

UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

August 3, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:44 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, Carol Scott and Gordana Swanson were present.

Item #1. Approval of the Minutes of the June 8, 2001 Commission Meeting.

The minutes of the June 8, 2001 Commission meeting were distributed to the Commission and made available to the public. Chairman Getman noted that the minutes were missing a section and would be resubmitted for approval at the next Commission meeting.

Item #2. Public Comment.

Jim Knox, representing California Common Cause, stated that the Commission and staff had worked hard on conflicts of interest, and noted that more hard work needs to be done. He explained that the current energy crisis involves the issue of conflicts of interest, and that entire state agencies have lost sight of their obligation to comply with the conflict of interest of laws. He charged that purchases and contracts for billions of dollars worth of energy are jeopardized because of the possible conflicts of interest.

Mr. Knox urged the FPPC to resolve the issue and restore public confidence in the process. He urged the commission to determine how widespread lack of compliance could occur, and find ways to ensure that it will not happen again.

Mr. Knox asked the Commission to explain the status of the investigation, and asked whether the Commission would consider leading an effort to assess how the situation happened, and what procedures or measures could be taken to prevent a future occurrence.

Enforcement Chief Steve Russo stated that a number of complaints had been received regarding possible statement of economic interest (SEI) violations and/or possible conflict of interest violations related to energy consultants. Staff is reviewing the information, and are in the process of reviewing the entire issue from an enforcement standpoint. He could not discuss any specific details of the work, but assured Mr. Knox that staff was taking the matter very seriously and that the enforcement division would thoroughly review the matter and take appropriate action regarding any violations.

Chairman Getman stated that staff is reviewing procedures for conflict of interest codes and for reviewing the 20,000 SEI's that the FPPC reviews every year, and that the staff will report back to the Commission whether they believe that further work needs to be done.

Item #3. Proposition 34 Regulations: Pre-notice Discussion of Regulatory Action Regarding Sections 85200 (“One-Bank-Account” Rule); Section 85317 (Carry-Over of Contributions.); Proposed Regulations 18520, 18521, 18523, 18523.1, 18525; 18537.1.

Senior Commission Counsel John Wallace introduced this item, noting that there were three basic issues of concern. Staff had received some comment from the public and the resulting minor changes will be reflected when a proposed adoption version of the regulation is presented.

Mr. Wallace explained that the first issue was whether the rule allowing the redesignation of committees and campaign bank accounts should be continued. Under the current rule, candidates can redesignate committees and bank accounts for future elections to the same office as well as election to other offices under limited circumstances. Proposition 34 created a conflict between the concept of redesignation and the concept of transferring funds forward to a redesignated committee. He noted that interested persons supported retaining the redesignation approach, because eliminating it would increase complexity and costs to committees and candidates. Staff believed that a distinct and separate committee for each election aids in enforcement and maintaining compliance of the law, by allowing staff to monitor the funds being raised as well as being spent in the committees. It also allows the public to be better able to attach contributions and expenditures to a specific election. He believed that eliminating the redesignation rule would be consistent with the statutory one-bank-account rule enacted under Proposition 73.

Mr. Wallace noted that, if the Commission decided to retain the redesignation rule, staff would present prenotice language codifying the redesignation rule at a later date.

Mr. Wallace presented the second issue, dealing with regulation 18525 and how it should be dealt with under Proposition 34. Proposition 34 created separate closed systems for every election, and those systems controlled the funds flowing into and out of a specific committee for a specific election. Regulation 18525, under Proposition 34, allows expenditures to be made from a future campaign bank account to pay for expenses associated with a prior election. Staff believed that the regulation should be reevaluated, possibly limited, or possibly made inapplicable to Proposition 34 elections.

Mr. Wallace noted that interested persons commented to staff that the regulation should be retained, and should be applied to Proposition 34 elections. Staff drafted optional language for the Commission's consideration amending regulation 18525, adapting the

regulation to a Proposition 34 context, in case the Commission decides that the regulation should be retained.

The final issue presented by staff, Mr. Wallace explained, dealt with the carryover issue in Government Code § 85317. He noted that the statute allows the transfer of funds forward without attribution to specific contributors, in limited circumstances. Under the Proposition 34 closed system, a broad interpretation of the carryover rule could defeat the purposes of the contribution limits. An incumbent with a large amount of funds not expended could carry them over to a future election, and it could affect the ability of the contribution limits to keep a fair playing field for everyone in that election. Staff proposed two options dealing with this issue. The first would apply the statute only to specific election cycles, and this approach was supported by staff. The second approach, advocated by the authors of the language, would apply the statute to every case where an incumbent is running for reelection to the same elective state office.

