

May 2, 2001

CEC Advice No. 2001-06

**Advice Provided to Ms. Kelly Ristuccia
Rose & Kindel**

This letter is in response to your correspondence to the City Ethics Commission of March 20, 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 we 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 who subsequently returned the contribution. 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 March 20, 2001 correspondence are detailed below.

QUESTION

Does a contributor's contribution to a City candidate that is subsequently returned to the contributor count toward that contributor's cumulative contribution limits contained in City Charter Section 470 (c)(6)?

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.

RELEVANT FACTS

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

1. You represent persons who have contributed to the “Richard Polanco for City Council” Committee in connection with Richard Polanco’s campaign for the First Council District in the April 2001 primary election.
2. In January 2001, Richard Polanco filed a Statement of Understanding, Declaration of Intent to Solicit and Raise Funds, List of Campaign Officers with the City Ethics Commission, and Controlled Committee Information relating to his primary election campaign. On January 30, 2001, Richard Polanco was certified by the Office of the City Clerk to appear on the ballot for the City’s primary election.
3. On February 27, 2001, Richard Polanco submitted a letter to the Los Angeles City Clerk authorizing that office to withdraw his name from the ballot for the City’s primary election.

ANALYSIS & CONCLUSION

Your request provides no specific information about when your client’s contributions were made or returned.² Therefore, we provide only general informal guidance about the application of the laws in this area.

The City Charter prohibits a person from making a contribution in connection with a single election for an elected City office which would cause that person’s aggregate amount of such contributions to *all candidates* in that election seeking election to all elective City offices to exceed \$500 multiplied by the number of City Council offices appearing on the ballot at that election plus \$1,000 multiplied by the number of City-wide offices appearing on the ballot at that election, but in no case less than \$1,000. 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”) govern the interpretation of Charter § 470 for terms 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

² We note, for instance, that a contribution is not considered to be “received” if it is not negotiated, deposited, or utilized, and is returned to the donor within 14 days of receipt. LAMC § 49.7.2. For purposes of responding to your question, we assume the contributions about which you are inquiring were negotiated, deposited, or used.

“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 actually listed on the ballot, but also a person who receives a contribution or makes an expenditure with a view to bringing about his or her nomination or election to any elective office. 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 Act. Cal. Gov. Code § 82007.

The City Charter prohibits a person from making contributions in excess of \$7,000 to all candidates for the 2001 primary election. The Charter does not provide for any exceptions to this calculation. There is no basis to conclude that either the framers when drafting the provision or the voters when approving the Charter amendment intended that contributions made that are received or used by a candidate would be excluded from the cumulative contribution limits.

Therefore, the contributions made to the Richard Polanco for City Council Committee at the time he was a candidate must be included in the \$7,000 cumulative limit for the 2001 primary election, even if Mr. Polanco’s name did not eventually appear on the ballot and even if those contributions are returned to the contributors by the Richard Polanco for City Council Committee.

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.

...

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.