

1 The Committee and Osborn had a duty to deposit funds into the correct account (committee bank
2 accounts “all purpose” and “restricted use”) in order to avoid receiving contributions over the
3 contribution limits for candidate support. The Committee and Osborn violated the Act’s requirements by
4 failing to deposit contributions received into the correct account. The Act also requires committees to
5 timely file a 24-Hour Report to disclose late contributions received and late contributions made. The
6 Committee and Osborn violated the Act by failing to timely file these reports for late contributions.

7 **SUMMARY OF THE LAW**

8 All legal references and discussions of law pertain to the Act’s provisions as they existed at the
9 time of the applicable violations.

10 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

11 When enacting the Political Reform Act, the people of the state of California found and declared
12 that previous laws regulating political practices suffered from inadequate enforcement by state and local
13 authorities.² To that end, the Act must be liberally construed to achieve its purposes.³ A purpose of the
14 Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁴

15 Another express purpose of the Act is to ensure that receipts and expenditures in election
16 campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices
17 may be inhibited.⁵ The Act, therefore, establishes a campaign reporting system designed to accomplish
18 this purpose of disclosure.

19 “Restricted” and “All Purpose” Use Bank Accounts

20 The Act contains the state contribution limits for committees active in state candidate elections.
21 Section 85303 provides, in part:

22 “(b) A person may not make to any political party committee, and a political party committee
23 may not accept, any contribution totaling more than twenty-five thousand dollars (\$25,000) per calendar
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26 ² § 81001, subd. (h).

³ § 81003.

⁴ § 81002, subd. (f).

⁵ § 81002, subd. (a).

1 year for the purpose of making contributions for the support or defeat of candidates for elective state
2 office. ...

3 “(c) Except as provided in Section 85310, nothing in this chapter shall limit a person’s
4 contributions to a committee or political party committee provided the contributions are used for purposes
5 other than making contributions to candidates for elective state office. ...”

6 The contribution limit set forth in Section 85303, subdivision (b), above is subject to cost-of-
7 living adjustments and at the time of this violation was \$34,000 for the political party committee limit.
8 “Elective state office” is defined as the office of Governor, Lieutenant Governor, Attorney General,
9 Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction,
10 Members of the Legislature, members elected to the Board of Administration of the Public Employees’
11 Retirement System, members elected to the Teachers’ Retirement Board, and members of the State Board
12 of Equalization.⁵

13 To implement the contribution limits and provide for committees to track the receipt of their
14 limited versus unlimited contributions, the Fair Political Practices Commission (“Commission”) adopted
15 a regulation in 2007 requiring some committees to designate and maintain separate bank accounts to keep
16 the limited and unlimited funds separate.⁶ These rules apply to political party committees as they are
17 subject to the limits of Section 85303, subdivision (b), and qualify as state general purpose committees.⁷
18 Regulation 18534 requires contributions made to committees for the purpose of making contributions to
19 candidates for elective state office, which are subject to limits, to be kept in an separate account
20 designated as “all purpose.” These funds may be used for any legitimate purpose, including making
21 contributions to candidates for elective state office. Contributions a committee receives in excess of the
22 contribution limits must be deposited into a “restricted use” account. These funds may be used for any
23 legitimate purpose *except* to make contributions to candidates for elective state office.

24 The regulation states that contributions received in excess of the limits must be returned, split
25 between accounts, or deposited into the “restricted use” account. Within 14 days from the date the

26 ⁶ Regulation 18534.

27 ⁷ Section 82027.5, subdivision (b).

1 contribution is received, a committee is permitted to transfer funds within limits from the “restricted use”
2 account to the “all purpose” account.⁸ Any other transfers to “all purpose” from “restricted use” accounts
3 are prohibited.⁹

4 Funds from a “restricted use” account may not be used to make contributions to candidates for
5 elective state office, or to make contributions to other committees for the purpose of making contributions
6 to candidates for elective state office.¹⁰ These funds may be used for any other legitimate purpose, such
7 as contributions to local California candidates, contributions to state and local ballot measure committees,
8 voter registration, and administrative costs.

