California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

From: Holly B. Armstrong, Commission Staff Counsel
John W. Wallace, Senior Commission Counsel
Luisa Menchaca, General Counsel

Re: Proposition 34 Regulations: Policy Issues Associated with the Interpretation of Single Bank Account Rule

Date: July 2, 2001

Introduction and Background

In June 1988, Proposition 73 was approved by the voters as amendments to the Political Reform Act (the "Act").[1]

Among other things, Proposition 73 enacted Section 85201[2], which required that all contributions or loans made to a candidate, or to the candidate's controlled committee, had to be deposited into a single campaign bank account. This section came to be known as the "one-bank-account" rule. The passage of Proposition 34 has raised several issues related to the "one-bank-account" rule in several different contexts, including possible exceptions to the "one-bank-account" rule, and whether the practice of redesignating committees for future elections should be permitted to continue. The purpose of this memo is to bring these issues to the Commission's attention and to obtain guidance from the Commission to aid staff in drafting regulations, if such action is deemed necessary by the Commission. The first five pages provide background regarding the "one-bank-account" rule. The discussion of issues begins on page five and recommendations are discussed on pages 9-14.

Proposition 73 also provided the following:

- Contributions to candidates for elective office had to comply with fiscal year contribution limits.

- As noted above, Section 85201 provided that all contributions or loans made to a candidate, or to the candidate's controlled committee had to be deposited in a single campaign bank account. Proposition 73 did permit a candidate to establish campaign committees and campaign bank accounts *for more than one elective office*. Consequently, a candidate could file a candidate intention statement for each office he or she intended to seek and establish campaign committees and campaign bank accounts for each candidate intention statement filed.

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[1] Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18997, of the California Code of Regulations.

[2] This section has been amended several times since the adoption of Proposition 73. Pertinent differences between the Proposition 73 language and the current language will be noted.

- Section 85201(e) provided that all campaign expenditures had to be made from the appropriate campaign bank account.

- Section 85304 (formerly entitled "Prohibition on Transfers") prohibited a candidate for elective office or a committee controlled by that candidate from transferring contributions to any other candidate for elective office.

- Section 85202(b)[3] provided that contributions deposited into the campaign account must be used only for expenses associated with the election of the candidate to the specific office which the candidate intended to seek or expenses associated with holding that office. This is referred to as the "trust" provision.

As conceived, Proposition 73 prohibited a candidate from transferring contributions directly or indirectly among his or her various campaign bank accounts. The Commission adopted this approach in December 1988 when they considered and adopted Regulations 18520, 18521, and 18522.[4] The November 30, 1988, memorandum stated: "Proposed Regulation 18520 provides that in a statement of intention a candidate must name a particular election for a specific office. This provision furthers the purposes of the Political Reform Act and Proposition 73 by limiting an incumbent's ability to stockpile contributions and thereby also reducing campaign expenditures by incumbents and challengers." (Emphasis in original.)

In May of 1989, the Commission adopted Regulation 18525. Regulation 18525 was intended to implement Section 85201 and 85202(b). The April 18, 1989, memorandum noted that "candidates are prohibited from using the contributions they have received for more than one election. When an election is over, a successful candidate may use his or her remaining campaign funds only to pay campaign debts and officeholder expenses during that term of office." However:

> "The Act provides no definition of 'campaign' expenses or 'officeholder' expenses to assist incumbent candidates in determining from which campaign bank account particular expenses should be made. Developing a definition of these terms presents considerable difficulty because it is not always possible to draw a firm line between 'campaign' expenses and 'officeholder' expenses.
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> "....
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> "....

[3] This section has been renumbered to 89510 and currently reads: "(a) A candidate may only accept contributions in accordance with the provision set forth in Chapter 5 (commencing with Section 85100); (b) All contributions deposited into the campaign account shall be deemed to be held in trust for purposes set forth in Chapter 5 (commencing with Section 85100)."

[4] Regulation 18521 continues to exist in the form adopted in 1988.

> "Proposed Regulation 18525 specifies which expenses are related to an incumbent officeholder's future candidacy. It requires the officeholder to pay these expenses only from the campaign bank account for a future election. The officeholder may treat all other expenses as either current officeholder expenses or as future campaign expenses. Thus, the Commission would refrain from trying to categorize every expense as exclusively campaign-related or officeholder-related." (April 18, 1989 Commission Memorandum: Adoption of Regulation 18525.)