Mr. Wallace noted that transfers are permitted under Proposition 34, but whether to require attribution to the contributors of the transferred monies is the issue.

Chairman Getman noted that the Federal rules also allow carryover even though there are contribution limits. She asked Mr. Wallace to clarify when the transfer statute would apply.

Mr. Wallace responded that if § 85317 was interpreted with the broader application, the transfer statute would be expressly inapplicable anytime it involved a reelection to the same state office. He explained that LIFO or FIFO attributions identify contributors of transferred monies and limit what those contributors can contribute to that candidate under Proposition 34. The carryover statute, however, expressly states that the attribution aspect is not applicable and could, therefore, nullify the transfer rules because it would not require attribution to contributors.

Commissioner Scott noted that it would eliminate the attribution rule.

Commissioner Knox agreed with staff's characterization of § 85317.

Mr. Wallace explained that the Commission would need to determine how broadly to interpret that section. Applying the transfer and attribution rules only to primary and general or special and special runoff elections would have a small effect on the closed system of contribution limits. However, if applied for every reelection, it could have a dramatic effect on the limits.

In response to a question, Mr. Wallace explained that a candidate is always able to transfer monies with attribution. However, a candidate with money left over from a primary election campaign account could not transfer it without attribution to the candidate's next primary campaign because it was raised in connection with a previous general election, unless the Commission decides to broadly construe the carryover statute, in which case a candidate could transfer monies from a prior general election

campaign account to a new general election campaign fund without attribution. If the Commission interpreted the statute more narrowly, "carryover" would be defined to mean simply primary election contributions transferred to general elections, or special election contributions could be transferred to special election runoffs without attribution. This would allow the monies to be carried over in the same election cycle. The author's interpretation of the statute was very different than this interpretation, but the author's intent is not controlling.

Chairman Getman observed that the language of § 85317 would seem to allow carryover from one election for elective state office to pay expenditures in connection with a subsequent election for the same elective state office.

Commissioner Knox clarified that the question was whether that language meant within the same election cycle or whether it meant election to the same office for a different term.

In response to a question, Commissioner Knox stated that § 85317 would not apply in cases where a candidate ran for an assembly seat and wanted to carry funds over to a senate seat.

Mr. Wallace agreed, noting that interested persons were not advocating that type of interpretation.

In response to a question, Mr. Wallace stated that, if the Commission should agree with staff's approach on the redesignation issue, it also should consider regulations to reflect that every term of office is a separate election.

Chairman Getman questioned how staff was defining "elective state office," noting that the language of § 85317 refers to "subsequent election for the same elective state office." She explained that proposed regulation 18520 would provide that, "specific office" means a specific term of elective office.

Mr. Wallace agreed, and noted that it would depend on whether the Commission agreed with staff's approach on the redesignation issue.

Commissioner Knox stated that proposed regulation 18520 would be consistent with a broad interpretation of § 85317, which staff was not recommending.

Chairman Getman stated that if Proposition 34 was a contribution limit scheme only it does not matter whether the contributions are carried over because it allows contributions for every election. If, however, Proposition 34 is also an expenditure limit scheme, the carryover provision becomes more problematic.

Mr. Wallace responded that interested persons believed that Proposition 34 was never intended to regulate expenditures.

Chairman Getman noted that the Federal scheme allowed carryover, partly because the Federal scheme does not limit the amount of expenditures that can be made. Proposition 34 does limit expenditures.

Mr. Wallace agreed. He noted that if money is allowed to be moved into the Proposition 34 "closed system," without attributing the monies, it would be distorting that system. He believed that expenditure issues should be treated the same way. He noted that even the authors of Proposition 34 would agree that attribution was the favored way to deal with movement of money between committees. Staff believed that attribution should be the basic rule and suggested a narrow view of the carryover issue.

Chairman Getman questioned why a candidate should be allowed to carryover monies from a primary to a general election.

Mr. Wallace responded that both elections involve getting elected to one office, as opposed to raising funds for a 2010 election and being able to transfer it to the 2014 election for the same office.

