



OFFICE OF THE
CITY ATTORNEY

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

Law and Legislation Committee
City Council
Sacramento, CA 95814

RE: PROPOSITION 73

Honorable Members in Session:

SUMMARY

Proposition 73 establishes limitations on campaign contributions which will be operative on January 1, 1989. Proposition 73 authorizes cities to establish more restrictive contribution limitations. These limitation provisions are applicable to the City of Sacramento. While the current limitations established by Chapter 62 of the City Code are, for the most part, more restrictive than the limitations of Proposition 73, there are certain conflicts or potential conflicts between Chapter 62 and Proposition 73. The contribution limitations of Chapter 62 should be either (1) repealed, in which case the provisions of Proposition 73 will govern; or (2) amended to eliminate the inconsistencies with Proposition 73.

This office has been advised that there may be interest among Councilmembers in enacting a public-funded campaign financing ordinance. Proposition 73 contains a general prohibition on the expenditure of public funds for political campaigns, and if this prohibition applies to the City of Sacramento, the City would be barred from establishing a public-funded campaign financing ordinance. However, while the contribution limitations of Proposition 73 should be considered applicable to both charter and general law cities, it is not clear that the prohibition on expenditure of public funds on local political campaigns is applicable to charter cities. Whether the prohibition is applicable turns on resolution of the question of whether the use of public funds to finance local political campaigns is considered a municipal affair or a matter of statewide concern. Resolution of the issue of whether a matter is a "municipal affair" is ultimately a matter for the courts, and is addressed on a case-by-case basis. No case has addressed the issue of whether the financing of local campaigns is a municipal affair.

CITY OF SACRAMENTO
CALIFORNIA

December 8, 1988

812 TENTH STREET
SACRAMENTO, CA
95814-2694

916-449-5346

DEPUTY CITY
ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
GARLAND E. BURRELL, JR.
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
KATHLEEN L. MCCORMICK

BACKGROUND

Proposition 73, passed by the voters on June 7, 1988, will be operative on January 1, 1989. This office has concluded that the contribution limitations established by Proposition 73 should be considered applicable to both charter and general law cities, and the Fair Political Practices Commission (FPPC) has recently issued an opinion reaching this same conclusion.

At this time there exists certain conflicts or potential conflicts between the campaign contribution limitations provision established by Proposition 73, and the contribution limitations set forth in Chapter 62 of the current City Code. To eliminate potential future problems, the City Code should be amended to eliminate any conflicts, and to clarify the City's intent.

CONTRIBUTION LIMITATIONS

The contribution limitations of Proposition 73 are, as a general rule, less restrictive than those found in Chapter 62 of the City Code. The limitations enacted by Proposition 73 apply on a per-fiscal-year basis, while the limitations set forth in the City Code apply on a per-election-cycle basis. Thus, for example, Proposition 73 prohibits a person from contributing more than \$1,000.00 per fiscal year to a candidate, while the City Code prohibits a person from making a contribution to a candidate for a City Council position of more than \$500.00 with respect to a single election (or \$1,000.00 to a candidate for the mayoral position). Generally there is no problem with this, since Proposition 73 expressly allows for local governments to establish more restrictive contribution limitations. However, there are certain provisions which would allow for campaign contributions in certain circumstances that would exceed the limitations established by Proposition 73. To eliminate any confusion and to reduce the possibility of future court challenges, the Council should either repeal or amend Chapter 62 to eliminate any potential conflicts and to clarify the intent and purpose.

In addressing the contribution limitations of Proposition 73, the City is presented with three basic options:

1. Repeal the contribution limitations set forth in Chapter 62, which will mean the City will thereafter be subject to the limitations established by Proposition 73; or

2. Retain the existing limitations, and amend Chapter 62 of the Sacramento City Code to eliminate any conflicts or potential conflicts between the provisions of Chapter 62 and the provisions of Proposition 73; or

3. Establish different limitations which are more restrictive than those set forth in Proposition 73.

Following is a list of the sections in Chapter 62 which appear to be in conflict with those of Proposition 73, and the manner in which they may be amended. These conflicts were discussed in more detail in a July 12, 1988 memorandum from this office. If the decision is made to retain the existing limitations contained in Chapter 62, then the following changes are required. If the decision is to repeal the limitations of Chapter 62, then the conflicts will also be eliminated.

If Chapter 62 is to be amended, but not repealed, then the following changes should be made:

(a) Sections 62.103(b) and (e) theoretically permit a person to contribute \$1,500.00 in a single fiscal year to a mayoral candidate if the candidate is involved in a run-off election. Section 62.103(b) should be amended so that a person may not contribute more than \$1,000.00 to a mayoral candidate in a given fiscal year, as provided by Proposition 73.

(b) Section 62.103(c) permits a political action committee to contribute \$3,000.00 to a mayoral candidate. Sections 62.103(c) and (e) should be amended so that a political action committee may not contribute more than \$2,500.00 in a given fiscal year, as provided by Proposition 73.

(c) Section 62.103(g) permits opponents of a candidate who contribute to his or her own campaign or whose spouse contributes to his or her campaign, to gather a matching amount of contributions, even if they include contributions that exceed the limitations of Chapter 62. Proposition 73 does not provide any exceptions to its contribution limitations. Section 62.103(g) should therefore be repealed or, alternatively, amended to provide that that section only provides an exception to the more restrictive limitations established by Chapter 62, and not to the limitations of Proposition 73.

