



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Cardenas, Wilson, Wood

From: Dave Bainbridge, General Counsel

Subject: *In Re Sanders* Opinion Request: AB 571, Aggregation of Contributions Received Prior to January 1, 2021 for Elections Held on or After January 1, 2021.

Date: April 1, 2021

In 2019, the Governor signed Assembly Bill 571 (“AB 571”) into law with a delayed effective date of January 1, 2021. AB 571 imposes a contribution limit on elective city and county offices in jurisdictions that do not enact an ordinance imposing contribution limits. (See Government Code section 85301¹.) AB 571 effectively applied existing state contribution limits to local elected officers in jurisdictions that do not have contribution limits. Contribution limits apply per election, regardless of when the contribution is received. (Section 85301.)

The Legal Division has received questions regarding the application of AB 571 to contributions made prior to the bill’s January 1, 2021 effective date for an election after the effective date. The legislation does not directly address this issue. The Legal Division has advised in these circumstances that contributions made prior to January 1, 2021 are not subject to the contribution limit but a contribution made prior to January 1, 2021 for an election after that date, should be aggregated with any contribution made after that date from the same contributor to the same recipient for the same election. For example, if a single contributor made a \$10,000 contribution in December 2020 to a candidate in an election held on or after January 1, 2021, that contribution is permissible, but the contributor would be prevented from contributing additional funds to the same candidate’s election because any additional contribution would exceed the contribution limit of \$4,900 put in place by AB 571.

In response to staff’s advice, the California Political Attorneys’ Association (CPAA) submitted public comments to the Commission at its February 2021 meeting. In a memorandum dated February 12, 2021, the CPAA argues that staff’s interpretation is a retroactive application of the law and that it does not align with the position taken when the contribution limit was imposed on elective state offices under Proposition 34, which went into effect January 1, 2001.

The Commission noticed a public discussion of AB 571’s effective date, and the question of aggregation, for its March meeting. In a memorandum to the Commission dated March 8, 2021, the Legal Division briefed the Commission on the basis for its interpretation. In consideration of the Legal Division’s memorandum and a subsequent response by the CPAA dated March 17, 2021, the Commission instructed staff at its March meeting to prepare

¹ All statutory references are to the California Government Code unless otherwise indicated.

alternative drafts of a Commission opinion for consideration and possible adoption at the Commission's April meeting.

As requested by the Commission, the Legal Division has prepared alternative drafts in response to the opinion request. Alternate Draft One encompasses Commission staff's previous interpretation that contributions made prior to the effective date of AB 571 should be aggregated with subsequent contributions, for the same candidate and election, for purposes of AB 571's newly imposed contribution limits. Conversely, Alternate Draft Two encompasses CPAA's position that contributions made prior to the AB 571's effective date should not be considered in determining whether a contributor can make additional contributions in the same election and to the same candidate subsequent to the effective date.

Pursuant to Commission Regulation 18322, this Memorandum and the alternate draft opinions were made available to the public on April 1, 2021. The deadline for any interested person to submit memoranda, briefs, arguments, or other relevant material regarding the opinion is April 10, 2021. The Commission will consider and may adopt either draft opinion at its April meeting.

Attachments:

In Re Sanders: Alternate Draft One

In Re Sanders: Alternate Draft Two