



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

MEMORANDUM

To: Chair Remke, Commissioners Audero, Hatch, and Hayward

From: Jack Woodside, General Counsel
Ryan P. O'Connor, Commission Counsel

Subject: Contribution Limits on Transfers from State Candidates to a State Candidate (or Candidate-Controlled Committee) to Oppose a Recall Election

Date: August 7, 2017

A recall effort has been initiated against Senator Josh Newman of the 29th State Senatorial District. If supporters of the recall submit sufficient signatures, the recall initiative will either be considered at a special election or on the June 5, 2018 primary election ballot.¹

On June 12, 2017, Richard R. Rios, Esq. of Olson, Hagel and Fishburn requested a determination of law to reverse the agency's interpretation that the restriction on contributions between state candidates contained in Government Code Section 85305 imposes a \$4,400 limit on the amount that a state candidate may contribute to a recall committee controlled by another state candidate. The request was made on behalf of the Senate Democratic Caucus. Executive Director Erin V. Peth treated Mr. Rios' correspondence as a request for a Commission opinion, which she denied because the question raised is covered by Commission regulations.

Executive Director Peth articulated that "the Commission has consistently concluded that contributions made by other state elected officials to a state candidate's controlled recall committee are subject to the \$4,400 limit on contributions between state candidates." She concluded that this has been the Commission's legal interpretation of the pertinent statutes since 2003 when the Commission approved the Fact Sheet on Recall Elections.

On June 28, 2017, Mr. Rios wrote the Commission again requesting a Commission opinion on the interplay between Sections 85305 and 85315. Mr. Rios also provided the Commission with an opinion of the Legislative Counsel Bureau (No. 1716447), prepared at the request of Senator Kevin de León. The opinion concludes that contributions by a state candidate to a recall committee controlled by another state candidate should not be subject to the \$4,400 limit on contributions between state candidates.

¹ Recall elections historically have been held between 60 and 80 days from the date of certification of sufficient signatures. However, the recently signed budget bill also extends the timeline for qualifying a recall ballot measure by approximately three months.

At the June 29, 2017 Commission meeting, Chair Remke scheduled a meeting for July 27, 2017 to determine whether or not to grant Mr. Rios' request for an opinion on this topic.

In advance of the July Commission meeting, Commission staff prepared a memorandum to the Commission. The Commission received additional public comment from interested parties Brian T. Hildreth, Esq., Nicholas L. Sanders, Esq., Max D. Kanin, Esq., Thomas A. Willis, Esq., John L. Burton, Esq., as well as additional correspondence from Richard R. Rios, Esq.²

At the July 27, 2017 meeting, the Commission deliberated over the issues raised with respect to the interplay between Sections 85305 and 85315, and whether the Commission should issue an opinion on the matter. Commissioner Hatch moved under Regulation 18321 to grant Mr. Rios' request for an opinion reversing the agency's interpretation that the restriction on contributions between state candidates contained in Government Code Section 85305 imposes a \$4,400 limit on the amount that a state candidate may contribute to a recall committee controlled by another state candidate. Commissioner Hatch further moved that the "Chief Counsel be instructed to cause a draft Commission opinion to be prepared and properly noticed for consideration by the Commission at the regular August meeting, which draft opinion analysis and conclusion shall be in accord with the analysis and conclusion of legislative counsel opinion number 1716447."³ The motion passed with three votes in favor and one against.

Using the discretion vested in the Commission under Regulation 18322, subdivision (f), Chair Remke then moved to shorten the deadlines associated with issuing a Commission opinion. The motion passed unanimously and made the publication date of the draft opinion August 7, 2017. The Commission also modified the deadline for any interested person to submit memoranda, briefs, arguments, or other relevant material regarding the opinion. Interested persons are now permitted to submit materials until August 16, 2017, one day prior to the Commission meeting. Lastly, public comment is welcome at the August meeting prior to the Commission's decision to adopt the draft Commission opinion, which is attached as Exhibit A.

² The staff memorandum, as well as Mr. Rios's correspondence, the Legislative Counsel Bureau opinion No. 1716447, and all other submissions by interested parties may be accessed here: <http://www.fppc.ca.gov/about-fppc/hearings-meetings-workshops/current-agenda/past-agendas/2017-agendas/jul-2017-agenda.html>

³ In an attempt to comply with the Commission's clear directive to prepare a draft opinion in accord with opinion of the Legislative Counsel Bureau (No. 1716447), the draft opinion incorporates analysis from the Legislative Counsel opinion verbatim whenever practicable.