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A Guide to Proposition 73

Senate Committee on Elections

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CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON ELECTIONS
Senator Milton Marks, Chairman

A GUIDE TO PROPOSITION 73



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on

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SENATOR MILTON MARKS

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DEC 19 1988

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December 7, 1988

TO: Members of the Senate

FROM: Milton Marks, Chair
Senate Elections Committee

RE: Guide to Proposition 73

Please find enclosed copies of the Senate Elections Committee's Guide To Proposition 73. The Guide is written in a question and answer format and is based the most recent regulations and opinions of the Fair Political Practices Commission. The Guide is divided into three parts:

- Part One: Giving, Getting, & Spending Campaign Money
- Part Two: Gifts & Honoraria
- Part Three: Mass Mailings & Newsletter
- Part Four: Miscellaneous

Part One includes information on the status of existing campaign funds and details the process through which those funds can be reviewed and separated for use in future election campaigns. Part One also explains the restrictions on the raising and use of campaign funds after January 1, 1989.

The Guide provides answers to the most common and frequently asked questions about the effects of Proposition 73 on candidates and their campaigns. The Guide, therefore, should give you a basic understanding of Proposition 73. Obviously, we could not anticipate every individual question which could be raised or provide legal advice for every situation. The staff of the Senate Elections Committee is available, however, to address those questions or obtain any needed information from the Fair Political Practices Commission. Please feel free to contact them at (916) 445-2601.

I hope that you will find this Guide to Proposition 73 to be both interesting and a useful tool in understanding campaign financing under Proposition 73.

- TIMOTHY A. HODSON
CONSULTANT
- JOHN SHAHABIAN
CONSULTANT
- DARREN P. CHESIN
CONSULTANT
- ~~MARK STRANK~~
SECRETARY

ADDRESS ALL COMMUNICATIONS TO
SENATE COMMITTEE ON
ELECTIONS
ROOM 5051
STATE CAPITOL
SACRAMENTO, CA 95814
PHONE: 445-2601

A GUIDE TO PROPOSITION 73

PART ONE: GIVING, GETTING, & SPENDING CAMPAIGN MONEY

I. BASICS

Who Is Covered?

The provisions of Chapter 5 are applicable to all candidates to any elective state or local office in California, incumbent elected officials, and to all individuals, persons, committees, political parties or other contributors to such candidates and officials.

When Do The Contribution Limits And Other Provisions Begin?

Proposition 73 states, "The provisions of Chapter 5 shall become operative on January 1, 1989." (Section 85104). Because none of the contribution limits or other restrictions are applicable until 1989, transfers and contributions of any size are legal up until midnight of December 31, 1988.

However, the state Constitution provides that the effective date of an initiative is the day after it is voted upon by the people. Thus, the effective date of Proposition 73 is June 8, 1988. The difference between the operative date and the effective date is important to recognize not only to avoid confusion but to understand why the Fair Political Practices Commission based certain regulations on the effective date (e.g., its definition of existing campaign funds).

Who Will Implement, Administer, & Enforce Proposition 73?

Proposition 73 was drafted as an amendment to the Political Reform Act of 1974. Consequently, the Fair Political Practices Commission has the primary responsibility to administer and enforce the provisions of Proposition 73. This includes the authority to adopt regulations interpreting and implementing the measure.

The Legislature may amend Proposition 73, but only to further its purposes and only with a two-thirds vote.

II. GIVING: WHO CAN CONTRIBUTE HOW MUCH TO WHOM

Who Can Give?

A candidate may only accept contributions from persons, political committees, or broad-based political committees. These are defined as:

Person: an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization.

Political Committee: a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates.

Broad-Based Political Committee: a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons and acting in concert makes contributions to five or more candidates. FPPC regulations allow committees to file as broad-based committees whenever they can meet the criteria.

What Are The Contribution Limits?

Each type of contributor (i.e., person, political committee and broad-based political committee) is subject to a separate contribution limit. In addition, Proposition 73 places limits on the contributions received by committees and political parties. The limits are:

To	From	Amount	Per
candidate	person	\$1,000	fiscal year
" "	political committee	\$2,500	fiscal year
" "	broad-based committee	\$5,000	fiscal year
" "	political party	\$5,000	fiscal year
political party, committee, or broad-based committee	person	\$2,500	fiscal year

Notes:

1. Transfers (i.e., contributions from funds controlled by a candidate to another candidate) are prohibited.
2. Contribution is defined to include loans.
3. In the case of a special election, the limits are the same, but the time period is per special election cycle (i.e., the day the office becomes vacant to the day of the special primary election) and special runoff election cycle (i.e., the day after the special primary through the day of the runoff).

