



## FAIR POLITICAL PRACTICES COMMISSION

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June 13, 2007

Renee Hatchwell Company  
P.O. Box 5005  
Carmel, California 93921

**RE: Your Request for Advice  
Our File No. A-07-102**

Dear Ms. Hatchwell:

This letter is in response to your request for advice on behalf of Senator Jack Scott regarding the new officeholder account fundraising provision of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. May the senator retain 2007 contributions to his officeholder account that exceed the 2007 limit?
2. May the Senator subtract fundraising expenses from the amount of officeholder contributions subject to the limit of Section 82016?

### CONCLUSIONS

1. The amount exceeding the limit must be returned to the contributors within 14 days of receipt.
2. Neither Section 85316 nor Section 82015 (the definition of contribution) provide any exception that permits deducting fundraising costs from the total of contributions received.

### FACTS

Senator Jack Scott has received officeholder contributions in excess of the calendar year limit in Section 85316 for calendar year 2007. Senator Scott wishes to

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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.

keep the contributions and apply them to his 2008 contribution limit under Section 85316. You also ask if fundraising costs can be excluded from the amount subject to that limit.

## ANALYSIS

### 1. Over-limit Officeholder Contributions

Generally, a contribution that has been received must be reported on the candidate's or committee's campaign statement. (Section 84211 et. seq.) For reporting purposes, Regulation 18421.1(c) sets forth when a monetary contribution is received:

“(c) A monetary contribution is “received” on the date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made. All contributions received by a person acting as an agent of a candidate or committee shall be reported to and disclosed by the candidate or committee, or by the committee's treasurer, no later than the closing date of the next campaign statement that the committee or candidate is required to file.”

There is a narrow exception to the general rule requiring reporting of contributions received. Section 84211(q) provides:

“A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.”

However, emergency Regulation 18531.63(d)<sup>2</sup> provided:

“(d) If during an officeholder's term of office, the officeholder receives an officeholder contribution (or contributions in the aggregate) from a single contributor that exceeds the allowable contribution limit as set forth in subdivision (b)<sup>3</sup> of this regulation, the officeholder shall

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<sup>2</sup> This emergency regulation expired on May 21, 2007, and a new permanent regulation will be considered by the Commission in June 2007. However, in the interim, staff continues to provide advice based on the policy enunciated by the Commission in Regulation 18531.63.

<sup>3</sup> Subdivision (b) provides: Officeholder Contribution Limits: In order to determine the applicable contribution limit to an elected state officer's officeholder account established pursuant to section 85316, the lower of the following apply: (1) The calendar year contribution limits applicable to the officeholder committee pursuant to section 85316 (aggregate and individual), or (2) The lowest per election contribution limit (the aggregate of the primary and general election limits) applicable to any other elective state office that the candidate has filed a statement of intention to seek during the officeholder's current term of office.”

return the amount exceeding the limit to the contributor as follows:

“(1) Monetary Contributions. The amount exceeding the limit shall be returned within 14 days of receipt or by the date the statement of intention to be a candidate is filed, whichever is earlier.”

Thus, the contributions may not be held or used for the next calendar year, but must be returned to the contributors within 14 days.

## **2. Officeholder Fundraising Costs**

Section 85316(b)(2) provides:

“No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

“(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

“(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than Governor.

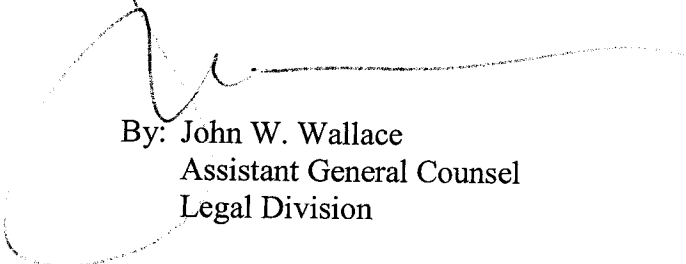
“(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.”

Neither Section 85316 nor Section 82015 (the definition of contribution) provide any exception for subtracting fundraising costs from the total of contributions received. Fundraising expenses are considered officeholder expenses and subject to the limits.

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

Sincerely,

Scott Hallabrin  
General Counsel



By: John W. Wallace  
Assistant General Counsel  
Legal Division

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