

COUNCIL COMMITTEE MINUTES

Concurrent Special Committee Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento and the Parking Authority of the City of Sacramento.

VOTING RECORD LEGEND			
MOV:	MOVED	ABST:	ABSTAIN
SEC:	SECOND	ABS:	ABSENT
M	— MAYOR RUDIN	D5	— SERNA
D1	— SHORE	D6	— MUELLER
D2	— FERRIS	D7	— KASTANIS
D3	— POPE	D8	— ROBIE
D4	— CHINN		

COMMITTEE NAME: LAW AND LEGISLATION

MEETING DATE: December 15, 1988

MEETING TIME: 3:00 p.m.

LOCATION: 1231 I STREET, 1ST FLOOR, HEARING ROOM

I HEREBY CALL Special Meetings of the Sacramento City Council, Redevelopment Agency of the City of Sacramento, Housing Authority of the City of Sacramento, and Parking Authority of the City of Sacramento to be conducted concurrently with the Council committee meetings listed below, which are incorporated herein by reference. The Special Meetings are called to permit Members who are not on the listed committees to attend the meetings and participate in the discussions. In the event five (5) or more members of the City Council are present at a Committee meeting, only those items listed on the agenda can be acted on or discussed.

The meeting was called to order at 3:08 p.m. by Chairman Terry Kastanis.

PRESENT: Committeemembers Kastanis, Mueller and Shore.
ABSENT: Committeemember Pope.
GUEST: Councilmember Serna.

1. Report regarding the effect of Proposition 73 on the Campaign Contribution Limitations Ordinance.

RECOMMENDATION OF STAFF: REVIEW AND MAKE RECOMMENDATION TO COUNCIL.

COMMITTEE ACTION: REFERRED BACK TO CITY ATTORNEY STAFF.

VOTING RECORD: RECOMMEND OPTION 1 OF REPORT; REFER OTHER MATTERS BACK TO CITY ATTORNEY FOR RESEARCH.

MINUTES:

Richard Archibald, Deputy City Attorney, was present to discuss the City Attorney's staff report on this issue.

Kastanis stated that the three proposals suggested are to (1) repeal the contribution limitations set forth in City Code Chapter 62; (2) retain the existing limitations, and amend Chapter 62 to

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eliminate conflicts between Chapter 62 and Proposition 73; or (3) establish different limitations which are more restrictive than those set forth in Proposition 73.

Shore stated that he recommends going with option 1. He said he feels the restrictive limits protect incumbents. Kastanis prefers option 2, stating that it is difficult enough to do a good job with the reporting procedures, and that they are scrutinized by the press, opponents, etc. He feels the reporting procedures should be kept as simple and clear as possible, and that we should not have different requirements than than FPPC regulations. He stated it should be easy to follow the law; option 2 makes it more difficult. Mueller feels option 1 is the closest the City can go. She asked whether the City could look to some future reform package. She would like staff to come back in thirty days with some recommendations.

At this time, Councilmember Serna, who is not a member of this Committee, brought up a new matter which he would like to see adopted in the future. He said he would like the Committee to consider adding a new section to the campaign ordinance that would institute an anti-laundersing ordinance. He said that candidates are "sitting ducks" when it comes to anyone wanting to launder campaign funds, and that no one can guarantee that this hasn't been done in their campaign. He said the City should institute this amendment to our current ordinance, as a portion of Proposition 68 is going to recommend doing it at any rate. He said that when a contribution is made, a declaration under penalty of perjury should be signed by the contributor stating that the contributed money is, in fact, their own money. He feels this should apply to any contributions of \$25.00 or more, since the FPPC looks at contributions of \$25.00 and over when they run an audit on a candidate. He admits this will add a new burden on the candidates, but will shift the burden of proof to contributors. He passed out some literature and a sample anti-laundersing ordinance at this time. Shore feels that this is a good idea, explaining that he has been one of those "sitting ducks" himself.