Are There Limits On Contributions To Committees And Political Parties?

Yes. No party, political committee or broad-based political committee may accept more than \$2,500 per person per fiscal year.

But Proposition 73 specifically states that there are no limits on contributions made to a political committee for purposes other than "making contributions directly to candidates for elective office." Thus the \$2,500 limit on contributions from person to parties, broad-based committees or political committees governs only funds given to finance party or committee contributions to candidates.

What Restrictions Are Imposed On Fundraising?

The FPPC has adopted regulations requiring all written campaign fundraising solicitations to specify the office and election for which the funds are being raised. For example, an invitation to a fundraising event would have to state that the event is to raise funds for John Doe's 1990 Senate campaign.

Candidates who have more than one campaign committee and who receive contributions that are not designated for a particular campaign may deposit that contribution in whichever committee he/she chooses. Thus, if John Doe has received an undesignated contribution, he may, at his discretion, deposit it in the Doe for Governor, Doe for Senate, or Doe for Mayor campaign committee account.

III. GETTING: HOW TO RAISE CAMPAIGN FUNDS

What Must Be Done Before A Candidate May Start Fund Raising?

Before any candidate may solicit or accept any contributions, he or she must take the following steps:

First, the candidate, under penalty of perjury, must file with the Fair Political Practices Commission a Form 501 statement of intention to run for an elective office. Pursuant to regulations adopted by the FPPC, this notice must specify both the office and the election (i.e., intention to be a candidate for the office of state Senate to be elected at the 1990 general election). It should be noted that this statement is completely separate from and unrelated to the various filings required by the Elections Code to qualify for the ballot.

Second, upon filing the statement of intention with the FPPC, the candidate must establish a single campaign account at a

financial institution in California. Within twenty-four hours of establishing the account, the candidate must file a Form 502, indicating the name and location of the financial institution and the account number, with the FPPC.

All contributions received by the candidate must be deposited in, and all campaign expenditures be made, from that single campaign account.

May An Individual Have More Than One Campaign Committee?

Yes, but not for the same office.

FPPC regulations permit individuals to file a statement of intention for more than one office and, in turn, create a campaign committee with the requisite single account for each office sought. To illustrate, John Smith files a statement of intention to run for reelection to the state Senate in 1992 and creates a committee for that race. Smith may also file statements of intention to run for Governor, Attorney General, Mayor of San Francisco, etc. and create committees for each of those races. Funds contributed to the Senate committee may not, however, be transferred to one of the other committees.

How Do The Contribution Limits Apply To Multiple Committees?

The contribution limits are aggregate. Therefore, an individual who contributes \$750 to the Smith for Senate committee cannot contribute more than \$250 to the Smith for Governor committee without exceeding the \$1,000 limit.

May A Candidate Committee Have More Than One Account?

Section 85201(a) states that a candidate "shall establish one campaign contribution account" and that all contributions must be deposited in and all expenditures made from that account. However, the FPPC has noticed regulations which would allow a candidate to open additional accounts (e.g., certificate of deposit, savings, etc.) so long as there was a single checking account into which all contributions would be initially deposited and from which all expenditures would be made. The regulations would allow use of credit card accounts tied to the checking account and a petty cash fund.

In addition, Proposition 73 allows existing campaign funds to be carried forward and used for non-candidate related purposes (see Section IV). Because these existing funds must be kept separate from funds raised after January 1, 1989, candidates may have two accounts (i.e., a new money account and an old money account). Funds in the old money account may not be used to support or oppose a candidacy for elective office.

May An Existing Committee Be Designated As A Candidate's New Committee?

Maybe. An existing committee may be designated as a candidate's new committee if all of the existing committee's funds were reviewed and found to be in compliance with the limits (see Section IV). If a portion of the funds were not in compliance, the committee may not be designated as the new committee.

