

April 2, 2001

CEC Advice No. 2001-05

**Advice Provided to Mr. James R. Sutton
Nielsen, Merksamer, Parrinello, Mueller & Naylor**

This letter is in response to your letter to the City Ethics Commission of February 21, 2001. Unfortunately, due to limited staff resources currently and the large volume of requests for assistance our office has received in the last month we regret that were unable to respond to your request more quickly.

Your letter requested written advice regarding whether cumulative contribution limits contained in the City Charter Section 470 (c)(6) apply to contributions made to a candidate running for elective City office whose name was subsequently removed from the ballot. Without specific facts from you, we are able to respond to your inquiry with *informal* assistance only.¹ Your question and the Commission's response, based on the information you provided in your February 21, 2001 letter and in the Commission's public files are detailed below.

¹Los Angeles Administrative Code (LAAC) § 24.1.1(f)(3). Informal assistance does not provide the requestor with the immunity set forth in City Charter § 705(b). Formal written advice regarding a specific situation and identified persons may be obtained from the Commission upon request when the specific facts of that situation are provided.

QUESTION

Does a contributor's contribution to a City candidate who will not appear on the ballot count toward that contributor's cumulative contribution limits contained in City Charter Section 470 (c)(6)?

RELEVANT FACTS

We have determined that the following facts are relevant to your inquiry:

1. You represent persons who have made contributions to the "Scott Schreiber for City Council Committee" in connection with Scott Schreiber's campaign for the Third Council District in the April 2001 primary election.
2. Scott Schreiber has filed a Statement of Understanding, Declaration of Intent to Solicit and Raise Funds, List of Campaign Officers, public campaign disclosure forms, and a cancellation of declaration of intent to solicit and receive contributions with the City Ethics Commission relating to his primary election campaign.
3. Scott Schreiber was not certified by the Office of the City Clerk to appear on the ballot for the City's April 10, 2001 primary. As a result, Mr. Schreiber's name will not appear on the April primary ballot.

ANALYSIS & CONCLUSION

As discussed below, the cumulative contribution limits contained in the City Charter include all contributions made to City candidates.

The City Charter provides that no person shall make a contribution in connection with a single election for an elected City office which would cause the aggregate amount of such contributions by that person to exceed a sum equal to five hundred dollars (\$500) multiplied by the number of City Council offices appearing on the ballot at that election plus one thousand dollars (\$1,000) multiplied by the number of City-wide offices appearing on the ballot at that election, but in no case less than one thousand dollars (\$1,000), in connection with *all candidates in that election seeking election to all elective City offices*. Charter § 470(c)(6), emphasis added. City law considers a primary and runoff to be separate elections. For the City's April 10, 2001 primary election, a contributor's cumulative limit is \$7,000.

Because Charter § 470(b)(1) provides that definitions used in the Political Reform Act (“Act”) shall govern the interpretation of Charter § 470 when terms are not defined in City law, we turn to the definition of “contribution” contained in the Act and the implementing regulations of the Fair Political Practices Commission (“FPPC”). The Act defines a “contribution” as a payment made for political purposes for which full and adequate consideration is not made to the donor and includes a payment made at the behest of a candidate or committee. Cal. Gov. Code § 82015. A payment is defined, in pertinent part, to include any payment, deposit or other rendering of money. Cal. Gov. Code § 82044. The Political Reform Act also defines a candidate to include not only an individual who is listed on the ballot, but also one who receives a contribution or makes an expenditure even if the specific elective office is not known at the time. Additionally, an individual who becomes a candidate retains his or her status as a candidate until that status is terminated pursuant to Section 84214 of the PRA. Cal. Gov. Code § 82007.

We note that Scott Schreiber solicited and accepted contributions as a candidate for his campaign in the Third City Council District. Since the Charter prohibits persons from making contributions in excess of \$7,000 to all candidates for the April 10, 2001 primary election, all contributions made in connection with that election must be included. This is true regardless of whether a candidate ultimately succeeds in qualifying for the ballot or is ultimately elected. In this case, that means the contributors to the Scott Schreiber for City Council Committee must count contributions to that committee in determining whether they have met the \$7,000 cumulative limit for the April 10, 2001 primary election. The fact that a candidate to whom a contributor donates does not ultimately appear on the ballot does not mean that a contribution did not occur in the first instance.

Thank you for contacting the City Ethics Commission about this matter.

Attachment

APPLICABLE CITY LAW ATTACHMENT

California Government Code Section 82007 Candidate.

“Candidate” means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. “Candidate” also includes any officeholder who is the subject of a recall election. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. “Candidate” does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971.

California Government Code Section 82015 Contribution

(a) Contribution means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

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California Code of Regulations, Title II, Section 18215 states:

(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or made at the behest of the following or any agent thereof:

- (A) A candidate;
- (B) A controlled committee;

...

Los Angeles City Charter Section 470(c)(6)

No person shall make a contribution in connection with a single election for an elected City office which would cause the aggregate amount of such contributions by that person to exceed a sum equal to five hundred dollars (\$500) multiplied by the number of City Council offices appearing on the ballot at that election plus one thousand dollars (\$1,000) multiplied by the number of City-wide offices appearing on the ballot at that election, but in no case less than one thousand dollars (\$1,000), in connection with all candidates in that election seeking election to all elected City offices; provided, however, that a candidate shall not be limited by this Subsection (6) in the amount he or she may contribute or expend in connection with his or her own campaign, subject to the provisions of Subsection (c)(10) of this section.

Los Angeles Municipal Code Section 49.7.4. Return of Contributions.

A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and is returned to the donor within 14 days of receipt.