



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

February 14, 2002

John G. Barisone, City Attorney  
City of Santa Cruz  
333 Church Street  
Santa Cruz, CA 95060

**Re: Your Request for Informal Assistance  
Our File No. I-01-201**

Dear Mr. Barisone:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Since your request is general in nature and does not seek advice regarding a specific public official, we are treating your request as one for informal assistance.<sup>2</sup>

### FACTS

Recently a group of city constituents, along with two council members, proposed revisions to the City of Santa Cruz voluntary campaign expenditure ordinance, which would introduce a campaign contribution limitation component to the ordinance. If adopted, the revisions would go into effect prior to the city's November 2002 general election. You are requesting informal assistance in determining whether the revised ordinance conflicts with provisions of the Act.

### ANALYSIS

The Commission is charged with interpreting and enforcing the provisions of the Act, and may provide advice only with respect to those provisions. (Section 83114.) While the interpretation of local ordinances is thus generally beyond the scope of Commission advice (see *Kunkel* Advice Letter, No. I-89-598; *Zundel* Advice Letter, No.

---

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code section 83114; 2 Cal. Code of Regs. Section 18329(c)(3), copy enclosed.)

I-94-111), the Act does contain several provisions regarding the *interaction* of such ordinances with the Act. (Sections 81009.5, 81013 and 85703.) This advice necessarily must be limited to the application of those sections. (*Gawron* Advice Letter, No. I-89-550.)

The Act grants local agencies the power to enact certain ordinances that govern the conduct of local elections. Section 81013 of the Act provides, in relevant part:

“Nothing in this title prevents . . . any . . . local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title.”

In addition, section 85703 provides:

“Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312.”

Section 85312, added by Proposition 34 and amended by Senate Bill 34 qualifies the Act’s definitions of contributions and expenditures, as follows:

“ . . . payments for communications . . . to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising . . . .”

Pursuant to Section 85703, local jurisdictions with ordinances that impose contribution limitations or prohibitions in connection with local elections must also provide for this exception in some fashion.

Although the Commission may neither interpret nor comment on the viability, enforceability, or constitutionality of a local ordinance, we are not constrained from identifying those provisions of the proposed ordinance that may conflict with or impede a person’s compliance with the Act. (*Ketner* Advice Letter, No. I-93-464; *Zundel* Advice Letter, *supra*.)

We provide the following comments on the provisions of the proposed ordinance:

Section 2.10.010 states the purpose and intent of the proposed version Chapter 2.10, as amended and now entitled “Voluntary Campaign Expenditure and Contribution

Limitations for City Council Candidates.” Nothing in this section conflicts with the provisions of the Act.

Section 2.10.020 establishes a “Voluntary Campaign Expenditure and Contribution Limitation Option,” under which each city council candidate might elect to voluntarily limit his or her campaign expenditures and fundraising. In the November 2000 statewide general election, California’s voters approved Proposition 34, which amended the Act effective January 1, 2001. The statutory changes significantly impact the duties and responsibilities of statewide and local officials, candidates, filing officers and others. Among other things, Proposition 34 establishes contribution limits and voluntary expenditure ceilings for certain candidates and committees. (Sections 85301-85303; Sections 85400-85403.)

The contribution limit and voluntary expenditure option of Chapter 2.10.020 does not prevent compliance or otherwise conflict with the Act *provided that*, pursuant to Section 85703, the ordinance does not conflict with Section 85312.<sup>3</sup>

Section 2.10.030 provides certain benefits and incentives for accepting the contribution limit and voluntary expenditure option. These benefits and incentives do not conflict with the provisions of the Act. We note specifically that while proposed Section 2.10.030 may add to the requirements of the Act, it is not inconsistent therewith.<sup>4</sup> Sections 2.10.040 and 2.10.050, regarding the “City Council Election Newsletter” are nowhere inconsistent with the provisions of the Act. The same is true of the disclaimer of Section 2.10.070.

Section 2.10.075 requires a third pre-election report, to be filed with the city clerk at a specified point shortly before an election, in addition to any other reports required to be filed under the Act or other law. This additional requirement is not inconsistent with the Act. However, in the last sentence of Section 2.10.075(b), please clarify that this requirement is only applicable to city council candidates and city general purpose committees. The way the sentence is currently worded, it appears that the ordinance seeks to require state or county committees that make expenditures in connection with an election in your city to file the third pre-election report. The Santa Cruz City Council does not have the authority to regulate such state and county committees.

Sections 2.10.080 and 2.10.090, the ordinance’s penalty and severability clauses, are not inconsistent with the Act.

---

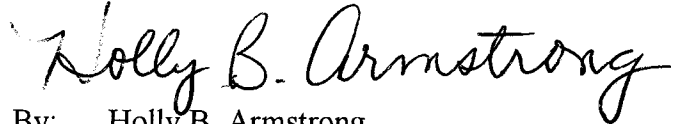
<sup>3</sup> The Commission will consider issues related to Section 85312 in its upcoming meeting in March 2002. You may monitor Commission activity in this area in person, or through the Commission’s website at [www.fppc.ca.gov](http://www.fppc.ca.gov). See also *In re Olson*, Opinion No. O-01-112 (2001).

<sup>4</sup> We note that in Sections 2.10.030(a)(3) and 2.10.075(b), the ordinance refers to “the Political Reform Act of 2001.” These references, and any other such references that may appear throughout the ordinance, should be replaced with: “the Political Reform Act of 1974, as amended in 2001.” Also in Section 2.10.030(a)(3), we suggest that the reference to Government Code Section 82016, which is the definition of “controlled committee,” might more appropriately be replaced by a reference to Government Code Section 84101, which sets forth the procedures for forming a committee by filing a Statement of Organization (Form 410).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in cursive script that reads "Holly B. Armstrong". The signature is written in black ink and is positioned above the typed name and title.

By: Holly B. Armstrong  
Staff Counsel, Legal Division

HBA:jg  
I:\AdviceLtrs\I-01-201