



California Political Attorneys Association

c/o Kaufman Legal Group, APC
777 South Figueroa Street, Suite 4050
Los Angeles, CA 90017-5864
Telephone: (213) 452-6565
E-Mail: sshin@kaufmanlegalgroup.com

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VIA ELECTRONIC MAIL:

Chair Miadich and Commissioners Baker, Cardenas, Hatch, and Wilson
Fair Political Practices Commission
ATTN: Katelyn Greene, Commission Counsel
1102 Q Street, Suite 3000
Sacramento, CA 95811
E-Mail: kgreene@fppc.ca.gov

Re: Application of AB 571 Contribution Limits

Dear Chair Miadich and Commissioners:

The California Political Attorneys Association (“CPAA”) submits this comment to the Commission staff concerning your interpretation of the applicability of the AB 571 (Ch. 556, Stats. 2019) contribution limits to contributions made by donors, and received by candidates, in jurisdictions subject to the AB 571 limits. We understand from communications with Commission staff by members of CPAA that you have concluded that AB 571 limits would apply to contributions made *prior* to January 1, 2021 for an election held *on or after* January 1, 2021. For example, if a donor contributed \$10,000 to a 2022 candidate (in a jurisdiction subject to AB 571) prior to January 1, 2021, the donor would not be able to contribute additional funds in 2021 because the limit was already reached.

In short, such a conclusion is wrong. It is a conclusion which would render countless contributions – all of which were legally given and received over the past several years – subject to a law which did not exist when those contributions were made, and neither candidates nor contributors have been given any notice or information about the Commission’s dramatic decision in this regard. And from a purely legal perspective it is a conclusion which runs counter to longstanding interpretation of the contribution limit statutes, incorrectly interprets AB 571’s language and could exceed the Commission’s authority. For the following reasons, we believe that Commission staff’s conclusion regarding this retroactive application is not correct and that Commission staff should rescind any oral or written advice given to requesters to that effect.¹

¹ The only situation for which retroactive application is arguably permissible would be if the candidate received contributions into a committee that could legally raise such funds prior to January 1, 2021, and wished to transfer those funds to a new controlled committee for another office set up on or after January 1, 2021, in which case the attribution rules of Government Code section 85306(a) may apply.

Proposition 34 (2000) provides instructive guidance. That measure was approved by the voters on November 2, 2000. While the measure became effective generally on January 1, 2001, section 83 of the uncodified provisions provided that the contribution limits of chapter 5 (commencing with section 85100 and including sections 85300-85321), which were the candidate contribution limits, would become effective for candidates for statewide office only after the November 6, 2002 general election. By its terms, Proposition 34, uncodified section 83, provided:

This act shall become operative on January 1, 2001. However, Chapter 5 (commencing with Section 85100) of Title 9 of the Government Code, except subdivision (a) of Section 85309 of the Government Code, shall apply to candidates for statewide elective office beginning on and after November 6, 2002.

Moreover, section 85306 was enacted by Proposition 34, in particular subdivisions (b) and (c). 85306(b) provided that candidates for elective state office (other than statewide offices) who possessed campaign funds on January 1, 2001 could use those for seeking future elective office without attributing funds to specific contributors; 85306(c) provided that candidates for statewide elective office possessing funds on November 6, 2002 (see sec. 83, which made the limits provisions for statewide candidates effective after November 6, 2002) could use those funds without attribution to specific donors. Here is section 85306 in its entirety, as enacted by Proposition 34:

- (a) 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.
- (b) Notwithstanding subdivision (a), a candidate for elective state office, other than a candidate for statewide elective office who possesses campaign funds on January 1, 2001, may use those funds to seek elective office without attributing the funds to specific contributors.
- (c) Notwithstanding subdivision (a), a candidate for statewide elective office who possesses campaign funds on November 6, 2002, may use those funds to seek elective office without attributing the funds to specific contributors.

Section 85321 also suggests that the Legislature knows how to make explicit its intention as to the status or disposition of contributions or funds at the time of the effective date of a measure or legislation. Section 85321, which has not been modified since its adoption in 2000 and was not amended by AB 571, provides explicitly that a committee with outstanding net debts

as of the effective date of Proposition 34 could be paid with funds raised that were not subject to the Proposition 34 limits:

Notwithstanding any other provision of this chapter, if a candidate for elective state office or the candidate's controlled committee had net debts resulting from an election held prior to January 1, 2001, contributions to that candidate or committee for that election are not subject to the limits of Sections 85301 and 85302.

AB 571 does not change the provisions of limitation found in Proposition 34, sections 85306(b) and (c) and uncodified section 83. Indeed, the bill's preamble language states "This bill, *commencing January 1, 2021*, instead would prohibit a person from making to a candidate for elective county or city office, and would prohibit a candidate for elective county or city office from accepting from a person, a contribution totaling more than the amount set forth in the act for limitations on contributions to a candidate for elective state office." (emphasis added)

While section 85306 of Proposition 34 is modified by AB 571 to cover transfers by a candidate from one candidate controlled committee for elective office to another of the candidate's controlled committees, this section would not on its face apply when the candidate did not establish a new controlled committee, but simply solicited and received contributions to the pre-2021 committee from a donor, prior to January 1, 2021. In this respect, the Commission staff would exceed its statutory authority to interpret AB 571 to require attribution after January 1, 2021 of previously received contributions that were not subject to limits; i.e., the candidate could accept contributions up to the full amount of the new 2021 limits in addition to and without attribution of previously-received contributions.

The Commission has latitude to interpret provisions of the Political Reform Act as part of its general supervisory and regulatory powers. However, the Commission is not free to interpret the statute in a manner that is inconsistent with the Act. Given the express statutory language that makes clear the new limitations imposed on candidates for elective offices in jurisdictions that have not enacted their own limits as of January 1, 2021, that became effective on January 1, 2021, the Commission staff's interpretation to the contrary is not consistent with the Act and lacks statutory authority. (*Citizens to Save California v. FPPC* (2006) 145 Cal.App.4th 736; *Californians for Political Reform Foundation v. FPPC* (1998) 61 Cal.App.4th 472; *Brown v. FPPC* (2000) 84 Cal.App.4th 137; and *People v. Thrasher* (2009) 176 Cal.App.4th 1302 [all overruling the FPPC's statutory interpretation not deemed consistent with the Act].) Furthermore, the Legislature ordinarily makes laws that will apply in the future; accordingly, there is a presumption that laws apply *prospectively* rather than retroactively without specific evidence of intent from the Legislature otherwise. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 307.) Here, the Legislature's intent is made crystal clear in section 85306(e), and throughout AB 571: "This section shall become operative on January 1, 2021."

We do not suggest that if a local candidate for elective office sets up a new committee after January 1, 2021, and wishes to transfer previously-received funds from one controlled committee to the new one, that section 85306(a) attribution requirements would not apply. We agree they would, and that would be consistent with the statute. However, in the previously described situation (using the same committee in place prior to January 1, 2021 into which new

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donor contributions are received for an election occurring on or after January 1, 2021), section 85306 would not apply on its own terms.

Very truly yours,



KC Jenkins
Bell, McAndrews & Hiltachk, LLP
Member, Regulatory Committee, California Political Attorneys Association



Nicholas Sanders
The Sutton Law Firm
Member, Regulatory Committee, California Political Attorneys Association