



1-1-1982

# Elections

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## Recommended Citation

University of the Pacific; McGeorge School of Law, *Elections*, 13 PAC. L. J. 689 (1982).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol13/iss2/24>

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# Elections

## Elections; campaign funds and disclosures

Elections Code §§12400, 12401, 12402, 12403, 12404, 12405, 12406, 12407 (new); Government Code §§84200, 84205 (amended).

AB 516 (Robinson); STATS. 1981, Ch 78

Support: Fair Political Practices Commission

SB 42 (Carpenter); STATS. 1981, Ch 956

Support: Department of Finance

Chapters 78 and 956 reflect the California Legislature's interest in strengthening the political process by informing the public of campaign practices thus enhancing public confidence.<sup>1</sup> Chapter 956 specifies the appropriate uses for campaign funds,<sup>2</sup> while Chapter 78 revises the requirements for the filing of financial campaign statements.<sup>3</sup>

In an attempt to assure the public that the proper use is made of political contributions,<sup>4</sup> Chapter 956 prohibits the personal use of campaign funds by individual candidates, officeholders, and treasurers of non-candidate controlled committees.<sup>5</sup> A personal use is found if the payment creates a substantially personal benefit and does not have more than a negligible political, legislative, or governmental purpose.<sup>6</sup> In addition, several of these personal uses of campaign funds are specifically enumerated and prohibited under Chapter 956.<sup>7</sup> A candidate may not expend campaign funds for professional services or personal debts, including personal income taxes and settlements of civil actions.<sup>8</sup> Personal gifts of \$100 or more, and payments or reimbursements for travel expenses<sup>9</sup> not reasonably related to political, legisla-

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1. See CAL. ELEC. CODE § 12400. See generally *Brown v. Superior Court*, 5 Cal. 3d 509, 487 P.2d 1224, 96 Cal. Rptr. 584 (financial disclosure is required to insure a better informed electorate which promotes a compelling state interest).

2. See CAL. ELEC. CODE §§12400-12407.

3. See CAL. GOV'T CODE §§84222, 84205.

4. See Assemblyman Robert J. Campbell, Newsletter, Sept. 16, 1981; Senator Omar L. Rains, Newsletter, Sept. 15, 1981, (copies on file at *Pacific Law Journal*).

5. See CAL. ELEC. CODE §12401. See also *id.* §12400 (making or receiving of campaign contributions does not, in itself, create a trust or trust-like relationship that would necessarily limit the uses of campaign funds).

6. *Id.* §12401.

7. See *id.* §12402. See also Assemblyman Robert J. Campbell, Newsletter, Sept. 16, 1981 (Chapter 956 seeks to specifically prevent the use of campaign funds for such personal uses as the purchase of cars, televisions, or other consumer items) (copy on file at *Pacific Law Journal*).

8. CAL. ELEC. CODE §12402(a).

9. *Id.* §12402(b)(c).

tive, or governmental activity are also prohibited.<sup>10</sup> Similarly, a candidate may not make payments or reimbursements for the purchase, lease, refurbishing, or rental of vehicles, appliances, equipment, or real property where the lessee or legal title holder is the candidate, officeholder, or a member of his or her immediate family, or an officer of a non-candidate controlled committee.<sup>11</sup> Replacing articles that were lost, stolen, or damaged in connection with political, legislative, or governmental activity, however, is not prohibited as a personal use.<sup>12</sup>

Chapter 956 also places restrictions on the uses of surplus campaign funds left after the candidate leaves office or during the post-election reporting period.<sup>13</sup> These funds may be used only for the following purposes: (1) repayment of personal or committee loans reasonably related to political, legislative, or governmental activity;<sup>14</sup> (2) payment of outstanding campaign expenses;<sup>15</sup> (3) pro rata repayment of contributors;<sup>16</sup> (4) contributions to any candidate, committee, or political party;<sup>17</sup> (5) donation to religious, scientific, educational, social welfare, civic, or fraternal organization so long as no part of the organization's earnings flow to private shareholders or individuals;<sup>18</sup> or (6) donation to any charitable or non-profit tax-exempt organization.<sup>19</sup> The surplus campaign funds also may be held in a segregated fund to be used in future political campaigns.<sup>20</sup>