Commissioner Knox stated that the statute binds the Commission, even though it creates distortions to the "closed system" created under Proposition 34. The fairest reading of the language of § 85317 seemed to suggest that the carryover from an election in 2000 to an election in 2004, not merely from a primary election to a general election, would be permitted without attribution.

Mr. Knox, from California Common Cause, stated that attribution must be required. He believe that monies should not be carried over, even from the primary to a general election, without attribution. Otherwise, it just creates a mechanism for donors and candidates to avoid the contribution limits. He did not agree that § 85317 allowed carryover without attribution.

Commissioner Knox questioned how Mr. Knox would treat the "Notwithstanding subdivision (a) of Section 85306..." language of § 85317 if it did not rule out the requirement for attribution.

Commissioner Scott asked whether it could be interpreted to mean that this methodology did not have to be used, instead of meaning that there does not have to be attribution.

Commissioner Knox responded that it seemed to rule out application of all of subdivision (a), and pointed out that the concern that the "closed system" would be distorted should consider that using the LIFO and FIFO systems is already a kind of distortion.

Commissioner Scott agreed, but noted that subdivision (b) excludes all attribution, while subdivision(a) refers to the accounting methodology. If the statute read, "Notwithstanding subdivision (b)...," she would agree that it did not have to be attributed.

Commissioner Knox responded that if the "Notwithstanding..." language of § 85317 was not there the Commission would be trying to harmonize the provisions of § 85306, with the attribution provisions, and § 85317. He believed that the § 85317 language was meant to impose no limitations under § 85306 (a).

Commissioner Scott argued that the result of that would be to add subdivision (b) to the "Notwithstanding..." language. Subdivision (b) allows transfers without attribution, while subdivision (a) allows transfers with attribution under the LIFO or FIFO methodology.

Commissioner Knox agreed, noting that subdivision (a) requires attribution, but that the "Notwithstanding..." language of § 85317 should be interpreted to mean that the carryover is allowed without attribution.

Chairman Getman asked whether there was a definition to the word "carryover."

Mr. Wallace responded that "carryover" generally referred to old money being carried over, noting that there was a separate "old money" provision in the transfer section.

Ms. Menchaca did not believe that there was any other provision in the history of the Act that used the word "carryover" in a way that would help.

Scott Hallabrin, from the Assembly Ethics Committee, stated that there could be an issue with the definition of "same elective state office" in terms of legislators representing a district that has been redistricted. He expressed the same concern for legislators who start in the assembly, move to the senate, then go back to the assembly, and he questioned whether those situations would be considered the same office.

In response to a question, Mr. Hallabrin confirmed that term limits still apply in those scenarios.

Commissioner Knox questioned how the rest of the items identified in the staff memo would be affected if the Commission chose to allow the carryover to be transferred without attribution from election cycle to the next election cycle and from a primary election to a general election.

Mr. Wallace responded that redesignation occurs most commonly to the same elective office. Allowing carryover would support the idea that redesignation should also be permitted since the ability to carry over monies without attribution diminishes some of the auditing justifications for prohibiting it.

In response to a question Mr. Wallace stated that if redesignation is permitted § 18525 would continue to be a problem because candidates would be allowed to spend out of one office account to support efforts for another office.

Commissioner Knox questioned whether, if the Commission chose the broader view of § 85317, and also decided to continue to allow redesignation, it would affect any of the other regulations adopted or proposed.

Ms. Menchaca stated that the regulation has to do with Government Code Section 85316, and could affect voluntary expenditure limits. If the Commission chose to allow redesignation, staff would want to include specific reference to specific statutes or regulations so that the committees would have to consult those regulations or statutes to ensure that they are not getting around those statutes by redesignating.

Mr. Wallace added that staff would want to put language together to codify redesignation if the Commission chose to continue to allow it, dealing with issues such as transferring debt.

In response to a question, Chairman Getman explained that a candidate could receive contributions totaling \$12,000 from the same individual in some circumstances. One primary election donation and one general election donation for each of two elections could be made to the redesignated committee. This issue would require stringent bookkeeping rules in order to keep track for contribution limit purposes.

Mr. Wallace noted that it could be difficult for Enforcement to track and would also be difficult for the public to follow.

Chairman Getman noted that the Form 460 has been revised to require that contributions be tied to specific elections.

Mr. Wallace noted that Enforcement staff believed that it would be easier to monitor if the committees had separate accounts and committees. He did not believe it to be an insurmountable issue.

