

California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

From: John W. Wallace, Senior Commission Counsel
Luisa Menchaca, General Counsel

Re: Adoption of Proposed Regulation 18537.1 construing § 85317 (Carry Over of Contributions)

Date: November 27, 2001

Section 85317 provides:

“Notwithstanding subdivision (a) of Section 85306, a candidate for elective state office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office.”

Section 85306(a) provides:

“A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a ‘last in, first out’ or ‘first in, first out’ accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302.”

In other words, § 85317 allows contributions to be carried over *without limit and without attribution of contributions* to specific contributors under certain circumstances.¹ The issue addressed in proposed regulation 18537.1 is under what circumstances should this carry over without attribution be permitted as an alternative to transfer with attribution.

As noted in staff’s July 2001 memorandum to the Commission, the scope of § 85317 and its interplay with § 85306 is unclear and yet has wide-ranging effects. If an expansive view of § 85317 were accepted, this section could undermine the overall purpose of Proposition 34 to limit campaign contributions on a per election basis. “Proposition 34 brings strict contribution limits to every state office.” (Ballot Pamp., Gen. Elec. (November 2000) argument in favor of Prop. 34 at p.16.)

¹ It should be noted that Proposition 34 allows transfer of funds among a candidate’s own committees, irrespective of whether § 85317 is broadly or narrowly construed. However, transfer is subject to allocation to contributors to ensure that no one contributor exceeds the applicable limits of Proposition 34.

Thus, the overall goals of Proposition 34 and its limits favor transfer with attribution in most cases. At the October Commission meeting, the Commission directed staff to notice a regulation reflecting a narrow construction of this section. The noticed regulation is attached.

The language of the proposed regulation provides that the “carry over” of contributions to a “subsequent election for the same elective state office” means that funds raised for a primary election may be carried over to the general election for the same office and funds raised in a special primary election may be carried over to a special general election for the same office. This is consistent with the statute’s language because a primary election and a general election are separate elections for most purposes in the Act, including Proposition 34’s expenditure limits.² Yet, at the same time, consistent with prior advice, they are elections to the “same elective office.”³ Thus, funds raised in a primary election may be carried forward to the associated general election because they are both elections for the same elective state office. Similarly, funds raised in a special primary election may be carried over to a special general election for the same office for the same reason.

As of the date of this memorandum, no public comment has been received as a result of the noticing and publication of the draft regulation, either in support or opposition.

Attachment
Reg. 18537.1

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² See also § 82022: “ ‘Election’ means any primary, general, special or recall election held in this state. The primary and general or special elections are separate elections for purposes of this title.” Section 82023: “ ‘Elective office’ means any state, regional, county, municipal, district or judicial office which is filled at an election....”

³ For example, the “one-bank-account” rule in § 85200 and regulation 18520 require the filing of only one statement of intention to be a candidate for a specific office for both the primary and general election to the same term of office.

1 Adopt 2 Cal. Code Regs. Section 18537.1:

2 **18537.1. Carry Over of Contributions.**

3 (a) For purposes of Government Code section 85317, “subsequent election for
4 the same elective state office” refers to:

5 (1) The “general election” as defined in Elections Code section 324, which is
6 subsequent to and connected to the “primary election,” as defined in Elections Code
7 section 341.

8 (2) The special general election, which is subsequent to and connected to the
9 special primary election.

10 (b) For purposes of Government Code section 85317, “carry over” refers to the
11 transfers of funds between a candidate’s primary or special primary election committee to
12 the candidate’s general or special general election committee without attribution as
13 required by Government Code section 85306(a).

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15 NOTE: Authority cited: Section 83112, Government Code.
16 Reference: Sections 85306 and 85317, Government Code.