

June 2, 1994

AL #94-3

To: All candidates for City of Oakland elective office and their campaign treasurers.

Re: **Loan provisions of the Oakland Campaign Reform Act, Section 304.**

NOTE: THIS ADVICE LETTER ADDRESSES THE LOAN PROVISIONS OF THE OAKLAND CAMPAIGN REFORM ACT, AND SUPERSEDES THE ADVICE PROVIDED IN SECTION 5 OF ADVICE LETTER #94-2.

This office has recently received several requests for advice regarding the loan provisions of the Oakland Campaign Reform Act (OCRA), contained within section 304. Specifically, the issue has been raised whether a candidate can personally loan money to his or her campaign committee in an amount exceeding the contribution limitations of section 300 et seq., with the expectation that all or part of the loan will be repaid from future campaign contributions.

#### SUMMARY CONCLUSION

The loan provisions of the Oakland Campaign Reform Act do not preclude a candidate from making a personal loan to his or her own campaign committee, as long as contributions received to reimburse the candidate for the personal loan do not exceed the campaign contribution limitations of the Act.

#### DISCUSSION

The loan provisions of the OCRA incorporate language contained in a proposed model ordinance put together by the California Commission on Campaign Financing. This model ordinance has been utilized by Oakland and other jurisdictions as

a basis for local campaign finance regulations. The same model

loan provisions have been incorporated within the Los Angeles campaign finance ordinance. Our research indicates that, during the most recent mayoral election in Los Angeles, it became an issue whether the loan provisions acted to prohibit candidates from loaning their campaign personal funds in excess of the contribution limitations with the expectation that all or part of the loan would be repaid from future campaign contributions. Given both the factual similarity and the essentially identical language in both the Los Angeles and Oakland cases, the analysis of the Los Angeles Campaign Ethics Commission (CEC) opinion on the issue bears directly on the matter as it pertains to Oakland. As a result of their analysis of the loan provisions, the Los Angeles CEC determined that such personal loans were not limited by the loan provisions of their campaign finance regulations, and after a review of the relevant language and in light of the stated intent of the provision, we concur.

The intent of the above noted loan provisions, including OCRA section 304, is to prohibit a candidate from circumventing the contribution limitations of the Act by obtaining "loans" from individuals in amounts exceeding the contribution limits. To accomplish this purpose, section 304 requires that "[a] loan shall be considered a contribution from the maker or guarantor of the loan and shall be subject to the contribution limitations of this Act." An exception is provided for loans made to a candidate "...by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed...", so that in such a case a loan would not be subject to the contribution limitations of the Act.

Section 304 does not directly address the situation wherein a candidate loans money to his or her own campaign committee. Under prevailing federal law, it is well settled that a candidate can spend as much of his or her own money on a campaign for elective office (See, Buckley v. Valeo (1976) 424 U.S. 1.), but it is unclear whether the federal standard applies to a loan by a candidate to his or her own committee when the loan is intended to be repaid in part or in whole by campaign contributors.

This office considers that section 304 of the Act does

not presently act to bar a candidate from loaning to his or her campaign an amount in excess of the contribution limitations of the Act, even when the candidate anticipates being repaid from future contributions, as long as all contributions to reimburse

the candidate for the personal loan are within the contribution limitations of section 300 et seq. of the Act. This conclusion is based upon the following considerations:

1. The extent to which a local jurisdiction can limit candidate loans to his or her own campaign has not been determined under federal law.
2. The OCRA does not explicitly delineate limitations on loans from a candidate to his or her own committee.
3. The primary intent of the contribution limitations of the Act is to reduce the influence of large contributors, special interests and PACs on City of Oakland elections. The loan provisions contained in section 304 are intended to close a potential loophole which would otherwise be available to such large contributors. Allowing a candidate to loan money in excess of the contribution limitations to his or her own campaign would not result in the creation of a loophole for large contributors, as long as contributions received to retire the loan are subject to the contribution limitations of the Act.

On a related note, candidates and their treasurers should be aware that a loan may be subject to contribution limitations even if it is obtained from a commercial lending institution in the regular course of business on the same terms available to members of the public, if the loan is guaranteed by a person other than the candidate.

Please contact me at your earliest convenience if you have additional questions regarding this letter.

Very truly yours,

JAYNE W. WILLIAMS  
City Attorney

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By: \_\_\_\_\_  
J. PATRICK TANG  
Deputy City Attorney

Dear David:

This letter is in response to your request for advice pertaining to section 304 of the Oakland Campaign Reform Act (OCRA). In a conversation over the telephone on or about May , 1994, you asked whether

### DISCUSSION

#### I. LOANS AND EXTENSIONS OF CREDIT MAY BE CONTRIBUTIONS SUBJECT TO CONTRIBUTION LIMITATIONS OF THE ACT.

Although the terms are not specifically defined within the Act, loans and extensions of credit are dealt with as separate types of transactions under section 304 of the Act. For the purposes of the Act, a loan should be treated as a transaction wherein a candidate or his or her committee obtains money from a particular source, and in return the source is repaid the money under the terms specified in the loan, usually with payments extending for a specified period of time.

For the purposes of the Act, an extension of credit is the provision of goods and services to a candidate or his or her campaign, with payment for such goods or services to occur at some later time.

#### A. A LOAN IS CONSIDERED A CONTRIBUTION UNLESS MADE TO A CANDIDATE BY A COMMERCIAL LENDING INSTITUTION UNDER TERMS AVAILABLE TO THE PUBLIC.

The Oakland Campaign Reform Act, section 304(a), requires that "[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." An exception, contained in subsection 304(c), allows that a loan is not subject to the contribution limitations of the Act when "...made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed."

#### B. EXTENSIONS OF CREDIT ARE CONTRIBUTIONS IF BALANCE OWED IS IN EXCESS OF \$1,500 FOR MORE THAN NINETY DAYS.

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.