Commissioner Knox stated that the money would be arriving during the new election cycle and asked why they would not be subject to the contribution limitations.

Chairman Getman responded that the limits would be in effect for the both elections, but § 85316 would allow fundraising after an election to pay off debt.

Commissioner Knox suggested that if a candidate chooses to redesignate, all contributions to the redesignated committee would be used for the new election and would be subject to contribution limits for the new election.

Chairman Getman did not believe that the Commission had the authority to tell committees that they could not fundraise to pay off the debt.

Commissioner Knox suggested that, by redesignating, a candidate would be acknowledging that they were closing down the old committee and starting the new

committee in debt and would only be able to fundraise up to the contribution limits for the new election campaign.

Ms. Menchaca stated that the notice for § 85316 is structured in a manner that would allow staff to craft a regulation in that manner.

Chairman Getman stated that it would be the easiest termination rule, and questioned whether the purpose language of Proposition 34 would address the issue of whether it intended to address contribution limits only.

Ms. Menchaca responded that there was nothing helpful on these issues.

Chairman Getman noted that the original purpose of Proposition 9 was retained, reducing the power of incumbency. Allowing carryover would give more power to incumbents and would, in that context, be counter to the Proposition 9 purpose.

Mr. Wallace agreed.

Ms. Menchaca noted an amendment to Government Code Section 89510 providing that campaign funds for a committee are to be held in trust for purposes of the contribution limits.

Chairman Getman stated that the voluntary expenditure ceilings of Proposition 34 would indicate that the expenditures should be considered. The more money that is carried over, the more people are encouraged to ignore the voluntary expenditure ceilings because they have more money to spend if they need it.

Commissioner Swanson stated that incumbency advantages should be eliminated as much as possible.

Chairman Getman stated that she was leaning toward supporting staff's recommendation to treat the carryover as just applying to primary and general elections. She concurred with Commissioner Knox's reading of the statute in isolation, but when considered with Proposition 34 and Proposition 9 she believed that limits should be placed on both contributions and expenditures.

Commissioner Knox asked how the carryover provision would be used with monies raised for a general election.

Chairman Getman responded that the provision would not be used.

Commissioner Knox did not agree that § 85317 was meant to be read so that it does not apply to funds raised in connection with a general election.

Chairman Getman responded that the regulations would have to be further studied to identify any additional repercussions if "same elective state office" was defined to mean the same term of an elective state office.

Commissioner Knox pointed out that monies raised for a general election could not be carried over for a subsequent election to the same elective state office under that definition.

Ms. Menchaca noted that proposed regulation 18520 attempts to define "same elective state office" as referring to a specific term of elective office, and fits within the overall scheme if the Commission chooses to allow redesignation. She agreed that the concept would need to be added in the specific regulation.

Chairman Getman motioned that the Commission accept staff's recommendation with regard to the carryover provision, applying it only to carryover funds from the primary to the general election of the same term for an elective state office.

Commissioner Swanson seconded the motion.

Commissioner Scott stated that the Commission should try to find a way to require attribution in all elections. She agreed that the Commission should not give undue help to incumbents, and stated that the statute should be interpreted in light of the entire statute, including the preamble.

Chairman Getman pointed out that it would only help those people who won the primary and are running for the general election. Moving monies from the general election to the next primary election would require attribution.

Commissioner Scott noted that one of the Commission's roles is to affect disclosure, and did not believe that there should be an intermediary step where attribution was not required.

Commissioner Downey stated that § 85317 was referring to an elective state office with a specific term and reelection to that office, essentially "swallowing" the attribution provisions of § 85316.

Commissioner Swanson stated her frustration with the issue, because the statute could not be revised by the Commission.

Mr. Wallace clarified that, while the Commission cannot amend the statute, it does have broad authority to interpret the statute. Staff believed that both options presented in the staff memorandum would be successfully defended if challenged.

Commissioner Scott stated that part of the Commission's role in interpretation is to go back to the findings and declarations and purpose of the Title to reconcile what might seem like inconsistent provisions of a statute.

Chairman Getman clarified that her motion was to interpret § 85317, consistent with the staff recommendation, as applying only to the carryover of contributions from the primary to the general election during the same election cycle, and not to apply § 85317 from one term to another even if it is the same elective state office.