However, the regulatory language also cautioned: "This section shall not be construed to permit an incumbent elected officer to make expenditures from any campaign bank account for expenses other than those associated with his or her election to the specific office for which the account was established and expenses associated with holding that office." (Regulation 18525(b).)

On May 15, 1989, in *Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission*[5] the United States District Court issued a preliminary injunction against the enforcement of certain aspects of Sections 85200-85202, 85301, 85304 and 85306. In pertinent part, the injunction permitted candidates to transfer contributions among their own candidate committees. The injunction called into question the appropriate interpretation of the "trust" provision.

Because the other provisions of Proposition 73 were still in effect and enforceable, staff continued to advise that despite a candidate's ability to transfer campaign funds among his or her own campaign bank accounts, the trust provision prohibited expenditures that were not associated with the office for which the campaign account was established, and the "one-bank-account" rule prohibited more than one bank account per election. (*Davidson* Advice Letter, No. I-89-347.)

On September 25, 1990, the United States District Court in *SEIU* invalidated portions of the Act added by Proposition 73, including the fiscal year contribution limitations and the transfer ban of Section 85304. In 1991, in the *Buck-Walsh* Advice Letter, No. A-91-075, we advised:

> "On September 25, 1990, the United States District Court issued an order in *Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission* (1990) 747 F.Supp. 580 (*"SEIU"*), which invalidated portions of the Act added by Proposition 73 in June of 1988. These provisions included the fiscal year contribution limitations of the Act and the transfer ban of Section 85304. [Footnote omitted.]

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[5] *Service Employees International Union, et al. v. Fair Political Practices Commission* (1992) 955 F.2d 1312, cert. den. 112 S.Ct. 3056; See also, (1990) 747 F.Supp. 580; (1989) 721 F.Supp. 1172 (Referred to hereinafter collectively as *SEIU*).

> "However, the campaign bank account sections of Proposition 73 were not affected by the court's decision. (Sections 85200 - 85202.) Section 85201 provides that all contributions or loans made to a candidate, or to the candidate's controlled committee shall be deposited in a single campaign bank account. The Commission has interpreted this to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each campaign. [Footnote and Citations omitted.]
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> "In light of the changes caused by the federal court order, on January 14, 1991, the Commission began advising that a candidate may redesignate a campaign committee and campaign bank account established after January 1, 1989, for reelection to the same office at a future date. Thus, the 1990-campaign bank account and campaign committee of Attorney General Lungren may both be redesignated for the 1994 election. This would be accomplished by filing a candidate intention statement (Form 501) for the future election, and by amending the campaign bank account statement (Form 502) and statement of organization (Form 410). This is true even if the committee and account have campaign funds and/or outstanding debts from the previous election.
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> "According to his facts, the Attorney General has two campaign bank accounts and only one campaign committee and one identification number. Consistent with the modified advice we are now providing, the Attorney General should transfer his funds into his 1994 account, terminate the 1990 account and amend his statement of organization to reflect that the committee and existing identification number are for the 1994 election, or delete reference to a year of election from the statement of organization entirely."

Finally, in 1991, Commission staff reconsidered the remaining impact of the "trust" provision of the Act. (*Dorman* Advice Letter, No. I-91-253.) In that letter we stated:

> "This advice supersedes previous Fair Political Practices Commission advice...under the trust provision found in former Section 85202, now Section 89510, we previously advised that a candidate for office could expend campaign funds only for a political purpose clearly related to his or her quest for that particular office. [Citation.] Because the ruling in the SEIU case permitted candidates to transfer funds freely, without reference to the particular office sought, we are no longer interpreting the trust provision as previously done.... [S]o long as there is a reasonable relationship between the transfer of campaign funds and a political purpose, the expenditure is permitted."

However, a single bank account for each election is still required. For example, in 1999 we advised the Oakland City Attorneys' Office that the officeholder account provisions of the Oakland ordinance conflicted with requirements of state law because the Oakland ordinance permitted candidates to set up a campaign committee and account, and a separate officeholder account and legal defense fund account in connection with the same election. We advised "the one bank account rule is currently interpreted to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each specific election. Thus, despite the one bank account rule, a candidate may have numerous bank accounts/committees simultaneously open if the candidate keeps a bank account/committee from a previous election open and establishes bank accounts/committees for future elections." (*Hicks* Advice Letter, No. I-99-120.)

In November 2000, Proposition 34 further amended the "trust" provision to its present form which ties the use of the funds to purposes set forth in Chapter 5 of the Act. However, since the passage of Proposition 34, several new issues involving the "one-bank-account" rule have arisen. The purpose of this memo is to identify these issues and to seek guidance from the Commission to aid staff in drafting appropriate regulatory language, if it is deemed changes are necessary.