9 Duty to File 24-Hour Contribution Reports

10 Each candidate or committee that makes or receives a late contribution must file a report
11 disclosing the contribution within 24 hours of making or receiving the contribution.¹¹ A “late
12 contribution” includes a contribution aggregating \$1,000 or more that is made to or received by a
13 primarily formed committee during the 90-day period preceding an election.¹²

14 Liability of Committee Treasurers

15 Under the Act, it is the duty of the treasurer of a political party committee to ensure that the
16 committee complies with all the requirements of the Act concerning the receipt, expenditure, and
17 reporting of funds.¹³ The treasurer may be held jointly and severally liable, along with the committee, for
18 violations committed by the committee.¹⁴

19 **SUMMARY OF THE FACTS**

20 The FTB audit revealed that the Committee committed several violations of the Act.
21 Contributions totaling \$604,550 received from 13 contributors and deposited into “all purpose” bank
22 accounts exceeded the \$34,000 calendar year limit by \$162,550.

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24 ⁸ Regulation 18534, subdivision (c).

25 ⁹ Regulation 18534, subdivision (e).

26 ¹⁰ Regulation 18534, subdivision (d).

27 ¹¹ Section 84203.

28 ¹² Section 82036.

¹³ Sections 81004, 84100 84213, and Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

1 In addition, 24-Hour Contribution Reports were not filed with the Secretary of State (“SOS”) for
2 14 contributions received on 7 dates, totaling \$1,946,900. In mitigation, 10 of these contributions totaling
3 \$1,942,250 were disclosed on Form 496 Late Independent Expenditure Reports that were filed within 24
4 hours. Reports also were timely filed for 753 other contributions received totaling \$20,333,979.

5 24-Hour Contribution Reports also were not timely filed with the SOS for 2 contributions made
6 on 2 dates, totaling \$255,000.

7 VIOLATIONS

8 COUNT 1: Failure to Deposit Contributions into the Permitted Campaign Bank Account

9 The Committee and Osborn failed to deposit contributions from 13 contributors into the correct
10 account causing the Committee to receive contributions over the limits for candidate support in the
11 amount of \$162,550, in violation of Section 85303 and Regulation 18534, subdivisions (b) and (c).

12 COUNT 2: Failure to Timely File 24-Hour Contribution Reports

13 The Committee and Osborn failed to timely file 9 24-Hour Contribution Reports after receiving
14 late contributions totaling approximately \$1,946,900 and making late contributions totaling
15 approximately \$255,000, in violation of Government Code Section 84203.

16 PROPOSED PENALTY

17 This matter consists of two counts of violating the Act, which carries a maximum administrative
18 penalty of \$5,000 per count.¹⁵

19 In determining the appropriate penalty for a particular violation of the Act, the Commission
20 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
21 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
22 circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d):
23 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3)
24 whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated
25 good faith in consulting with Commission staff; 5) whether there was a pattern of violations and whether

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27 ¹⁵ § 83116, subd. (c).

1 the violator has a prior record of violations of the Act or similar laws; and 6) whether, upon learning of
2 the violation, the violator voluntarily provided amendments to provide full disclosure.¹⁶

3 This case is a combination of campaign reporting and contribution limits enforcement. The
4 regulation was adopted by the Commission specifically to support the contribution limits of Section
5 85303. Because the contributions that a committee receives are limited in some cases and not limited in
6 others, it is important immediately upon receipt to segregate funds that are subject to limits from those
7 that are not. The way to avoid the commingling of limited and unlimited contributions received is the
8 segregation of funds for these different purposes. The commingling of these funds at any point would
9 make contribution limits virtually unenforceable because the source of funds expended from a
10 commingled account cannot readily be established.

11 *In the Matter of California Democratic Party and Katherine Moret*; FPPC No. 16/19635
12 (approved May 25, 2017), the Commission approved a penalty of \$3,500 against the CDP and Moret, as
13 the Committee’s treasurer, for failing to identify the committee bank account as “all purpose,” failing to
14 notify a recipient of contributions from which account the funds derived, and failing to deposit
15 contributions into the correct account, in violation of Government Code Section 85303 and Regulation
16 18534, subdivisions (b), (c) and (f) (1 count).

17 In aggravation, this Committee is also an extremely sophisticated party who should be held to the
18 highest standards. By depositing contributions from 13 contributors into the incorrect account, this caused
19 the Committee to receive contributions over the limits for candidate support in the amount of \$162,550.
20 The respondents explained that the excesses were due to funds being wired directly from the donor to
21 “all purpose” bank accounts, credit card contributions being processed into “all purpose” bank accounts,
22 and staff inadvertently switching the account numbers when splitting the funds between “all purpose”
23 and “restricted use” bank accounts. Respondents stated that the excess was transferred within days of
24 being discovered. Therefore, an administrative penalty \$3,500, comparable to the penalty issued in the
25 California Democratic Party case, is recommended for this violation.

