

UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

July 9, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 10:05 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Item #1. Approval of the Minutes of the June 8, 2001 Commission Meeting.

The minutes of the June 8, 2001 Commission meeting were distributed to the Commission and made available to the public. Commissioner Swanson motioned that the minutes be approved. Commissioner Knox seconded the motion. There being no objection the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Item #3. In re Olson Opinion Request, FPPC No. O-01-112.

Commission Counsel Scott Tocher presented the draft opinion which memorializes the Commission's decision at the June 8, 2001 meeting that certain Los Angeles city ordinances regarding reporting requirements for statewide committees are preempted by §§ 81009.5 and 85312 of the Political Reform Act (Act).

Anthony S. Alperin, of the city of Los Angeles (LA) stated that the Commission should not consider the opinion request by the political parties because the issues should be resolved through the courts. He suggested that the Commission not issue an opinion on this case because the request is outside the scope of the Commission's authority.

Commissioner Downey stated that Mr. Alperin had an appealing argument that the opinion request was not in respect to an affirmative duty of the political parties, but asked Mr. Alperin whether the PRA excuses a duty imposed by a third party governmental agency.

Mr. Alperin responded that the Act authorizes someone to seek an opinion with regard to that person's duties under the Act, and not with regard to that person's duties under some other law enacted by some other governmental unit. There is no duty under the Act that

independent expenditures would have been reported on the same 24-hour basis. The parties that are now complaining had filed those reports, and there was a high level of compliance in the past.

Mr. Alperin stated that there was no way state legislation could have been adopted prior to their election.

Chairman Getman understood that SB 34 would once again make the payments contributions or independent expenditures and suggested that staff clarify the issue before a decision on supporting the legislation is made. She believed that a voluntary compliance regime pending resolution through the legislature could have been an alternative approach.

Chairman Getman clarified that the votes of the Commission listed on page 12 of the draft opinion were the votes taken at the last meeting and would be updated to reflect the vote that would be taken when the Commission makes its final decision. In response to a request by Mr. Alperin, Chairman Getman requested that the words in the first paragraph on page 3 of the draft opinion "and independent expenditures on behalf of" be struck from the opinion because they were in error.

Commissioner Downey motioned that the Commission adopt the draft opinion with the indicted change. Commissioner Knox seconded the motion. The motion carried by a vote of 4-0.

Item #7. Proposition 34 Regulations: Policy Issues Associated with the Interpretation of Single Bank Account Rule.

Senior Commission Counsel John Wallace explained that the staff memorandum dealt with the "one bank account" rule created by Proposition 73. Proposition 34 did not repeal this section, but staff has found that this rule may be impacted by other regulations under consideration as a result of Proposition 34. As an example, the question of whether separate bank accounts should be used for primary and general elections would be affected by the "one bank account" rule. Some of the issues presented in the staff memorandum were interlinked with items on the July agenda.

Mr. Wallace explained that § 85317 allows contributions to be carried over without attribution of contributions to specific contributors. If the Commission decides to construe this section broadly, allowing carryover without attribution in every campaign for re-election, it would result in contributors being able to contribute twice to the same election. It would also render irrelevant regulation 18525, which limits expenditures for certain purposes out of certain campaign committees. It would also predetermine the redesignation of campaign bank accounts.

Mr. Wallace requested guidance from the Commission regarding the carryover provision of § 85317. He suggested that staff either prepare specific regulatory language for the

next Commission meeting or prepare different optional interpretations in draft language for consideration at the next meeting.

In response to a question, Mr. Wallace stated that § 85306 also dealt with funds on hand as of December 31, 2001.

Ms. Menchaca clarified that § 85306 provides that funds on hand as of January 1, 2001 may be used to seek elective office without attributing funds to specific contributors.

Mr. Wallace agreed that it would be fair to consider § 85306 a second carryover section. He noted that the Commission could consider it to be a carryover provision in every case where someone is seeking reelection.

Chairman Getman responded that, if the Commission determined that it was appropriate to carry over from one term to another, it might be too broad because there would be no application of the transfer rules and no ability to implement the contribution limits. Carrying over from primary to general might make sense but there are separate contribution limits for both and carrying over without attribution would undo the separate contribution limits.

Mr. Wallace noted that staff was attempting to determine what the statute intended to do. Staff's interpretation and recommendation was intended to do the least damage to the existing system of Proposition 34. He explained that there was nothing in the ballot pamphlet providing guidance to this section.

Chairman Getman stated that the Commission is working toward the concept that Proposition 34 is organized around elections. In that sense, there would be a starting point and an ending point to a committee and to an election. She questioned how the Commission would determine when and under what circumstances carryover would occur.

Mr. Wallace responded that the carryover issue was somewhat interlinked with § 85316 and that if a committee had debt they could raise up to the net debt, but once the election was over there would be no more fundraising under the old committee. The carryover provisions would only be applicable where there was no debt.

Chairman Getman noted that there have been objections to the Commission's initial decision that § 85316 not apply to elections prior to Proposition 34 because there was no regulation requiring that a committee be closed. She suggested that staff work on a regulation forcing closure of a committee, and that if a committee has outstanding debt those debts must be either paid or written off. In that way the committee cannot be allowed to continue in existence and be used as a fundraising vehicle once the election cycle has been completed.

Ms. Menchaca explained that § 84214 deals with termination of committees and gives the Commission flexibility to explore regulations requiring that committees be closed.

Mr. Wallace pointed out that if most of the statutes in Proposition 34 are not considered to be applicable to preexisting committees, requiring that committees be closed would help in the interpretation and application of those statutes.