Analysis and Discussion

1. Officeholder Expenses and the "One-Bank-Account" Rule.

An initial question in the consideration of the "one bank account" rule is whether the rule has become unnecessary in light of Proposition 34's Section 85317. As noted in the background section, the "one bank account" rule was premised on the idea that all contributions or loans made to a candidate, or to the candidate's controlled committee, had to be deposited in a single campaign bank account, and that all campaign expenditures had to be made from that campaign bank account. Moreover, the "trust" provision provided that contributions deposited into the campaign account must be used only for expenses associated with the election of the candidate to the specific office which the candidate intended to seek or expenses associated with holding that office.

When Proposition 73 was enacted in 1988 prohibiting separate officeholder accounts, officials began to maintain old campaign committees from prior elections to use those committees and funds for "officeholder" purposes. Since these old campaign committees were attached to a prior election, they were permissible under the "one-bank-account" rule.

However, issues arose as to whether given expenditures were related to the future campaign or were related to holding office after being elected by virtue of a prior campaign. If a contributor could contribute to both the new campaign account and the old campaign account, then both contributions could be used simultaneously to benefit the candidate's future election. For example:

Example: It is 1991. Assemblymember Jones was elected in 1990. He will run for reelection in 1992. Thus, his 1992 campaign bank account is his campaign bank account for election to a future term of office. Alternatively, his 1990 campaign bank account was his campaign bank account established for election to his incumbent term of office in 1990.

- *Incumbent Account: This account is not being used for any future election. The assembly member may use the funds in the account to pay outstanding debts from the 1990 election. He may also use the funds in the account to pay for the expenses associated with his incumbency resulting from the 1990 election. Based on Regulation 18525, he <u>may not</u> use these funds for any costs of the 1992 election campaign.* (See, April 18, 1989 Commission Memorandum: Adoption of Regulation 18525, supra.)

- *Campaign bank account for election to a future term of office: This account may be used for costs associated with his 1992 election campaign.*

Regulation 18525 was enacted to deal with the problem of "mixed purpose" expenditures. Subdivision (a) specifies the expenses for which campaign funds from the campaign account for election to a future office *must* be used. Subdivision (b) provides for the use of funds for mixed purposes; from either the officeholder's campaign account established for the election to his or her current office, or from a campaign bank account established for a future election:

> "(a) An incumbent elected officer shall make expenditures for the following campaign expenses from the appropriate campaign bank account for election to a future term of office:
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> "(1) Payments for fundraising and campaign strategy expenses for election to a future term of office.
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> "(2) Payments for mass mailings, political advertising, opinion polls or surveys, and other communications in connection with election to a future term of office. For purposes of this section, a mass mailing, political advertisement, opinion poll or survey, or other communication shall be considered "in connection with election to a future term of office" if it makes reference to the officer's future election or status as a candidate for a future term of office, or if it is made by an incumbent officer within 3 months prior to an election for which he or she has filed any of the following:
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> "(A) A statement of intention to be a candidate for a specific office, pursuant to Government Code Section 85200.

"(B) A declaration of candidacy or nomination papers, as specified in Chapter 1 (commencing with Section 8000) of Division 8 of the Elections Code.

"(C) Any other documents necessary to be listed on the ballot as a candidate for any state or local office.

"(3) Payments for services and actual expenses of political consultants, the campaign treasurer and other campaign staff, pollsters and other persons providing services directly in connection with a future election.

"(4) Payments for voter registration and get-out-the-vote drives.

"(b) An incumbent elected officer may make expenditures for purposes not enumerated in subdivision (a) from either the campaign bank account established pursuant to Government Code Section 85201 for election to the incumbent term of office or from a campaign bank account established pursuant to Government Code Section 85201 for election to a future term of office. This section shall not be construed to permit an incumbent elected officer to make expenditures from any campaign bank account for expenses other than those associated with his or her election to the specific office for which the account was established and expenses associated with holding that office."

Same example as above, Assemblymember Jones was elected in 1990. He will run for reelection in 1992. Thus, his 1992 campaign bank account is his campaign bank account for election to a future term of office. Alternatively, his 1990 campaign bank account was his campaign bank account established for election to his incumbent term of office. Thus, paying for a campaign advertisement related to the 1992 campaign must come from the 1992 account (subdivision (a) above). Payment for legislative office staff is considered an "officeholder" expense and must be paid from the 1990 account.