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¹⁶ Reg. 18361.5, subd. (d).

1 As to the second count, the Committee and Osborn failed to timely file 9 24-Hour Contribution
2 Reports after receiving late contributions totaling approximately \$1,946,900 and making late
3 contributions totaling \$255,000.

4 The Commission also considers penalties in prior cases involving similar violations. Recent cases
5 with similar violations include:

6 *In the Matter of Bloom for Assembly 2014, Richard H. Bloom, and David L. Gould*; FPPC No.
7 16/456 (approved Jan. 18, 2018) the Commission approved a penalty of \$2,000 in Count 2 against the
8 respondents for failing to timely file five 24-hour reports totaling approximately \$15,420. Four of the
9 five reports were filed late, but prior to the election with the remaining one being filed after the election.
10 Respondents in Bloom reported \$10,020 of \$15,420 in late contributions prior to the election.

11 Respondents state that they believed to be complying with the disclosure requirements for most
12 of these contributions received since all but \$4,650 were reported on Form 496 Independent Expenditure
13 Reports filed electronically with the SOS. In addition, they state that the reports for the contributions
14 made to the Orange County Republican Central Committee were missed due to the large volume of
15 activity late in the cycle and the payments did not go through the regular protocol and thus were missed.
16 They state that they have since revised the protocol to include all spending.

17 In aggravation, an additional 24-Hour Independent Expenditure Report was not timely filed with
18 the SOS for a \$7,687 independent expenditure made on October 29, 2014, in support of a candidate for
19 California Assembly in the 2014 General Election. In mitigation, \$1,942,250 of the unreported
20 \$1,946,900 late contributions were disclosed on Form 496 Late Independent Expenditure Reports that
21 were filed within 24 hours. Reports also were timely filed for 753 other contributions received totaling
22 \$20,333,979.

23 Based on the foregoing and taking into account that the information was reported timely for the
24 majority of the contributions received on a different report but the \$255,000 in contributions made were
25 not, a higher penalty in the amount of \$3,000 is recommended for Count 2.

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, Respondent,
3 California Republican Party and Mike Osborn, hereby agree as follows:

4 1. Respondent violated the Act as described in the foregoing pages, which are a true and
5 accurate summary of the facts in this matter.

6 2. This Stipulation will be submitted for consideration by the Fair Political Practices
7 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

8 3. This Stipulation resolves all factual and legal issues raised in this matter—for the purpose
9 of reaching a final disposition without the necessity of holding an administrative hearing to determine
10 the liability of Respondent pursuant to Section 83116.

11 4. Respondents have consulted with their attorney, Ashlee Titus of Bell McAndrews &
12 Hiltachk, LLP, and understand, and hereby knowingly and voluntarily waive, any and all procedural
13 rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This
14 includes, but is not limited to the right to appear personally at any administrative hearing held in this
15 matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-examine all
16 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
17 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
18 reviewed.

19 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
20 Respondent agrees to the Commission imposing against him an administrative penalty in the amount of
21 \$6,500. One or more payments totaling said amount—to be paid to the General Fund of the State of
22 California—is/are submitted with this Stipulation as full payment of the administrative penalty described
23 above, and same shall be held by the State of California until the Commission issues its decision and
24 order regarding this matter.

25 6. If the Commission refuses to approve this Stipulation, this Stipulation shall become null
26 and void, and within fifteen business days after the Commission meeting at which the Stipulation is
27 rejected, all payments tendered by Respondent in connection with this Stipulation shall be reimbursed to
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1 Respondent. If this Stipulation is not approved by the Commission, and if a full evidentiary hearing
2 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
3 Director, shall be disqualified because of prior consideration of this Stipulation.

4 7. The parties to this agreement may execute their respective signature pages separately. A
5 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
6 or as a PDF email attachment is as effective and binding as the original.

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8 Dated: _____
9 Galena West, Chief, on behalf of the Enforcement Division
10 Fair Political Practices Commission

11 Dated: _____
12 Mike Osborn, Respondent, individually and on behalf of the
13 California Republican Party

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15 The foregoing Stipulation of the parties "In the Matter of California Republican Party and Mike
16 Osborn," FPPC Case No. 2017-01378 is hereby accepted as the final decision and order of the Fair
17 Political Practices Commission, effective upon execution below by the Chair.

18 IT IS SO ORDERED.

19 Dated: _____
20 Alice T. Germond, Chair
21 Fair Political Practices Commission