There was further discussion, and it was requested that the City Attorney staff:

1. Analyze further the issue of whether public campaign financing constitutes a municipal affair which the City of Sacramento therefore has the authority to regulate, regardless of the prohibition in Proposition 73 on the expenditure of public funds for political campaign purposes;

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2. Analyze and summarize the public campaign financing programs established in the City of Seattle, Washington, and the County of Sacramento, and the system proposed in the model ordinance of the League of California Cities;
3. Consider and discuss revenue sources and financing of a public campaign financing program for the City of Sacramento;
4. Consider the legality of establishing a levy on contributions over a particular amount, with the proceeds being used to fund a program of public campaign financing;
5. Discuss appropriate dates for implementation of a public campaign financing program.
6. Discuss possible expenditure limitations and limitations on public matching funds;
7. Consider the possibility of establishing a public campaign financing program for the mayoral election only;
8. Discuss voter support for the concept of public campaign financing;
9. Consider the legality of establishing expenditure limitations for initiatives or ballot measures; and
10. Consider the legality of prohibiting the use of paid signature gatherers.

Mueller shared an idea that was presented to her from someone else: Tax contributions of money over a certain limit. If a contribution is over \$100.00, what if the recipient of those funds pays that tax? And would this take voter approval to implement? Would Council want to consider putting something on the ballot to see if people support public financing?

Serna feels these matters discussed today should be moved expeditiously. Shore stated that he questions whether the City might be better off without reform. As an alternative, Serna proposed that the City Attorney staff look at the option of public financing for mayoral candidates only, as that is the most costly campaign.

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Shore brought up the matter of paid signature gatherers and suggested they be volunteers instead of paid workers. Some other suggestions by the Committee included the anti-launders ordinance, spending limits, sponsoring an initiative banning paid signature gatherers, free media advertising, and public financing of mayoral candidates only.

Steve Barrow, a representative of Common Cause, stated they have been long-time proponents of campaign financing reform. He said his group participated heavily in the drafting of the Sacramento County ordinance. He said they feel placing both Proposition 68 and Proposition 73 on the ballot was meant to confuse the voters. They feel voters thought they were voting for spending limits with both those propositions. He said there are many court challenges out there now because of these propositions. His group feels spending limits are the most important issue to the voters. He said they applaud any movement the City takes. He said that in order to keep government clean in the eyes of the voters, we must have spending limits. They feel public financing is a good idea, and that contribution limits are very important, but that contribution limits on their own don't work. Kastanis told Mr. Barrow that he was encouraged by his presentation, and would like to hear from him in more detail about his group's recommendations.

Serna stated that the City Attorney's office questions the legality of public financing by the City as a charter city. He asked whether Common Cause would be interested in sharing the cost of taking this to court, if necessary. Mr. Barrow stated that they do lots of litigation (pro bono), and that this question is at the "National" now. He said this is important, as there are other charter cities and counties in this same position. Mr. Barrow also feels the anti-launders ordinance is a very good idea.

Jim Harrington of the League of California Cities spoke at this time. He said he was involved in putting together the League's model ordinance. He said the League coordinates for amicus briefs but does not participate in lawsuits directly. He told the Committee that they would first need to be sued. He said their legal staff's opinion is that the public financing and expenditure limits issue is available for charter cities but not general law cities, and that there are 83 charter cities out of over 450 cities in California.

A representative from the League of Women Voters spoke on behalf of her group, saying they support the City's proposed ordinance.

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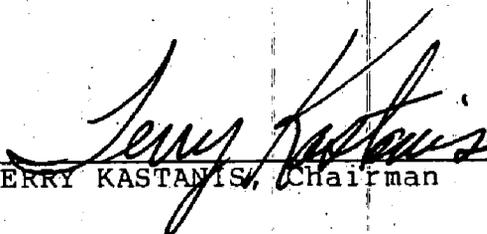
Robert Leidig, attorney, stated he strongly urges the City to proceed with option 1. He said that many issues under Proposition 73 still need to be resolved.

It was requested that the City Attorney's office come back in 30 days with their recommendations regarding the issues discussed today. Ted Kobey, Assistant City Attorney, stated that this was quite an extensive project, and that their office would do the best they can in that short a time. The next meeting for this Committee is scheduled for the January 19. Serna noted that the City is about to face an election cycle, and that this is not an item that can be dragged on. He said that, on this one, we need this done quickly. He said the City Attorney's office should stop whatever they're doing and get this done.

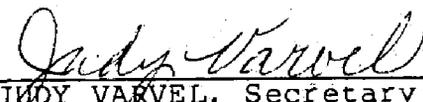
Mueller motioned, Shore seconded, and it was unanimously agreed to go with option 1, repealing contribution limitations set forth in City Code Chapter 62. A staff report from the City Attorney's office relating to the items discussed today was requested to be brought before the next Committee meeting scheduled for the third Thursday in January.

