

March 7, 1989

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
PROPOSITION 73 AND RECENT COURT RULINGS

Two recent court rulings out of Los Angeles have raised questions about the operation of Proposition 73 throughout the state. Because of the impact on expenditure of campaign funds raised prior to January 1, 1989, and because of the confusion surrounding the "mass mailing" provisions, this report is issued to clarify the status of Proposition 73 and Fair Political Practice Commission (FPPC) regulations.

Campaign Funds

In California Common Cause v. Fair Political Practices Commission, Los Angeles Superior Court No. C709383, Judge Kurt Lewin struck down recent FPPC regulation No. 18536.1, which had under some circumstances permitted expenditure of campaign funds raised before January 1, 1989, for campaign purposes despite California Government Code section 85306 (contained in the Political Reform Act) as amended by Proposition 73, which reads:

Sec. 85306. Use of Campaign Funds; Effective Date.

Any person who possesses campaign funds on the effective date of this chapter, January 1, 1989, may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

Because of Judge Lewin's ruling, the FPPC is now advising, as a conservative measure, that no campaign funds raised before January 1, 1989, be spent to support or oppose a candidate running for state or local office in this state (with the exception of candidates running for Los Angeles City offices). This information was obtained from Blanca Breeze, of the FPPC by telephone on February 17, 1989.

Please be aware, however, that the validity of section 85306 is still in doubt because it raises serious constitutional questions. The U.S. Supreme Court has upheld campaign contribution limitations against First Amendment attacks on the grounds that this type of limitation may be necessary to fight corruption, even though it may restrict political activity. The Court, however, has struck down campaign expenditure limitations, because they directly restrict political activity and do not

necessarily prevent corruption. *Buckley v. Valeo*, 425 U.S. 1 (1976). The FPPC had attempted in regulation No. 18536.1 to construe Section 85306 to avoid these constitutional issues, however, the Los Angeles trial court found that to do so was beyond the FPPC's authority. Therefore the regulation was found invalid.

The FPPC has not decided yet whether to appeal this lower court ruling. We understand that there are other cases pending in the state challenging all or part of Proposition 73.

Meanwhile, California Government Code section 85306 is in effect and presumably will be enforced by the FPPC. We will keep you informed of the status of Government Code section 85306 as well as of other Government Code sections affected by Proposition 73.

Mass Mailings

In a separate case heard in Los Angeles County Superior Court, to which the FPPC was not a party, the court struck down the prohibition on mass mailings imposed by Proposition 73. Unless and until this ruling is appealed, however, the ruling applies only to the parties to the lawsuit. Therefore, the FPPC continues to enforce that "mass mailing" provision and its recently adopted regulation construing the provision. The League of California Cities on February 17, 1989 issued a helpful newsletter explaining key aspects of the FPPC's "mass mailing" regulations and attached a copy of the rule itself. A copy of the League's material is attached for your convenience.

Respectfully submitted,
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City Attorney

CCM:jrl:048.7

Attachment

cc Blanca Breeze, FPPC, Staff Attorney

Charles G. Abdelnour, City Clerk

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