However, if the assembly member wanted to send a mass mailing four months prior to the 1992 election trumpeting his accomplishments in office, under subdivision (b), it is considered a mixed purpose expenditure that can be paid out of either campaign bank account. In other words, rather than creating a laundry list of expenses that solely relate to future campaigns, and those that do not, the Commission chose to identify what purely is a campaign expense. The rest of the expenses were of mixed purpose and could be paid from either account. (See, April 18, 1989 Commission Memorandum: Adoption of Regulation 18525, supra.)

However, Section 85317 of Proposition 34 allows the use of funds raised in connection with the election of a candidate to office, for reelection to that same office after that date without attribution. Section 85317 provides: "Notwithstanding subdivision (a) of Section 85306, a candidate for state elective office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office." The scope of this section is unclear and yet has wide-ranging effects. For example:

- If the Commission takes an expansive view of Section 85317, such that it applies to every campaign for reelection to the same elective office, the need to distinguish "campaign" expenses and "officeholder" expenses may be unnecessary. Candidates will simply transfer campaign funds forward without limitation or attribution. Under this scenario, Regulation 18525 may need to be amended or repealed since the separate campaign bank account concept in this context becomes meaningless. However, the placement of Section 85317 seems to argue against this interpretation. Were the section intended to be a broad exception to the transfer rule in Section 85306, it would most probably have been placed in that section.

- Another approach might be to construe the statute to apply to funds "carried over" from a committee in existence prior to the effective date of Proposition 34. This was the understood meaning of the term "carryover" after the passage of Proposition 208 where the initiative drafters failed to account for "old" funds and the Commission dealt with this "carryover" issue in the context of a regulation. (See, e.g., Proposition 208 Regulation 18530.1; *Grindle* Advice Letter, No. I-97-083; *Craven* Advice Letter, No. A-97-373; *Mathys* Advice Letter, No. A-97-062; *Webb* Advice Letter, No. A-96-321; *Johnson*, Advice Letter, No. A-96-316.)

  Staff would not interpret Section 85317 to limit the ability of the Commission to require a new committee and bank account, and require a formal transfer of the funds to the future election account even in this limited context.

- A third approach might be to construe the statute to apply to funds "carried over" from a primary election committee to a general election committee. This may be what was intended by the phrase "subsequent election for the same elective state office." While not determinative, the drafters have stated that this was the intent of the provision.

Staff is requesting no Commission action on this issue at this time. Staff simply brings this issue to the attention of the Commission. It should be noted that the issue may be further impacted by consideration of other Proposition 34 regulations on this agenda and in future agendas. In addition, the Commission may wish to consider whether further regulatory action specifically addressed to this area is necessary. For example, Regulation 18525 may require amendment or repeal.

2. Redesignation Issues

The issue of "redesignation" of committees and/or campaign bank accounts is not an issue of multiple committees for the same election, but rather a question of the procedure to be used to establish a committee for a new election to the *same* office.

The logic supporting redesignation appears to be that since Section 85201 and Regulation 18521 continued to require a separate campaign bank account for each election to a specific office, and since the ban on intra-candidate transfers was invalidated and the "trust" provision diminished in *SEIU*, redesignation simply allowed the candidate to avoid the procedural steps of opening a new committee and a new bank account and having to transfer funds from the old committee to the new committee (with attendant committee and bank account number changes). Rather, the candidate could leave the funds where they were and simply "redesignate" the existing committee and bank account for the new election. This way, by simply amending the campaign bank account statement and the statement of organization, the candidate could avoid having to physically move the funds, and could proceed with his or her campaign for the next election for the same office.

According to the Commission's campaign reporting manual,[6] redesignation of a campaign committee for an election to a different office has been permitted only if all of the following criteria are met:

> "-- The bank account established for the previous office is closed;
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> "-- The remaining funds are transferred to the new campaign bank account established for the future election;
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> "-- The committee's Form 410 is amended to indicate the new office being sought; and
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> "-- There are no debts owed by or to the committee from the previous election."

Redesignation of a campaign committee with debt for an election to the same office is permitted. (*Bertheau* Advice Letter, No. I-97-245.)

In May of 2001, in the staff memorandum on "Proposition 34 Campaign Disclosure Issues," the benefits of rejecting the "redesignation" rule in light of the Proposition 34 amendments was discussed. The memorandum stated:

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[6] Information Manual A: Campaign Provisions of the Political Reform Act for: Elected State and Local Officers (including Judges) and the Controlled Campaign Committees; Candidates for State and Local Elective Offices and their Controlled Campaign Committees (excluding Controlled Ballot Measure Committees).