(d) Section 62.103(d) provides that contribution limitations are not applicable until a candidate has received \$10,000.00 in contributions. Proposition 73 does not allow for a threshold amount before its contribution limitations apply. Accordingly, Section 62.103(d) should be repealed or, alternatively, amended to provide that the more

restrictive limitations in Chapter 62 are applicable only after the \$10,000.00 limitation is reached, while the limitations of Proposition 73 are effective from the inception of the campaign.

The foregoing constitute the minimum changes that are required to eliminate actual conflicts between Chapter 62 and Proposition 73. [If the decision is to amend rather than repeal Chapter 62, consideration might be given to additional amendments. The definitions and nomenclature of Proposition 73 differ from those in Chapter 62. For example, Proposition 73 divides contributors into the four categories of "persons", "political parties", "broad based political committees", and "political parties", and establishes contribution limitations for each. Chapter 62 divides contributors into two categories, "persons" and "political actions committees", and establishes contribution limitations for each. If the contribution limitations of Chapter 62 are not repealed, then it may be appropriate to amend Chapter 62 so that its definitions and nomenclature are the same as those contained in Proposition 73.

PUBLIC-FUNDED CAMPAIGN FINANCING ORDINANCE

This office has been advised that there is some interest among Councilmembers in the enactment of a public-funded campaign financing ordinance. The County of Sacramento has such an ordinance. The League of California Cities previously had a model public-funded campaign financing ordinance, but this model ordinance is currently being reconsidered by the League in light of the passage of Proposition 73.

Under the system established by the County ordinance, which is similar to the federal campaign financing system, a candidate who elects to participate in the public financing program agrees to limit his or her campaign expenditures, and in return receives matching funds from the County up to a specified level. The system is voluntary, and only those electing to participate are (i) subject to the limitation on campaign expenditures, and (ii) entitled to receive public funds to spend on their political campaigns.

Proposition 73 included an express prohibition on the expenditure of public funds for political campaigns. Thus, Section 85300 of the Government Code was added to read:

No public officer shall expend and no candidate shall accept any public money for the purpose of seeking elective office.

While the foregoing section does prohibit the expenditure of public funds for political campaigns, there remains an issue of whether this section is applicable to charter cities such as the City of Sacramento. Generally, charter cities have the right to regulate municipal affairs as they see fit, notwithstanding the presence of conflicting or inconsistent state law. Unless the prohibition on the expenditure of public funds for local political campaigns is deemed to be a matter of statewide concern, as opposed to a municipal affair, the City of Sacramento is authorized, by virtue of Article XI, Section 5(b) of the California Constitution, and Section 10 of the City Charter, to establish a system whereby public funds are contributed to candidates involved in campaigns for City Council seats or the mayoral position.

The determination of whether or not a matter is a "municipal affair" or a matter of statewide concern is ultimately a matter to be resolved by the courts on a case-by-case basis. To date there have been no decisions on point. This office initially took the position that the Proposition 73 prohibition of public funding of local political campaigns was probably a matter of statewide concern, and therefore preempted the City from enacting its own public-funded campaign contribution ordinance; however, further consideration has caused this office to reconsider this issue, and further analysis of this question should occur if the Council is interested in public funding of campaigns. There is little doubt that the contribution limitations of Proposition 73 constitute matters of statewide concern and that the City could therefore not enact conflicting limitations. However, it is not clear that the prohibition on utilizing public funds to finance local political campaigns is likewise a matter of statewide concern. The FPPC has issued an opinion concluding that the contribution limitations of Proposition 73 are applicable to charter cities. However, the FPPC did not address the issue of whether the use of public funds to finance political campaigns is also applicable to charter cities. It should be anticipated that an ordinance authorizing the expenditure of City funds for political campaigns will likely face a court challenge. The County is preparing to initiate a lawsuit to determine the validity of its ordinance in light of Proposition 73.

The enactment of a public-funded campaign financing ordinance will likely require the establishment of a sizeable administrative system to administer its provisions. The County ordinance imposes substantial reporting and accounting obligations on both staff and candidates. The cost of administering a campaign financing ordinance, along with the expense of City contributions to participating candidates, could be substantial. If there is sufficient interest in the enactment of a

Law and Legislation Committee
Re: Proposition 73
December 8, 1988
Page - 6 -

public-funded campaign financing ordinance, it is recommended that this matter be referred to this office for further analysis and that the issue of the costs associated with such an ordinance be addressed.

RECOMMENDATION

The provisions of Chapter 62 of the City Code should either be repealed or amended to be consistent with the contribution limitation provisions established by Proposition 73. Because of the January 1, 1989 operative date for Proposition 73, the amendment or repeal of Chapter 62 should be accomplished at the earliest possible date.

If there is sufficient interest in the enactment of a public-funded campaign financing ordinance, it is recommended that this matter be referred to this office for further analysis and that the issue of the costs associated with such an ordinance be addressed.

Respectfully submitted,

JAMES P. JACKSON, City Attorney

By: Richard E. Archibald
RICHARD E. ARCHIBALD,
Deputy City Attorney

December 15, 1988
All Districts