Commissioners Scott, Swanson, Knox and Chairman Getman voted "no." Commissioner Downey abstained. The motion failed by a vote of 0-4 with one abstention.

Mr. Wallace suggested that option 2 of proposed regulation 18537.1 may reflect the broader interpretation that the Commission was moving toward, and could work with some limiting language. If staff were to work with that language, they would also need to bring back the issue of debt.

Commissioner Knox questioned the statutory support for subdivision (b). He believed that subdivision (a) would allow for carryover without attribution provided it involved the same seat (even though it might be different election cycles). Subdivision (b) provides that monies cannot be carried over until the debt from the prior campaign has been distinguished.

Chairman Getman suggested that subparagraph (b) should be included in a separate decision.

Mr. Wallace explained that staff was trying to harmonize this statute with § 85316, the debt statute.

Chairman Getman suggested that Mr. Knox could consider a motion pertaining to subparagraph (a) only.

Ms. Menchaca noted that subdivisions (b) through (d) are intended to harmonize with other provisions of Proposition 34.

Commissioner Knox motioned that the Commission direct staff to prepare a regulation following option 2 subparagraph (a), allowing carryover without attribution to another election providing the candidate is running for the same office, defined in terms of office, not election cycle.

Chairman Getman seconded the motion.

Commissioner Swanson stated that attribution is a difficult issue as presented in Proposition 34. She believed that the voters would want easier access to more information, and that without attribution the voters would not have the information they needed. She asked why the motion was good for the public.

Commissioner Knox responded that allowing carryover without attribution does seem contrary to Proposition 34, but the language of 85317 is so clear that it cannot be

circumscribed by using the overall purpose of the Act. The flaw is not in the intentions or the regulation, he noted, but in the statute.

Ms. Menchaca stated that staff has found it frustrating to work with statutes by trying to draft regulations that further the contribution and expenditure limits. Staff spends more time trying to figure out ways of accomplishing what they think was the public's intent. There are numerous places in Proposition 34 where the language seems to directly contradict other language in Proposition 34. She urged the Commission to allow staff flexibility to try to harmonize the statutes because, while it is important to look at the plain language, the end result of the adopted regulations should not be to render nullified another statute.

Chairman Getman added that the same problem exists with §§ 85316 and 85317.

Commissioner Scott agreed that there should be a way to harmonize the statutes without stretching too far. She suggested that staff explore a better rationale for doing this if the motion passes.

Commissioner Swanson agreed that harmonizing is important, but asked whether the motion will tie staff's hands.

Ms. Menchaca responded that it is linked to all of option 2. She did not believe that passing the motion will preclude staff from working on option 2 subparagraphs (b) through (d), but stated that she would have more guidance as the Commission discusses those items.

Commissioner Downey asked whether the previous motion which was not passed would have provided staff the latitude they needed to harmonize the statute.

Ms. Menchaca responded that it would not have provided greater latitude, but it would have provided a different interpretation of "subsequent election for the same state office." She noted that option 2 defined carryover, providing the Commission with an opportunity to interpret "carryover," narrowly or broadly.

In response to a question, Commissioner Knox noted that Ms. Menchaca was not offering any further refinement of the term "carryover," and that "carryover" under option 2 subparagraph (a) means being able to transfer funds to a new election cycle for the same seat.

Chairman Getman clarified that subparagraphs (b) through (d) limit when the carryover can be used, and noted that if the Commission passes the motion, the Commission should look very carefully at that proposed language.

Ms. Menchaca added that staff would probably work on language that could read, "Notwithstanding (a), the term carryover does not mean these things...".

Commissioner Knox restated his motion to direct staff to prepare a new regulation 18537.1, implementing Government Code Section 85317, that would be consistent with subparagraph (a) of option 2 of the staff memorandum. He clarified that, if the motion is passed, carryover would not be subject to attribution but could only be used for subsequent terms to the same elective state office. He suggested that Mr. Hallabrin's concerns about reapportionment issues and returning to an office after an accepting another office would need to be addressed.

Commissioner Swanson noted that this would create advantages for incumbents.

Commissioners Scott, Downey, Swanson and Chairman Getman voted "no." Commissioner Knox voted "yes." The motion failed by a vote of 1-4.

Commissioner Scott motioned that staff prepare a method or rationale for reconciling what seems like inconsistent provisions of the statute to permit attribution when money is moved from one place to another, to respond to the concerns that have been expressed.