> "For purposes of providing the clearest picture of a candidate's compliance with the contribution limits and, if accepted, the voluntary expenditure ceilings, it may be desirable to prohibit redesignation and require state candidates to establish a separate bank account and committee for the primary election and a separate bank account and committee for the general election. This also would allow tracking of a candidate's outstanding debt and how much is being collected after the election to pay debt. Although sections 85200 and 85201 would allow separate accounts and committees for each election year (primary and general elections combined), staff has advised in the past that under the 'specific office' language in section 85200, one account and committee should be used for state primary and general elections.
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> "In light of the passage of Proposition 34, to fully implement the contribution limits and expenditure ceilings, the Commission may want to reconsider the current interpretation of sections 85200 and 85201. We have contacted other jurisdictions with contribution limits and/or expenditure ceilings, including Missouri, New Hampshire, New Jersey, New York, North Carolina, and Ohio, as well as the Federal Election Commission and the City of Los Angeles. Only Los Angeles requires a separate account and committee for each election."

In contrast, in "working group" meetings held with the interested public concerning revisions to the campaign disclosure forms resulting from the enactment of Proposition 34, individuals representing the regulated community, as well as Franchise Tax Board auditors, opposed the idea of requiring separate accounts and committees. They believed that more accounts and committees would result in confusion and errors on the part of filers (e.g., money would be deposited in the wrong account, expenditures would be made from the wrong account, checks that have more than one purpose would have to be transferred from one account to another, etc.). In addition, because candidates must file their electronic reports through approved software vendors, who charge from $50 per filing to $10,000 per year, requiring multiple committees and/or reports could be very costly.

Staff Recommendation

Staff recommends that candidates be required to open new bank accounts and controlled committees for each election, regardless of whether the candidate is running for reelection to the same office or not. Proposition 34 is organized entirely around a "per election" scheme. Therefore, requiring a separate account and controlled committee per election will harmonize with the overall scheme of Proposition 34, and the other regulations being drafted to implement Proposition 34.

Although the candidates will be required to formalize the process (creating a new bank account and committee for each election and closing the old one rather than going through the fiction of "redesignating" the old account), the actual changes required to implement the new procedure will be minor. There will be minor changes required to the form instructions, and instead of amending the Form 410, candidates will file a new one for the new committee, and will obtain a new identification number. They will have to file separate reports for each open committee, which may encourage candidates to close out old committees in a more timely fashion.

Further, while the "trust" provision no longer serves as a basis to limit movement of funds between a candidate's own campaign accounts, requiring separate committees and formal transfer of funds effectuates the "one-bank-account" rule and serves to assist in the enforcement of the new Proposition 34 "per election" contribution limits. (See, Section 83112.) Of course taking this approach will require a new look at Regulation 18525 to determine if modification is necessary. However, when viewed in light of its history, Regulation 18525 may continue to be useful as written so that it avoids "trying to categorize every expense as exclusively campaign-related or officeholder-related."

Staff will also review and make recommendations regarding when the new regulations requiring new committees and accounts should become applicable, and whether these regulations should be applicable to candidates in local elections.

Conversely, if the Commission decides that the "redesignation" rule should continue, staff would recommend two actions: (1) adoption of a regulation codifying this rule; and, (2) consideration of the need for a prohibition in that regulation against redesignation in any case where the committee to be redesignated has outstanding debt. Redesignation of campaign bank accounts and committees where the committee may have campaign debt is even more problematic than in other contexts. In addition to compliance with the contribution limits (as required by Section 85316), in the case of committees with debt, there also must be compliance with the "fundraising cap" of Section 85316. Further, should the Commission determine that Section 85316 limits the use of the campaign funds raised under the "fundraising cap" solely to the payment of campaign debt, *the use* of these funds may also have to be monitored to assure compliance with the statute. All of these additional considerations argue strongly for the rejection of a redesignation rule in the context of campaign debt, whether redesignation is allowed in other contexts or not.

3. General vs. Primary Elections

Section 85318 states:

> "A candidate for state elective office may raise contributions for a general election prior to the primary election for the same elective state office if the candidate set [sic] aside these contributions and uses these contributions for the general election. If the candidate for state elective office is defeated in the primary election or

> otherwise withdraws from the general election, the general election funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election contributions."