IV. FUTURE SPENDING: HOW FUTURE CAMPAIGN FUNDS MAY BE USED

What Are The Restrictions On Funds Contributed After January 1, 1989?

Proposition 73 imposes broad limits on the uses of campaign funds. All contributions raised must be placed in a single campaign account and, pursuant to Section 85202(b), "deemed to be held in trust"; consequently, the funds may be used for only two purposes:

- expenses associated with the election of the candidate to the office specified in the candidate's statement of intention filed with the FPPC; and/or
- expenses associated with the holding of that office.

What Are "Expenses Associated With The Election Of The Candidate?"

The exact answer to this question is as yet unknown since the FPPC has not drafted regulations addressing this issue.

The FPPC has adopted regulations addressing related questions raised in Section 85306 regarding use of existing campaign funds. As detailed below, the regulations define expenditures to "support or oppose a candidacy for elective office."

What Are "Expenses Associated With Holding An Office?"

FPPC regulations define officeholder expenses as those expenses "incurred directly in connection with carrying out the usual and necessary duties of holding office, including but not limited to, travel between an officeholder's residence and public office, meetings with constituents which are not campaign-related meetings, and salary payments to staff for other than campaign activities."

May Campaign Funds Be Carried Over From One Election To The Next?

No. Contributions are made to a committee formed by a candidate to support a campaign to a specific office at a specific election. Contributions can only be used for that purpose and

thus cannot be carried forwarded for use in some future election, even if it is for the same office. For example, funds raised by candidate Smith to run for the Assembly in 1990 cannot be used in Smith's 1992 Assembly race.

V. CURRENT SPENDING: THE STATUS OF EXISTING CAMPAIGN FUNDS

What Is the Status Of Existing Campaign Funds?

Section 85306 of Proposition 73 restricts the use of campaign funds held by persons on the effective date of the measure to any "lawful purpose" except "to support or oppose a candidacy for elective office."

What Are Existing Campaign Funds?

Proposition 73 uses the phrase "any person who possesses campaign funds on the effective date of this chapter." FPPC regulations have defined this to mean:

- All cash and cash equivalents possessed on June 8, 1988 (Proposition 73's effective date);
- Any assets purchased between June 8, 1988 and December 31, 1988;
- Any contributions, cash, cash equivalents, or other assets received or possessed between June 8 and December 31, 1988, including the proceeds, rents, etc. thereon.

According to the FPPC regulations, pledges of future contributions and other types of unenforceable promises are not campaign funds.

In short, a computer purchased before June 8, 1988 is not subject to the restrictions imposed by Section 85306; the \$50,000 candidate Smith had in a campaign account on June 8 and all funds raised since then are subject to the restrictions.

Are All Existing Funds Restricted?

No. The FPPC concluded that a literal application of Section 85306 would create unconstitutional results. The FPPC thus adopted regulations which implement 85306 in a manner that, in their opinion, is both constitutional and faithful to the basic intent of the voters.

In essence, the FPPC ruled that contributions which (a) were made before January 1, 1989, and (b) would have satisfied the contribution limits imposed by Proposition 73 had those limits been operative, would be deemed in compliance with Proposition 73 and thus available for use in future campaigns.

It is permissible to use those funds to support or oppose a candidacy for elective office if the funds are reviewed and segregated under specific procedures established by the FPFC.

How Should Existing Funds Be Reviewed & Segregated?

FPFC regulations set forth these procedures for reviewing and segregating funds received on or before December 31, 1988 and which comply with the Proposition 73 limits but have been commingled with other contributions:

- Step One: Establish new, separate account to receive deposits of reviewed and segregated funds.
- Step Two: Determine total amount of cash and cash equivalents (including loans receivable) on hand at the time the new account is established.
- Step Three: Beginning with the most recent contribution (i.e., the last received) each contribution must be reviewed to determine whether it is in compliance with the Proposition 73 limits. This process continues until the total amount of cash and cash equivalents on hand is reached.

In reviewing contributions, a candidate must aggregate the total amount of contributions from each person, political committee, broad-based political committee and/or political party received by the candidate and all committees controlled by the candidate during the fiscal year.

Contributions received from a political committee or broad-based committee are in compliance with the limits (i.e., \$2,500 and \$5,000 respectively) only if the committee indicates that the contributions it received were in compliance with the limits. If the contributing committee cannot assure the candidate, the candidate must regard the committee as a "person" and thus subject to the \$1,000 limit.

