April 12, 1994

AL #94-2
(Revised Copy)

Henry C. Levy
Levy & Henderson
364 61st Street
Oakland, CA 94618

Re: **Interpretation of City of Oakland Campaign Reform Act Provisions: Section 304; Section 307, and; Section 310;**

Dear Hank:

This letter is in response to your request for clarification regarding certain provisions of the Oakland Campaign Reform Act (OCRA). I have summarized the issues you have raised as follows:

1. Whether the state imposed transfer ban under Proposition 73 prohibits the transfer of funds to or from an officeholder or candidate in a City of Oakland election or his or her committee?

2. Whether the officeholder fund allowance under section 310 is subject to section 300/301 contribution limitations?

3. Whether officeholder expenses should be paid out of the officeholder's campaign account?

4. How should a contribution to the officeholder fund be distinguished from a contribution to the campaign account?

5. Whether loans from candidates or officeholders to themselves are considered "contributions" under section 304?

6. Whether the property manager of a partnership who also handles the accounting for the partnership could make an independent contribution, when the partnership has already

made a contribution on behalf of the partnership?

DISCUSSION

1. The state imposed transfer ban under Proposition 73 prohibits the transfer of funds from an officeholder or candidate or his or her committee, to a City officeholder or candidate for City office or his or her committee.

This issue is a matter of state law, and has been addressed by the Fair Political Practices Commission. According to the FPPC, inter-candidate transfers under Proposition 73 are prohibited, as follows:

> "No candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfer of funds between candidates or their controlled committees are prohibited." (Gov. Code § 85304.)

Most of the provisions of Proposition 73 have been invalidated, the result of a United States District Court opinion. (Service Employees International Union v. Fair Political Practices Commission (1990) 747 F. Supp. 580, affirmed on appeal by the U.S. Court of Appeals for the Ninth Circuit in 1992.)

However, certain provisions of Proposition 73 remain, and the FPPC considers that the transfer ban contained within section 85304, "...continues to prohibit the transfer of campaign funds where the prohibition serves to uphold constitutionally valid local contribution limits." (FPPC Advice Letter File No. I-92-124.) The FPPC has determined that the limitation contained in section 85304 would prohibit a candidate or his or her committee from transferring funds to:

> "(1) any candidate on the ballot for election in a special election for any local or state office, and;

(2) any candidate in a jurisdiction with valid local contribution limits." (FPPC Advice Letter File No. I-92-124.)

While the FPPC considers that a candidate or committee from outside of Oakland is prohibited from transferring funds to an officeholder or candidate for city office as a result of Proposition 73, according to the FPPC, the section 85304 transfer ban would not act to affect transfers from a local officeholder's or candidate's campaign account to a candidate or his or her committee who is running for an office outside of the City of Oakland. (FPPC Advice Letter File No. I-92-124.)

It has been relayed to this office that technical advisors from the FPPC might have verbally indicated that transfers both **from** and **to** a candidate for city office would be impermissible. This interpretation is at odds with the conclusion reached in the FPPC Advice Letter File No. I-92-124. This office considers that the aforementioned FPPC letter is a correct interpretation of the effect that the section 85304 transfer ban has on local candidates. Two additional FPPC Advice Letters, copies of which are attached for your information, support this conclusion.

It is recommended that you contact the Fair Political Practices Commission if you have additional questions regarding the impact of Proposition 73 on inter-candidate transfers.

2. The officeholder fund allowance under section 310 is subject to section 300/301 contribution limitations.

The officeholder fund allowance under section 310 is intended to allow an officeholder to fund political, governmental or other activities of a lawful purpose not related to his or her campaign for political office. The rationale for creating the officeholder fund allowance is to permit funding of officeholder activities without requiring use of monies contributed towards a campaign for political office. Therefore, money contributed to the officeholder fund is separate and apart from contributions to the officeholder's or candidate's campaign committee.

While a contribution to the officeholder fund by a person or committee is not to be counted towards the limitation on contributions to the officeholder's or candidate's campaign committee imposed under Section 300/301 of the OCRA, any contribution made to the officeholder fund may not exceed in any calendar year the amount the person or committee could contribute to the officeholder's campaign committee under Section 300/301.

For example:

> If Citizen Smith makes a contribution to Candidate A in the amount of $500, and Candidate A has adopted expenditure ceilings pursuant to section 300(c) of the OCRA, then Citizen Smith could make a separate contribution to the officeholder fund up to $500 per calendar year.