Section 82022 provides:

> " 'Election' means any primary, general, special or recall election held in this state. *The primary and general or special elections are separate elections for purposes of this title.*" (emphasis added)

Proposition 34 imposes separate contribution limits for the primary and general elections (sections 85301 and 85302),[7] although Section 85318 allows a candidate to simultaneously raise contributions for both the primary and general elections. In this case, although they are for the same office, the primary and the general elections are treated as two different elections, and two different contributions are permitted from each contributor. Sections 85318 and 82022 add complexity to the issues discussed above in the context of primary and general elections.

There are different arguments for and against requiring separate committees and accounts in this context.

Arguments for and Against Requiring Separate Committees and Accounts for Primary and General Elections

Arguments for Separate Committees and Accounts:

- While separate committees and accounts will result in additional transactions between accounts, it will encourage treasurers to account for each transaction at the time it occurs and will create a clear audit trail for purposes of determining compliance with the law.

- Separate accounts/committees require the maintenance of a separate account for each purpose, a clear audit trail of funds between accounts and public disclosure of the activity in each account. Each contribution will be deposited into the proper account and expenditures for that same purpose will be made from that account. The public will be able to determine for each type of account how much was raised, how much was spent and how much is on hand.

- If an alternative approach is adopted (i.e., allowing one bank account/committee for multiple purposes), compliance with Proposition 34's contribution limitations, expenditure ceilings, and post election fundraising rules may become a matter of bookkeeping entries which for the most part will not be disclosed on any public campaign statement. Failure to maintain proper bookkeeping entries would render an

[7] The same contribution limits apply separately to special and special runoff elections held to fill a vacant elective office. (Section 85314.)

account meaningless in terms of determining compliance and may make transactions difficult, if not impossible, to recreate.

Arguments Against Separate Committees and Accounts: At working group meetings, individuals representing the regulated community expressed concern about requiring separate accounts and committees for the general and primary elections. In addition, questions have been raised about whether there is a need for separate primary and general committees. Because candidates can collect for both the primary and general elections at the same time--and use primary funds for the general--requiring separate primary and general accounts/committees may cause confusion and result in a high number of errors. It will also raise many issues with respect to which bank account must be used to pay for which campaign expenses such as goods and services. For example, will the general election committee be required to purchase signs, office supplies, computers, and other equipment from the primary committee?

Both positions can be argued convincingly. However, neither is mandated by the statute. Ultimately, the decision must turn on whether the benefits of such a rule outweigh the burden on the regulated public. Staff has identified three approaches that the Commission may wish to consider:

a) ***Require*** a separate account/committee for the primary and a separate account/committee for the general elections.

b) ***Permit*** a separate account/committee for the primary and a separate account/committee for the general elections, or the same account/committee at the discretion of the candidate.

c) Require the same primary and general election accounts for each election, but require separate accounts and committees for each election year.

However, because the treatment of primary and general elections to the same elective office and term raises unique issues that are not apparent in the discussion of redesignation generally, we would recommend that the Commission instruct staff to hold additional working group meetings on this issue.

4. Legal Defense Funds

Section 85304 states, in pertinent part:

> "(a) A candidate for elective state office or an elected state officer may establish *a separate account* to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities

> and duties. These funds may be used only to defray those attorney fees and other related legal costs."

Section 85304 appears to conflict with the existing "one-bank-account" rule. However, the express terms of the section allow the formation of a separate committee and the collection of separate funds not bound by Proposition 34's contribution or expenditure limits. "It is well settled ... that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577; *Rose v. State of California* (1942) 19 Cal.2d 713, 723-724.)

Staff also believes that when this specific provision is viewed in light of the "one-bank-account" rule, the creation of the exceptions is consistent with the purposes of the Political Reform Act and Proposition 34. Section 85304(a) specifically states that "[t]hese funds may be used only to defray those attorney fees and other related legal costs." In other words, their use is expressly limited to purposes *not* included in Chapter 5 of the Act (i.e. they may *not* be used for campaign related activity). Therefore, Section 89510(b) does not present any obstacle to a separate account for Legal Defense Funds separate from the single campaign bank account.

Staff Recommendation: The Commission is currently considering this issue in the context of Regulation 18530.4, also on this Commission Meeting agenda. However, based on this rule of statutory construction, staff believes that the Commission may properly allow separate committees for legal defense funds. Staff would request that the Commission decide this issue related to legal defense funds in the context of Regulation 18530.4 and authorize staff to make the appropriate revisions to the regulations interpreting the one bank account rule (Regulations 18521, 18523, 18523.1, 18524, 18525, 18526) to reflect the statutory exceptions to this rule in whatever form the Commission decides.