The meeting was adjourned at 4:13 p.m.

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TERRY KASTANIS, Chairman

ATTEST:


JUDY VARVEL, Secretary

Office of the Sacramento City Council

MEMORANDUM

December 14, 1988

TO: Mayor and Councilmembers

FROM: Joe Serna, Jr.
Councilmember, District 5 

SUBJECT: PROPOSED ANTI-LAUNDERING ORDINANCE

Recent events have shown that alleged campaign contribution laundering has occurred in a local election unbeknown to the candidate recipient. Laundering of campaign contributions is both wrong and illegal and should stop.

The Political Reform Act has long contained a requirement that an "intermediary" for a contribution disclose this fact to the recipient candidate or committee. However, until the passage of Proposition 68 there has been no specific definition of the term "intermediary." The Fair Political Practices Commission (the "FPPC") has long recognized that the recipient may be totally unaware that a contribution is actually from another source. Now that a definition of "intermediary" has been added, it seems appropriate to require contributors to disclose all the relevant information.

The provisions in the Political Reform Act (Government Code Section 84302) requiring this disclosure may be ignored and violated by the contributor and any intermediary, without the knowledge of the recipient. It seems appropriate for the City to adopt a requirement that contributions to City candidates must be accompanied by this information before they may be received.

Under the Political Reform Act, it is illegal for someone to make contributions either directly or indirectly in a name other than the name by which such person is identified for legal purposes. (Government Code Section 84301.) It is also illegal to make an anonymous contribution of \$100 or more. (Government Code Section 84304.)

Furthermore, it is illegal to make a contribution on behalf of another, or while acting as the agent or intermediary of another, without disclosing to the recipient both the name of the true source of the contribution and the name of the intermediary, as well as the address, occupation and employer information for each. (Government Code Section 84302.)

Proposition 68 on the June ballot added Government Code Section

84302.5, which for the first time defines the term "intermediary" as used in Government Code Section 84302.

The FPPC has ruled that while most of Proposition 68 does not go into effect, this particular section does. Furthermore, the FPPC ruled that this section became effective and operative immediately upon its adoption (i.e., on June 8, 1988). (See Bell & Olson Opinion, 11 FPPC 1, 24; No. 88-002; November 9, 1988.)

The FPPC has long-recognized that recipients of contributions generally are not equipped to determine if a contribution is made under the name of another. In a comment to a regulation adopted in 1979, the FPPC has stated:

This regulation sets out the duties of candidates and treasurers only with respect to campaign statements. Among the duties imposed by this regulation on candidates and treasurers with respect to committee campaign statements is to "cause to be checked, and, if necessary, corrected, any information...which a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer [candidate] is aware or should be aware by reason of his or her duties under this regulation and the Act." The circumstances that trigger a duty to inquire under this standard are limited to those actually known to the candidate or treasurer and to those of which he or she should be aware by carrying out his or her duties under the Act and regulation. They do not include circumstances a candidate or treasurer "might" or "should have known" if he or she had gone beyond his or her required duties. For example, Mr. Jones may give Mr. Smith \$100 in cash and instruct him to write a check to the candidate's controlled committee and to conceal the true source of the contribution. The committee reports the contribution as received from Smith. If neither the candidate nor the treasurer has any knowledge concerning the questionable nature of the contribution and neither, through performance of their respective duties (such as monitoring campaign records or reviewing campaign statements), could have learned any facts that would lead one to question the contribution, the candidate and treasurer have no duty of inquiry with respect to the contribution. There is no duty of inquiry even though if Smith were asked he would have revealed the true source of the funds.

Once the known circumstances are such that a question is raised concerning the accuracy of information on a campaign statement, an inquiry is required. It is not possible in

a regulation to describe with particularity every factual situation that might trigger such an inquiry since the variety of circumstances that could arise with respect to any particular campaign transaction are endless. By way of example, however, such circumstances might include the following in the case of a contribution: The size of the contribution, the reported source, the likelihood of that source making a contribution of the size reported, the circumstances surrounding receipt, and the manner in which the contribution is recorded in campaign records.

The burden of inquiry is likely to fall more heavily upon the treasurer because it is he, rather than the candidate, upon whom the major record keeping and reporting responsibility falls. Therefore, the treasurer is more likely than the candidate to be the person who, by reason of performance of duties, is aware of or should be aware of facts which would give rise to a duty of inquiry.