3. Officeholder expenses should not be paid out of the officeholder's political account without first having been deposited into the candidate's officeholder fund savings account.

The Political Reform Act and Section 306 of the OCRA require that a candidate for city office have no more than one campaign committee and one checking account for the office sought, out of which all campaign expenses shall be made. Section 310 provides for a candidate to establish and maintain an officeholder expense fund. The officeholder expense fund is not intended to be used in connection with any election to city office, but may be established to allow an officeholder to defray the expenses associated with holding office when such expenses are unrelated to the officeholder's campaign for local office. Therefore, contributions to the officeholder fund account must be segregated from contributions made to the campaign checking account. Establishment of an officeholder fund savings account would be an acceptable method for segregating officeholder fund contributions from campaign contributions.

When making a payment from the officeholder expense fund, the payment could be withdrawn from the officeholder fund savings account and deposited into the campaign expense account. A check in that amount would then issue from the campaign expense account to the intended recipient of the payment.

4. A contribution to the officeholder fund should be earmarked as such at the time the contribution is made.

An officeholder expense as defined in the OCRA section 310 is unrelated to the candidate's or officeholder's election for city office. The distinction should be indicated by the contributor at the point of contribution, in order to avoid confusion and to ascertain the intent of the donor at the outset.

For example:

> If Citizen Smith makes a contribution to Candidate A's campaign, the contributor should indicate that the contribution is for the campaign by writing on the face of the check "For Candidate A's Campaign" or equivalent language. If Citizen Smith makes a contribution to Candidate A's officeholder fund expense account, then that contribution should be clearly earmarked for that purpose by writing on the face of the check "For Candidate A's Officeholder Expense Fund" or equivalent language. Citizen Smith would under this scenario draft two separate checks, indicating in writing on the face of each check for what purpose the contribution is being made.

Failure to designate on the check whether the contribution is for the candidate's campaign expenses or for the officeholder expense fund could inadvertently result in either the donor and/or the candidate/officeholder being in violation of the contribution limitations under section 301 of the OCRA. For example:

> If the applicable campaign contribution limitation is $500, and Citizen Smith intends to contribute $500 to an officeholder's campaign and $500 to the officeholder's Officeholder Fund account by issuing one check for $1,000, both the contributor and the candidate/officeholder would be in violation of the contribution limitations of OCRA section 301 if the candidate/officeholder neglected to transfer $500 of the total contribution to the officeholder expense fund savings account.

5. Loans from candidates or officeholders to themselves are considered "contributions" under section 304.

You have asked whether a candidate can loan money to his or her campaign without the loan being subject to contribution limitations. Under section 304(a), "[a] loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this Act." Therefore, a loan made by a candidate to his or her campaign would be subject to the contribution limitations of the Act.

Section 304(c) provides that a candidate can obtain a loan from a commercial lending institution in the regular course of business on the same terms available to a member of the public, and the proceeds of that loan can be spent by the candidate on the campaign **without being subject to the contribution limitations of section 301**. However, in this case the loan is to the candidate and not the campaign, so that the candidate cannot repay the loan to the lending institution with campaign funds.

6. When a partnership has made a contribution to a candidate, a person employed by the partnership may also make a contribution to that candidate if he or she is not a named partner and does not have a controlling interest in the partnership.

In our last telephone conversation you raised the additional question whether the aggregation provisions of the OCRA, section 303, would prevent a property manager and accountant for a partnership from making a contribution to a candidate for office in Oakland, when the partnership had already made a contribution on behalf of the partnership.

Pursuant to section 303, a contribution from a partnership to a particular candidate is aggregated with a contribution to the same candidate from an individual employed by the partnership, when:

a) the individual contributor is a named partner, **or**;

b) the individual owns a controlling interest in the partnership.

Under the limited facts you have presented, the property manager would not be precluded from making a separate contribution on his own behalf to the candidate, even when the candidate was in receipt of a contribution from the partnership which employs that individual, because the property manager is not a named partner, and does not own a controlling interest in the partnership.

Your March 7, 1994 letter also raised an issue whether a gift of Oakland A's tickets to the City for the benefit of the councilmembers creates any conflict of interest. Questions regarding conflict of interest must be raised by the council-member in order to be addressed by this office. You should refer the councilmember to our office directly with any questions he or she might have pertaining to conflict of interest.

Please contact me at your earliest convenience if you have additional questions regarding the issues addressed herein.

Very truly yours,

JAYNE W. WILLIAMS
City Attorney

By: ______________________________
J. PATRICK TANG
Deputy City Attorney

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Attachments

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