

Thus, while section 85318 allows candidates to raise contributions for a general election prior to the primary election, it controls the use of the funds to maintain the integrity of the per election limits. The candidate must set these contributions aside and

use them only for the general election. This applies even where the same bank account is used for both the primary and general elections.

Further, if the candidate for elective state office is defeated in the primary election, the general election funds shall be refunded to the contributors on a pro rata basis, less any expenses associated with the raising and administration of general election or special general election contributions. (Section 85318.) The statute does not authorize the use of general election funds for primary election debt.

Movement of Funds between the Primary and General Elections

Your question pertains to use of general election monies to pay debt incurred for the primary election. As an initial point, we note that section 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.”

Thus, there is no controversy that the Assembly member may currently raise funds to retire debt incurred in connection with the primary election, so long as the primary election limits are not violated.

In addition, two sections of the Act allow the movement of funds between campaign committees. Section 85317 allows the “carry over” of campaign funds raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a *subsequent*² election for the same elective office. However, you are not asking about carrying funds “forward” consistent with section 85317.

Finally, section 85306(a) provides:

“A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a ‘last in, first out’ or ‘first in, first out’ accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302.”

This section (and regulation 18536) would generally apply in cases where the candidate had two separate committees, and would allow the transfer of funds between the candidate’s committees, so long as the transfers are reported and made with

² Regulation 18537.1(c) provides “‘Subsequent election for the same elective state office’ means the election to the next term of office immediately following the election/term of office for which the funds were raised.”

attribution to specific contributors. The attribution of the transferred funds to specific contributors ensures that the aggregate contributions made by any one contributor do not exceed the applicable contribution limits for that election. However, attribution and the reporting of attributed transferred funds all operate in circumstances where there are two committees which can report the movement of funds from one committee to the other. In this case, there is no mechanism to report the transfer and attribution of the funds within a single committee.

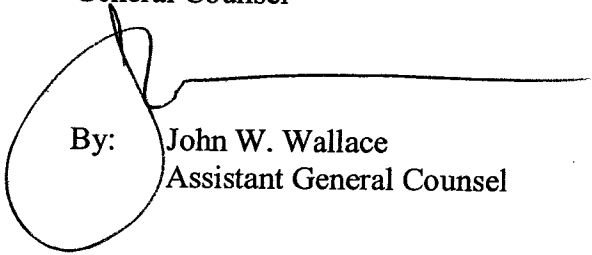
Thus, your facts do not fit squarely into either of these provisions. Yet, the lack of an express procedure does not authorize an interpretation of the Act, which may result in evasion of the applicable limits for the primary and general elections. (Sections 85301-85302.) For example, if John Doe contributed \$3,200 to the candidate's primary election committee (the maximum allowed), no interpretation of section 85318 would allow a second contribution of that contributor to be used for the primary election. Such a conclusion, absent an express exception, would repudiate the per election limits applicable to primary and general elections.

However, under the limited circumstances described in your facts, we believe that the general election funds may be used to pay primary election debt. This is because you have no separate committees for the primary and general elections. However, you may only use the general election funds *so long as* the aggregate amount of money contributed to the primary from any one contributor, when aggregated with the funds of that same contributor to the general election that are later used for primary election debt, do not exceed the per contributor limit applicable to the primary election. (Section 85301.) While there currently is no reporting mechanism for this type of transaction with respect to contributions received, we strongly encourage you to keep thorough records of the transaction to ensure that the limits are not violated. In addition, you must keep records consistent with regulation 18540, which concerns the allocation of expenditures to primary or general elections for purposes of the volunteer expenditure limits. (Section 85400; regulation 18401.)

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

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