Chairman Getman agreed. Closing out the backlog of committees could eliminate many of the difficulties.

Commissioner Swanson expressed her concern that the portion of the redesignation issue that requires that the bank accounts established to a previous office be closed and other requirements under Proposition 34 have been driving the Commission to make decisions through the back door.

Mr. Wallace agreed, explaining that the Commission was attempting to meld Proposition 73 provisions with the Proposition 34 provisions, and the two provisions do not fit together perfectly. If the Commission wanted to change the "one bank account" rule, they could pursue legislation, or to try to harmonize and construe it with Proposition 34. He believed that there may be a way to do it by regulation.

Chairman Getman suggested that the Commission allow one committee and one bank account per election, and when a new election is started, the previous committee and bank account be closed.

Ms. Menchaca thought it could be done, but that it might require changing some of the language in regulation 18525.

Mr. Wallace noted that it would mean that redesignation of campaign bank accounts would not be allowed for future reelections to the same office. To an extent the redesignation issue overlaps with the issue of carryover. He explained that staff believed that redesignation is problematic and would support its elimination. He pointed out that interested persons had voiced some opposition to eliminating redesignation because of the costs involved with opening new committees as well as the potential errors that could occur when transferring the funds back and forth.

Chuck Bell, of Bell, McAndrews, Hiltack and Davidian, supported seeking a legislative rationalization of the old statutes and Proposition 34. He stated that the "one bank account" rule should be reconsidered because it had posed a lot of problems. He believed that the drafters of Proposition 34 were trying to move the Commission away from looking too closely at carryover and transfer rules and how they might impact contributions that had been received by a committee either prior to Proposition 34 effective dates or between a primary and general election. They wanted to avoid attributing to a contributor to a previous election a contribution that consists of funds carried forward because, as addressed in § 85317, it was irrelevant. The relevant limit was the contribution for the general election.

Mr. Bell stated that the federal election system has worked well without requiring termination of committees after the primary election and would oppose such a scheme here. He believed that the enforcement objectives can be handled with requiring that the committees be terminated. He noted that § 85317 suggested that the drafters of Proposition 34 would have agreed with him.

In response to a question, Mr. Bell stated that the biggest problem with closing down committees was dealing with outstanding debt. He noted that the FEC has not solved the problem very well when they began using a debt settlement process. That process requires that the committee request a formal statement from the creditors acknowledging that they would agree to retire the debt. He noted that a committee that has debt does not always have the funds and resources to try and settle the debt. He agreed that resolving the debt issue was the only reason to keep the committees open.

Mr. Bell noted that the "one bank account" rule under Proposition 73 was really a "two bank account" rule, because sometimes committees had officeholding accounts. Those accounts allowed caucus fundraising efforts, active campaigning for other candidates, and a variety of things that would not necessarily be considered officeholding expenses.

In response to a question, Mr. Wallace stated that requiring candidates to close out the committees would not circumvent the public's access to information, unless the records were not retained as long.

Commissioner Swanson requested that staff explore the question to ensure that the public's access to the information not be inadvertently inhibited.

Technical Assistance Division Chief Carla Wardlow agreed that the reporting goes on as long as the candidate is raising or spending any money. If the accounts and committees are required to be closed the committees would no longer be able to raise or spend money to pay off the debt.

Chairman Getman stated that fundraising to pay debt should be done within a certain amount of time after an election, but not extending far into the future. Committees should decide whether they are going to pay off the debt. She noted that different contribution limits that apply to different elections make it necessary to phase out the old system within a reasonable amount of time.

Mr. Wallace agreed that closing out the pre-Proposition 34 committees would resolve a lot of the issues that have arisen with the interpretation of Proposition 34.

The Commissioners were in agreement that staff should explore the concept of closing out the committees.

Mr. Wallace stated that they would have language ready by the August meeting and would provide as many options as possible in the text.

Chairman Getman suggested that staff hold at least one interested persons meeting before the Commission considers the options to discern what practical issues might arise. She noted that if a committee had a legitimate debt and there was a dispute with the creditors, there must be a way to resolve that dispute.

Ms. Menchaca, in response to a question, noted that the issue is time-sensitive in the sense that staff was requesting that the Commission make decisions pertaining to other sections which overlap this issue. She asked that staff work on this issue in conjunction with prenotice discussion of other regulations. Ms. Menchaca agreed that an interested persons meeting would be very useful.

Chairman Getman asked the Commissioners if they were comfortable with exploring the possibility of eliminating redesignating committees and requiring new committees for each election cycle.

There was no objection from the commission.

Mr. Wallace suggested that staff prepare language for consideration at the August commission meeting, with a possible emergency adoption in September, 2001.

Chairman Getman noted that it would allow ample opportunity for public input of any practical problems with the concept. She requested that staff present both the pros and cons of the concept, and asked that they interpret § 85317 to give the Commission a sense of what it is supposed to mean.

In response to a question, Mr. Wallace stated that the issue of having separate accounts for the primary and general elections raises different issues than the redesignation of committees, and believed that it should be treated separately. Staff believed that it could be dealt with after the separate bank account issues had been dealt with.

In response to a question, Mr. Wallace stated that the Franchise Tax Board would be included in the discussions because of their opposition to separate committees.

Chairman Getman clarified that there was a concern from the public that the more committees and accounts there are, the more possibilities for errors exist, especially going from a primary to a general election.

Commissioner Swanson requested that staff present both the advantages and disadvantages, noting her concern that closing out committees should not become a means to "cover your tracks".

The Commission adjourned for a break at 11:38 a.m.

The Commission meeting reconvened at 12:05 p.m.