Chairman Getman noted that proposed subsection (a) discussed attribution and contributions not exceeding the limit and asked how staff could do this without worrying about the limits.

Ms. Menchaca responded that it could be viewed as responding to just part of the statute. She noted that § 85317 refers to the entire subdivision (a) and that it would be harder to do that. She suggested that staff explore the latter part of § 85306(a), and approach § 85317 in a manner that would provide that funds can be raised separately for each election, ignoring the attribution language.

Commissioner Knox asked if she was suggesting that attribution would be required, but that the contribution limits would not apply.

Chairman Getman clarified that, currently, contributions to the prior election would count towards the contribution limits of the current election. Another possibility would be to require attribution, and allow contributors to donate to the current election even if their donation to the prior election was carried over to the current election.

Commissioner Knox stated that it might be an acceptable alternative.

Chairman Getman clarified that staff would try to harmonize in a way that has attribution but focuses on the second section, consistent with Commissioner Scott's motion.

There being no objection, the motion carried.

The Commission adjourned for a break at 11:05 a.m.

The Commission reconvened at 11:17 a.m.

Decision Point 1 - Redesignation

Mr. Wallace explained that, under Proposition 73, staff has advised that, since transfer of a candidate's campaign funds between his or her own committees was permitted, redesignation should be allowed for reelection to the next term of office. Proposition 34, requiring the "per election" scheme is not consistent with the prior advice. Staff proposed prohibiting redesignation, requiring the opening of a new committee and a new bank account for each term of office.

In response to questions, Mr. Wallace stated that staff could not identify any specific problem areas because the law is so new. He agreed that redesignation is not expressly allowed or prohibited under the statute. He explained that interested persons believed that it would be more difficult to have separate committees, and Franchise Tax Board representatives suggested that the benefits of requiring separate committees might be overcome by the burdens involved in it. FPPC Enforcement Division, however, believed that the separate committees would set up better audit trails for purposes of tracking the limits, and would be easier for the public to follow.

In response to a question, Mr. Wallace stated that, for committees that do not have debt, if carryover is allowed, redesignation might be appropriate.

Commissioner Downey suggested that the Commission could help Enforcement Division and accommodate the regulated community by requiring, upon redesignation, such things as terminating the preceding committee and a means of tracking funds.

Technical Assistance Division Chief Carla Wardlow stated that currently redesignation occurs through an amendment to the statement of organization. This can happen in the middle of a reporting cycle. The committee has not been required to do dual bookkeeping to track the monies for the different elections, because there was no need to.

Chairman Getman suggested that redesignation might be required at the beginning or end of a reporting cycle because expenditures and contributions will need to be tracked for purposes of following the voluntary expenditure and contribution limits.

Ms. Wardlow responded that the Forms currently have no place to identify when the committee has been redesignated, unless the committee's name is changed.

Chairman Getman suggested that it could be built in by requiring that the name of the committee be changed upon redesignation.

Ms. Wardlow suggested that a separate summary page could be used for the new election. She did not know how that would work with electronic filing. She noted that there are already committees that have been redesignated for the next election.

Mr. Wallace noted that a "grandfather rule" would have to be provided allowing those committees to retain their new status. He suggested that, since the Commission seemed

to be leaning toward keeping redesignation, staff should return to the Commission with a codification of the redesignation rule with limitations such as special reporting, different types of summary pages, and possible limitations to accommodate electronic filing .

Ms. Menchaca noted that whether or not a committee had debt could be a consideration.

Commissioner Knox asked where the statute supports such a limitation.

Mr. Wallace responded that there was not opposition from interested persons to prohibiting redesignation when there was debt, noting that committees with debt have separate rules for how their monies can be spent or raised.

Commissioner Knox asked whether staff was considering proposals under which committees finishing an election with debt would not be able to redesignate, but would have to start a new committee for a subsequent election.

Mr. Wallace responded that they would have to form a new committee, allowing better tracking of the dual purposes. To the best of his recollection, the regulated community was concerned about losing redesignation generally, but was not opposed to prohibiting redesignation when there were debts. He suggested that there may be more public feedback by the next Commission meeting.

Chairman Getman was concerned about how redesignating with debt would harmonize with § 85307, which limits the amount of outstanding loans a committee can have at any time. If § 85307 includes personal loans, regardless of what election the loan was for, it might argue in favor of allowing committees to redesignate with the debt. It would be important to keep track of the personal loan on an ongoing basis, making sure that the committee does not acquire more debt than allowed under that section.