(Comment to 2 Calif. Code of Regs.
Section 18427. Emphasis added.)

As can be seen from the comment, the FPPC has acknowledged that, to a large extent, a candidate or treasurer may be a "sitting duck" for those who wish to "launder" campaign contributions by making those contributions through intermediaries who fail to disclose their status as an intermediary.

Under the Political Reform Act as amended by Propositions 68 and 73, it is now necessary for a candidate or treasurer to obtain the name, address, occupation and employer information from all contributors whose contributions must be itemized. In addition, information on intermediaries must also be obtained and records must now be kept to assure that contribution limitations are not violated. Furthermore, written fundraising solicitations must now advise contributors of the office and election for which the contribution is requested.

Therefore, it seems entirely appropriate for the City of Sacramento to amend its ordinance to provide that no contribution shall be accepted (i.e., deposited into a campaign contribution account) unless and until the contribution is accompanied by: the name, address, employer and occupation information; and a statement to the effect that the contributor is the true source of the contribution and is not acting as the agent or intermediary for any other person.

I have drafted for your review a possible amendment to the City's

ordinance which would establish such a requirement. I recognize that this will place an additional burden upon both contributors and recipients of contributions. However, the burden exists now to provide and to obtain most of this information anyway.

This amendment merely necessitates the provision of the information at the outset rather than at a later date. Under the limitations in Proposition 73, a violation could occur which would then need to be later corrected if this information is not first obtained

The amendment should enact a new section to read as follows:

(a) No contribution of \$25 or more shall be deposited into a campaign contribution account (as that term is used in Government Code Section 85201) unless and until it is accompanied by a statement signed under penalty of perjury from the contributor which contains all of the following information:

(i) The contributor's name and, if the contribution is made by a check drawn upon a joint bank account, whether the contribution is made individually, or jointly with another; if made jointly, the name of the joint contributor must also be provided;

(ii) The contributor's address;

(iii) The contributor's occupation and, if a joint contribution, the other contributor's occupation;

(iv) The contributor's employer (or if self-employed, the business entity) and, if a joint contribution, the same information for the other contributor; and either

(v) A statement, signed under penalty of perjury by the contributor (or contributors if a joint contribution), that the contribution is from the contributor(s) and that it is not made as agent or intermediary for any other person or entity; or

(vi) If a contribution is delivered to the candidate or committee by someone other than the contributor (excluding delivery through the United States Postal Service or other commercial delivery service) in addition to being accompanied by the information required by subdivisions (i) through (v) for the intermediary, the contribution shall also be accompanied by a statement which states the name, address, occupation and employment information for the

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source of the contribution as is required of a contributor, intermediary under subdivisions (i) through (iv).

(b) The statement required by subdivision (a) shall be in substantially the same form as that set forth below.

My proposed anti-laundering ordinance will eliminate laundering of campaign contributions, thus protecting the candidate and shifting the burden of proof to the contributor, but most importantly, this ordinance amendment will protect the campaign financing process from abuse.

I believe that this amendment (or a similar amendment drafted by the City Attorney's Office will go a long way toward preventing efforts at "laundering" campaign contributions.

cc: Walter J. Slipe, City Manager
Jim Jackson, City Attorney

Contributor's Declaration

Name of Contributor: _____

If contribution is made from joint funds,

Name of Joint Contributor: _____

Address: _____

Occupation(s) of Contributor(s): _____

Employer(s) of Contributor(s): _____

Check the appropriate box below.

This contribution is made from my own personal funds or from funds controlled jointly by myself and any joint contributor listed above. I understand that it is unlawful to make or to transmit a contribution in my name if that contribution is from someone else, unless I disclose to the recipient the name, address, occupation and employer of both myself and of the source of the contribution.

This contribution is made from funds which are not my personal funds or from funds controlled jointly by me. It is made by someone else for whom I am transmitting the contribution as agent or intermediary. I understand that the law requires that in such a situation I must disclose to the recipient both my name, address, occupation and employer and the same information for the person(s) for whom I am transmitting this contribution. Therefore, I am providing this information on me in the above space and for the contributor in the space below.

Name of source of contribution: _____

Address: _____

Occupation: _____

Employer: _____

I declare under penalty of perjury that I have read the foregoing and that the information provided herein is true and accurate to the best of my knowledge and belief. Executed this _____ day of _____, 19____, at _____, California.