

Memorandum

To : Mr. Jim Tucker
Chief of Staff to Honorable Johan Klehs

Date: January 13, 1997

From : Timothy W. Boyer *Timothy W. Boyer*
Chief Counsel

Subject: **CONTRIBUTION DISCLOSURE OPINION 97-2**
Payments received by elected officeholders for officeholder purposes pursuant to new Government Code section 85313 are considered "contributions" pursuant to the definition of "contribution" in the Political Reform Act. Since the prohibition in Government Code section 15626 is based on the Political Reform Act definition of "contribution," such payments are also considered "contributions" for purposes of section 15626.

Question

You have asked whether payments received for officeholder purposes under new Government Code section 85313¹ are considered "contributions" for purposes of the contribution disclosure and disqualification requirement in section 15626.

Conclusion

Section 15626 uses the definition of "contribution" set forth in the Political Reform Act (PRA), in section 82015. This definition, as construed by the Fair Political Practices Commission (FPPC), includes payments for officeholder expenses set forth in section 85313.

Analysis

Section 15626(h)(1) provides that "contribution" has the same meaning prescribed in the PRA, in section 82015. Section 82015 broadly defines "contribution" as "any payment . . . unless it is clear from the surrounding circumstances that it is not made for political purposes." Regulation 18215 further provides that a payment is made for political purposes if it is received by or made at the behest of a candidate.

¹ All code references are to the Government Code unless otherwise indicated. All regulations are in Title 2, Division 6, of the California Code of Regulations.

Members of the State Board of Equalization who receive and accept contributions are considered candidates as the term is defined in section 82007. Section 82007 also provides that an individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated. An individual may terminate his or her status as a candidate only if the individual declares, under penalty of perjury, that he or she has ceased to receive contributions and make expenditures, and does not anticipate receiving contributions or making expenditures in the future; has eliminated all campaign loans, debts, and other obligations, or has declared that he or she has no intention or ability to discharge them; has no remaining surplus funds; and has filed all required campaign statements. (Regulation 18404.) Thus, historically, payments to officeholders for officeholder expenses were considered "contributions" as defined in section 82015. (See e.g., *Danner* Advice Letter, A-96-039; *In re Montoya* (1989) 12 FPPC Ops. 7, 11; *Thirteen Committee v. Weinreb* (1985) 168 Cal.App.3d 528.)

With the passage of Proposition 208 in the November 1996 election, section 85313 was enacted. Section 85313 provides:

"(a) Each elected officer may be permitted to establish one segregated officeholder expense fund for expenses elated to assisting, serving or communicating with constituents, or with carrying out the official duties of the elected officer, provided aggregate contributions to such to such a fund do not exceed \$10,000 within any calendar year and that the expenditures are not made in connection with any campaign for elective office or ballot measure.

"(b) No person shall make, and no elected officer or officeholder account shall solicit or accept from any person, a contribution or contributions to the officeholder account totaling more than \$250 during any calendar year. *Contributions to an officeholder account shall not be considered campaign contributions.*

* * *

"(d) All expenditures from, and contributions to, an officeholder account are subject to the campaign disclosure and reporting requirements of the Political Reform Act of 1974 as amended."

On January 8, 1997, the FPPC was contacted regarding its construction of this section. Currently, the FPPC views payments to officeholders for officeholder expenses as contributions under section 82015. The FPPC indicated that the language in section 85313 referred to the payments as contributions and that Proposition 208 did not redefine the term. Additionally, the last sentence in subdivision (b) of section 85313 is construed as distinguishing officeholder contributions from *campaign* contributions that are regulated in other portions of Proposition 208. Finally, it was noted that the question had not been asked of the FPPC before, since the answer would have little practical effect on the implementation of Proposition 208, and since the construction of section 15626 was not within the FPPC's jurisdiction.

If you have further questions regarding this matter we will be happy to discuss them with you. The staff persons assigned to this matter are Assistant Chief Counsel Mary C. Armstrong (324-5589) and Tax Counsel John Wallace (323-2481).

TWB:JWW:pf

cc: Honorable Ernest J. Dronenburg, Jr.
Honorable Johan Klehs
Honorable Dean F. Andal
Mr. John Chiang, Acting Member, 4th District
Honorable Kathleen Connell
Mr. E. L. Sorensen, Jr.
Mr. John Waraas
Ms. Mary C. Armstrong
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