Chairman Getman also noted that the federal system allows transferring a debt to another committee in order to facilitate termination of an old committee. This encourages the candidate to assume the debts in the current committee and continue to try to resolve them. She believed that the way the termination, debt settlement, and personal loan issues are dealt with by the Commission will help determine how the issue of transferring debts should be handled.

Commissioner Downey noted that if committees can be redesignated, committees would not have to close old bank accounts and open new ones, or file a new statement of organization, and they would not need to get a new tax identification number.

Chairman Getman added that they would not have to pay vendors twice to file electronic reports, which are a big expense.

Commissioner Scott asked whether that issue could be resolved administratively, so that the additional costs would not be an issue.

Mr. Wallace did not know whether that was an issue the agency could control, and noted that he would have to contact the Secretary of State's office to find out if there was anything that could be done.

Chairman Getman pointed out that electronic filing can only be accomplished by using an approved vendor, and that vendors charge by committee.

Commissioner Scott suggested that staff look into this issue.

Commissioner Knox stated that redesignation would require that the committee keep two separate accounts. One account would relate to expenses, and the other would relate to the next election. He clarified that the dual accounting is problematical for the enforcement division.

Mr. Wallace responded that there was also the concern that the public would have difficulty deciphering the books.

Mr. Russo explained that the enforcement problem is in identifying monies collected and disbursed. One way to handle it would be to have a separate account for each committee, making it easy for enforcement staff to see which committee the money pertains to. If there are not separate accounts, the only way to identify which committee the money is used for is by the record-keeping that the committee makes. He did not believe that the record-keeping would always be done correctly. In that case, enforcement staff could only charge the committee with a record-keeping violation, when in fact the committee may be trying to get around contribution or expenditure limits. A simple system would help enforcement to properly identify violations.

Decision Point 2

Chairman Getman noted that officeholder expenses are often difficult to identify in terms of whether an expense was for a campaign or whether it was a "mixed purpose" expense. She noted that a former general counsel of the FPCC stated that the Commission did not come up with a system requiring that the committees identify very specifically which election the expenses relate to, out of concern that it would create an enforcement nightmare. She believed that this was an important issue that should be considered.

Mr. Wallace responded that, with redesignation, expenditures would be made out of the correct account (even though there might be limited overlap with carryover money or debt). Regulation 18525, under Proposition 73, listed specifically those activities that were clearly for a campaign, require that expenditures for those activities come out of the future campaign account, and then consider all other expenses to be for "mixed purpose," allowing them to be paid from either account. Staff presented the regulation for the Commission's review to determine whether they want to revise it to fit Proposition 34 or determine that it does not apply to Proposition 34 elections. If the Commission chose not to apply it to the Proposition 34 elections, expenditures would have to come out of the specific account and the Commission would have to set up guidelines to determine what

is considered a current office holder expenditure versus what is considered a future campaign expenditure. Mr. Wallace explained that identifying the categories might be difficult.

Chairman Getman stated that identifying the expenditure for enforcement purposes was a strong argument for allowing redesignation, because it would encourage people to turn the committees over to a future election and make all expenditures out of that committee.

Mr. Wallace presented an alternative to modify Regulation 18525 to fit Proposition 34 elections. He explained that proposed Regulation 18525 Option 2 added new language to deal with elections under Proposition 34, in subdivisions (c) and (d). Subdivision (c) would deal with elections occurring after January 1, 2001, and would incorporate them to the debt limitations of § 85316. Even in this context, he noted, committees would have to pay their debts first, and then the funds could be used consistent with § 18525 as written. Subdivision (d) would apply to old committees, allowing funds to be used for officeholder expenses.

Chairman Getman stated that subdivision (d) made sense to her, and subdivision (c) was consistent with how the Commission was viewing the net debt, but she noted that it did not answer the question of the mixed expenses.

Mr. Wallace explained that those proposed subdivisions were an attempt to allow that monies can be used for anything but the future campaign expenses set out in subdivision (a). Subdivision (b) is the "mixed purpose" expenditure provision, and subdivision (a) describes the election expenditures that have to come out of the future campaign account. Subdivisions (c) and (d) were intended to allow funds to be used for any type of officeholder expenses after the election has occurred, but not for future campaign expenditures, consistent with § 18525.