- Step Four: After the review is completed, the total amount of cash and cash equivalents on hand should be reduced by an amount equal to the total of funds received which were in excess of the limits. The remainder (i.e., total cash on hand minus the amount in excess of the limits) must be deposited in the new account. If all contributions are in compliance, it is not necessary to establish a new, separate account.

The chart below illustrates how the review and segregation process might work:

contributor & contribution	amount permissible to segregate	comment
Jane Doe \$1,000	\$1,000	meets limit of \$1,000 per FY
Widget Inc. \$2,000	\$1,000	Widget is a "person" thus limited to \$1,000 per FY
Acme PAC \$5,000	\$5,000	Acme PAC qualifies as a broad-based PAC & funds raised met limits
XYZ PAC \$5,000	\$1,000	Though XYZ qualifies as a broad-based PAC, it can't assure candidates that the funds it raised met the limits, thus must be treated as a "person"
Senator ABC \$3,000	\$0	transfers are prohibited, thus this contribution can't be in compliance

What Happens To Funds In The Separate Account?

After depositing the reviewed and segregated funds in a separate account, the candidate has until June 30, 1989 to deposit all or part of those funds in his/her campaign committee account established pursuant to the provisions of Proposition 73. If the candidate has more than one campaign committee (e.g., Smith for Senate, Smith for Governor) the segregated funds may be divided among the committees. Once deposited in the committee account, the funds are deemed to be held in trust for use in the election for which the committee was established.

Any segregated funds not deposited in a campaign committee account by June 30, 1989 automatically revert to the status of existing funds not in compliance with the limits and thus subject to the full restrictions of Section 85306 (i.e. may be used for any lawful purpose except to support or oppose a candidacy for elective office).

What Happens To Funds Not In Compliance & Not Placed In The Separate Account?

Funds found not to be in compliance with the Proposition 73 limits and thus not eligible to be placed in the separate account may be retained by the existing committee in that committee's

existing campaign account. That committee may then be maintained until the existing funds are expended at which time the committee would be terminated.

These funds are subject to the restrictions of Section 85306 and thus may be used for any "lawful purpose" except to "support or oppose a candidacy for elective office."

What Is A "Lawful Purpose"?

The FPPC has defined "lawful purpose" as used in Section 85306 as "any purpose other than personal use, as defined in ... the Elections Code."

According to Section 12401 of the Elections Code, a "payment from campaign funds is for personal use if the payment creates a substantial personal benefit and does not have more than a negligible political, legislative, or governmental purpose."

What Are Expenditures To "Support Or Oppose A Candidacy For Elective Office"?

FPPC regulations define expenditures to support or oppose a candidacy for elective office as including all of the following:

- any contribution, including in-kind contributions, from a candidate or committee to another candidate for state or local office, a candidate controlled committee or any committee formed primarily to support or oppose candidates;
- any independent expenditure made by a candidate or committee to expressly advocate the election or defeat of a candidate for state or local office;
- contributions or expenditures made to support or oppose a recall of an elected officer; and
- any expenditure made by a candidate, controlled committee, or a committee formed primarily to support or oppose candidates, not including expenditures for officeholder expenses (see below).

How Else May Existing Funds Be Used?

In addition to defining "lawful purpose," FPPC regulations have specifically identified certain types of expenses which are not considered expenditures in support or opposition to a candidacy and thus restricted. These include:

- payments of campaign debts incurred before January 1, 1989 for goods consumed or services completed prior to January 1, 1989;

- payments for officeholder expenses;
- contributions or expenditures to support or oppose ballot measures, candidates for federal office, or candidates for state or local office in another state;

Non-candidate controlled committees and committees not formed to primarily support or oppose candidates may also use existing funds for:

- payment of overhead expenses; and
- payment of expenses of voter registration drives and non-partisan get-out-the-vote drives.

PART TWO: GIFTS & HONORARIA

What Is The Status Of Gifts & Honoraria Under Proposition 73?

Gifts and honorarium are permitted, though limited, under Proposition 73.

What Are The Restrictions On Gifts And Honoraria?

