



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

November 9, 2007

Richard Rios, Esq.
Olson Hagel & Fishburn LLP
555 Capitol Mall, Suite 1425
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-07-175

Dear Mr. Rios:

This letter responds to your request for advice on behalf of the California State Council of Service Employees Small Contributor Committee regarding its responsibilities under the campaign provisions of the Political Reform Act (the "Act").¹

QUESTION

May the California State Council of Service Employees Small Contributor Committee (the Council) contribute to a candidate in a runoff election for a seat on the California Public Employee's Retirement (CalPERS) Board, despite having already contributed the maximum contribution to the same candidate in the initial CalPERS election?

CONCLUSION

Yes. A runoff election is a separate election from the initial election for the CalPERS board.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

On July 2, 2007, the Council made a \$7,200 contribution to Henry Jones for CalPERS Board's September 28, 2007 election. Because no candidate for the Board received a majority of the votes cast, a runoff election was set for December 7, 2007. The Council wishes to contribute to Mr. Jones for the runoff election.

According to the Notice of Election prepared by CalPERS, election ballots were mailed to members August 20, 2007, and needed to be returned by September 28, 2007. The runoff ballots will be distributed November 9, 2007 and must be returned by December 7, 2007.

ANALYSIS

Effective January 1, 2001, Proposition 34 established per election contribution limits applicable to candidates for various state offices, including elective state offices. An "elective state office" is defined in Section 82024 as:

"[T]he office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, and member of the State Board of Equalization."

Thus, candidates for the CalPERS Board are subject to the contribution limits of the Act in connection with any election. Specifically, candidates for elective state offices are subject to the following per election limit on contributions from small contributor committees, such as the Council:

"A small contributor 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 small contributor committee, any contribution totaling more than six thousand dollars (\$6,000) per election.²" (Section 85302(a).)

The question you raise is whether the initial election and the runoff election are considered one election or two for purposes of the limit in Section 85302. We have previously advised that the six elected members of the CalPERS Board are subject to the

² These limits are adjusted periodically. The current adjusted limit is \$7,200.

contribution limits as set forth throughout Article 3 of Chapter 5 of the Act in connection with the initial CalPERS election.³ (*Gillan* Advice Letter, No. I-01-018(a).) However, this same letter concluded that, unlike the initial CalPERS election, the runoff election was not, in itself, a separate election and therefore did not warrant a separate contribution limit. This was apparently due in part to the conclusion that the runoff was merely an extension of the initial election, with no independent legal significance for purposes of Section 84225.

In May 2005, the Commission further considered the treatment of the CalPERS runoff elections. In January 2005, CalPERS notified Commission staff that CalPERS had enacted California Code of Regulations, title 2, section 554.6 to establish a runoff election process.⁴ Since then-existing Regulation 18452 made no provision for filing campaign statements pursuant to Section 84225 in connection with a runoff, staff proposed amendments to the regulation and Form 900 to capture runoff election fundraising activity.

The May 31, 2005 Commission memorandum provides:

“CalPERS’s regulation 554.6 has been amended to create another type of CalPERS election – the runoff – instituted when a majority has not been achieved through the first round of balloting. Because of this change, regulation 18452 [Citation Omitted.] also needs modification to require a third report so that CalPERS candidates separately disclose contributions and expenditures in connection with the runoff election. Otherwise, this information would not be available to the voters until January of the following calendar year. This change is also reflected in the amendments to the candidate campaign statement currently required to be filed by CalPERS candidates (the “Form 900” attached as Appendix 2).”

³ Section 82023 defines “elective office” to mean any state, regional, county, municipal, district or judicial office, which *is filled at an election*. The legislature added to Section 82023 the statement that “ ‘elective office’ also includes ... *members elected to the Board of Administration of the Public Employees’ Retirement System.*” However, the Legislature failed to redefine “election” to include CalPERS elections. In harmonizing these two statutes, however, the Commission has concluded that the CalPERS elections are “elections” for purposes of the contribution limit of the Act.

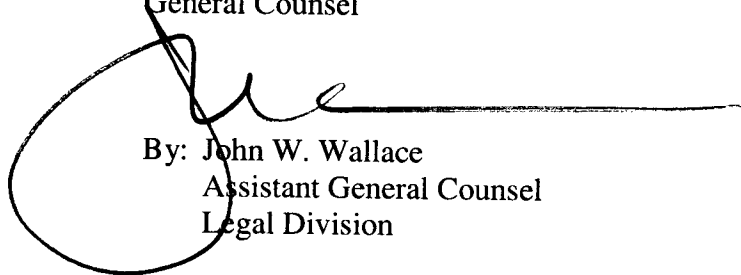
⁴ An earlier version of the regulation was enacted, but was challenged successfully in superior court. The 2005 version was a redraft of the original regulation in conformance with the direction of the court.

The Commission's amendments to the regulation reflect recognition that the runoff election period was a separate and distinct election for purposes of Section 84225.⁵ Thus, the Council may make a separate contribution (up to \$7,200) for the same candidate in the runoff election. To the extent that the *Gillan* Advice Letter Nos. A-00-033⁶ or I-01-018(a) conflict with that conclusion, they are superseded.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in black ink, appearing to read "John W. Wallace", is written over the typed name and title. The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

By: John W. Wallace
Assistant General Counsel
Legal Division

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⁵ This conclusion is consistent with the treatment of runoff elections in other provisions of the Act. For example, Section 85314 provides that "The contribution limits of this chapter apply to special elections and apply to special runoff elections. A special election and a special runoff election are separate elections for purposes of the contribution and voluntary expenditure limits set forth in this chapter.

⁶ The *Gillan* Advice Letter, No. A-00-033 also analyzes the application of Section 84308. This letter does not affect the conclusion with respect to Section 84308 at this time. However, we may review this conclusion at a later time.