Ms. Menchaca added that staff recommended adding subdivision (a)(5) in order to refer to the voluntary expenditure limits so that it would be a campaign expense that would have to come out of the particular account established for that election.

In response to a question, Mr. Wallace stated that § 18525 would still be needed if redesignation is allowed, because it would be needed for local elections. It would also be needed because officials may have officeholder expenses for a prior term of office, and would like to be able to use the future campaign funds in the redesignated account for those expenditures, and subdivision (b) would allow that.

Ms. Wardlow noted that redesignation would be voluntary and some candidates will choose not to redesignate.

Commissioner Scott suggested that the word "shall" be changed to "may" in proposed § 18525(a) because the official may not have to make those expenditures.

Mr. Wallace explained that when the Commission wanted to split up the nature of the expenditures, they determined that those expenditures could only be paid out of the future campaign account.

After further discussion, Mr. Wallace agreed that the language should be clarified.

Chairman Getman presented a hypothetical mass mailing scenario wherein an incumbent sent a mailer describing the official's position on a current budget issue, and asked for clarification of why the expense would be considered a future election expense.

Ms. Menchaca responded that the language in subdivision (a) addressing the issue should be revisited because the "3 month" language may not be supported by staff.

Mr. Wallace pointed out that the Commission adopted that language in order to set up a "bright line" rule. He cautioned that the regulation should not be amended too much because it has been used in local elections for quite a while and the local officials were familiar with it. He added that staff could come back with clarifying changes.

Mr. Wallace stated that staff recommended that separate accounts and committees be used and that redesignation not be allowed.

Chairman Getman stated that she was not persuaded that redesignation needed to be eliminated under Proposition 34.

Commissioner Knox was inclined to leave redesignation as an option for campaign committees, recognizing that it involved placing some impediments in enforcement investigations, because it would involve additional costs to the regulated community.

Commissioner Downey disagreed with Commissioner Knox, noting that the Commission owes allegiance to the staff recommendations. He believed that it would help enforcement efforts, and did not see the additional expenses and inconveniences that would be borne by the committees as insurmountable. He supported adopting the policy of Proposition 34, which was to compartmentalize the elections and to have separate committees for those election's candidates.

Commissioners Scott and Swanson agreed with Commissioner Downey.

Chairman Getman suggested that the staff prepare a proposal to eliminate redesignation.

Commissioner Downey clarified that he was not yet convinced that redesignation had to be eliminated.

Ms. Menchaca noted that the Commission had directed staff to allow redesignation with some limitations, and asked whether the Commission wanted to see two different versions. She suggested one version with limitations, and another option not allowing redesignation or requiring separate committees.

Chairman Getman responded that staff should at least prepare language without redesignation as an option, and suggested that they also prepare an option allowing redesignation with limits.

Mr. Wallace stated that § 18525 will also need to be brought back for a decision, dealing with specifying which accounts expenditures would have to be made from. The Commission will need to decide whether it should apply to Proposition 34 elections.

Chairman Getman noted that if the Commission chose to have separate committees, § 18525 would not be needed.

Mr. Wallace responded that it will still be needed in order to coordinate the expenditures out of two different committees.

Chairman Getman agreed that § 18525 should be brought back with a clear understanding of how it applies in the two redesignation options. She clarified that the Commission is leaning toward requiring separate committees, but might approve redesignation with more limits that it has now.

Chairman Getman asked whether staff's recommendation that contributions to other candidates would be considered an election expense out of a future campaign committee has received any attention from interested persons.

Mr. Wallace responded that the language was inserted as a point of discussion for the Commission and no decision had been made on that. There had been no public comment on it.

Commissioner Swanson suggested that Legal Division staff coordinate with Enforcement Division staff while working on the redesignation issue.

Chairman Getman noted that debt carryover could go to the new committee, or the redesignated committee, or that redesignation could only be allowed without debt. Therefore, that issue will also need to be brought back to the Commission.

The Commission adjourned for a lunch break and closed session meeting at 12:00 p.m.

The Commission reconvened at 1:30 p.m.

Item #4. Proposition 34 Regulations: Termination of Committees – Pre-Notice Discussion of Proposed of Regulation 18404.1.

Commission Counsel Holly Armstrong presented a supplemental memorandum to the staff memorandum, outlining federal termination procedures.