If a court finds that a person willfully and knowingly violated Chapter 956, the person may be liable for either up to \$500 or twice the amount of the unlawful expenditure, whichever is greater,<sup>21</sup> depending on the seriousness of the violation, and the presence or absence of good faith.<sup>22</sup> Chapter 956 also allows the court to award litigation costs, including reasonable attorney's fees.<sup>23</sup>

The Attorney General is named as the civil prosecutor responsible for enforcing the provisions of Chapter 956.<sup>24</sup> The district attorney of

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10. *Id.* §12403.

11. *Id.*

12. *Id.* §12401.

13. *See id.* §12404(a)-(e).

14. *Id.* §12404(a).

15. *Id.* §12404(b).

16. *Id.* §12404(d).

17. *Id.* §12404(c).

18. *Id.* §12404(e).

19. *Id.*

20. *Id.* §12404(f).

21. *Id.* (candidates, officeholders, and treasurers may be held jointly and severally liable in appropriate circumstances).

22. *See id.* (seriousness of violation may be considered by the court in determining the amount of liability).

23. *Id.* §12405(d).

24. *Id.* §12405(b).

any county in which a violation occurs, however, has concurrent powers and responsibilities,<sup>25</sup> and an elected city attorney may act as civil prosecutor with respect to violations occurring within the city related to city elections or city ballot measures.<sup>26</sup> In addition, any person may file a written request for the civil prosecutor to commence an action under Chapter 956.<sup>27</sup> The request must include a statement of the grounds for believing a cause of action exists,<sup>28</sup> and be signed by the person requesting the commencement of the action under penalty of perjury.<sup>29</sup> The civil prosecutor must respond within sixty days of receiving the request.<sup>30</sup>

In order that voters may be fully informed and to deter improper practices, the Political Reform Act of 1974<sup>31</sup> requires the disclosure of receipts and expenditures in election campaigns.<sup>32</sup> Prior law required candidates and committees to file financial campaign statements on July 31 and January 31 stating, among other things, whether they have made or received contributions or made expenditures during the six months before those dates.<sup>33</sup> Chapter 78 provides that a candidate will not be required to file a campaign statement for any six-month period if the candidate has filed a declaration<sup>34</sup> stating that to the best of the candidate's knowledge, less than \$500 in contributions or expenditures has been received by or made to the candidacy during the six-month period.<sup>35</sup> Moreover, Chapter 78 exempts candidates from filing required campaign statements if, by the date for filing the first campaign statement due before the election, the candidate files a declaration stating that less than \$500 will be received or given.<sup>36</sup> The candidate must, however, file campaign statements disclosing the amount if \$500 or more is eventually received or given.<sup>37</sup> Finally, Chapter 78 no longer requires campaign statements to be filed on a specific day.<sup>38</sup> These statements must be filed *no later than* July 31, and January 31 each year.<sup>39</sup>

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25. *Id.*

26. *Id.*

27. *Id.* §12405(c).

28. *Id.*

29. *Id.*

30. *Id.*

31. *See* CAL. GOV'T CODE §81000.

32. *See id.* §81002(a). *See generally id.* §81002 (other purposes of the Political Reform Act of 1974).

33. *See* CAL. STATS. 1980, c. 289, §8, at — (amending CAL. GOV'T CODE §84200).

34. *See* BLACK'S LAW DICTIONARY 495 (5th ed. 1979) (definition of declaration).

35. *See* CAL. GOV'T CODE §§84200(a), 84205(a).

36. *See id.* §84205(a).

37. *See* CAL. GOV'T CODE §§84200(a), 84205(a).

38. *See id.*

39. *See id.*