Elected officeholders are limited to gifts or honoraria of no more than \$1,000 per source per calendar year. The limit does not include reimbursements for "actual travel expenses and reasonable subsistence" in connection with the receipt of honoraria.

What Is The Definition Of Gift?

Since Proposition 73 is an amendment to the Political Reform Act, the Act's long-standing definition of "gift" is applicable. Section 82028 of the Act defines gift as "any payment to the extent that consideration of equal or greater value is not received...." Gift does not include informational materials, gifts from family members, personalized plaques and trophies with an individual value of less than \$250, etc.

What Is The Definition Of Honorarium?

Unknown at this time. Neither Proposition 73 nor the Political Reform Act defines "honorarium." The FPPC is in the process of drafting the necessary regulations, which should be available in January or February, 1989.

What Is A Single Source?

The proposed FPPC regulations state that no elected officer may accept more than \$1,000 in gifts and honoraria per calendar year from:

- a business entity and its parent, subsidiary, or otherwise related business entities;
- an association or other organization and its national, state, regional, or local chapters.

How Else Would The FPPC Regulations Interpret The Limits?

The proposed regulations would clarify that an elected officer could not accept more than a total of \$1,000 in gifts or honoraria for any speech or speeches given at a single assemblage. A single assemblage would include all events scheduled for a single conference, convention, etc.

PART THREE: MASS MAILINGS & NEWSLETTERS

What Is The Status Of Mass Mailings & Newsletters Under Proposition 73?

Proposition 73 bans the sending of mass mailings and newsletters at public expense. The FPPC has adopted extensive permanent regulations implementing and clarifying this ban.

What Is A "Mass Mailing"?

Mass mailing is defined as 200 or more substantially similar pieces of mail sent in a single calendar month but does not include mailings sent in response to unsolicited requests.

What Does Substantially Similar Mean?

A mailing is substantially similar if the text is substantially the same with only minor changes or alterations for purposes of personalizing the piece of mail. Form letters wherein only the addressee information is changed are substantially similar.

What Is An Unsolicited Request?

A request is unsolicited when it is not requested or induced by the recipient officerholder or someone acting at the behest of the officeholder. However, a request in response to an elected officeholder's press release or participation in a public forum or press conference is considered unsolicited.

Any correspondence or oral inquiry on a subject is assumed to be a request for a single written response regardless of whether an explicit request for such a response was included. Thus, an officeholder could respond to a letter which simply voiced an opinion on an issue but did not ask for a specific response.

What Type Of Mass Mailings Are NOT Prohibited By Proposition 73?

The following mailings are not prohibited:

- press releases to the media;
- mailings sent in the normal course of business from one governmental entity or officer to another;
- mailings sent in connection with the payment or collection of funds by a governmental agency;
- mailings to persons subject to a governmental program administered by a governmental officer when the mailings are essential to the functioning of the program;
- mailings required by statute, ordinance or court order.

In addition, a mailing is NOT prohibited if it meets all of the following criteria:

- it is mailed by an elected officer's agency;
- the stationary, forms and envelopes used for the mailing are the official stationary, etc. of the agency; and
- the elected officer's name appears, if at all, only on the standard letterhead or logotype of the stationary and there are no other references to the officer, including his or her photograph or signature, in the mailing.

PART FOUR: MISCELLANEOUS QUESTIONS

What Is The Status Of The Litigation Regarding Proposition 73?

There have been four court actions filed regarding Proposition 73 and related issues:

Watson, et al. v. Senate Rules Committee seeks to overturn the restrictions on newsletters and mass mailings. It is currently pending in Los Angeles Superior Court.

Klehs v. Assembly Rules Committee also challenges Proposition 73's ban on newsletters and mass mailings. Petition for a writ was summarily denied by the Third District Court of Appeals in October.

Center for Public Interest Law v. FPPC & FTB argued that Proposition 73's ban on public financing did not conflict with the public financing scheme in Proposition 68. The Fourth District Court of Appeal denied request for a writ to force the FPPC to implement Proposition 68's public financing provisions. A subsequent appeal to the state Supreme Court was also denied.

California Common Cause v. FPPC, filed in the Third District Court of Appeals shortly after the failure of the Center for Public Interest Law case, argues that Proposition 73's ban on public financing is an unconstitutional infringement on the Legislature's right to appropriate funds.