



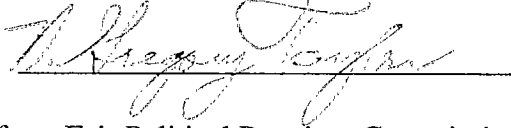
MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-7

April 14, 1997

To: Board of Directors (Legal and Claims Committee--Action)
(Executive Committee--Action)

From: General Counsel 

Subject: Request for Advice from Fair Political Practices Commission with
Respect to Interpretation of Proposition 208

RECOMMENDATION:

It is recommended that the Board of Directors authorize the General Counsel to seek advice from the Fair Political Practices Commission, substantially in the form of Attachment 1, with respect to the interpretation of Proposition 208.

EXECUTIVE SUMMARY:

Proposition 208, approved by the California voters on November 5, 1996, added a provision to the California Government Code which prohibits governmental appointees from making contributions to the office holders who appointed them.

A number of questions have been addressed to the Legal Department about the interpretation of this provision. This letter requests authorization from your Board to seek advice on an informal basis from the Fair Political Practices Commission (FPPC) to obtain guidance with respect to these questions.

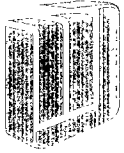
DETAILED REPORT:

Proposition 208, approved by the California voters on November 5, 1996, amended the election campaign provisions and other provisions of Political Reform Act. Proposition 208 added a provision to the California Government Code which prohibits governmental appointees from making contributions to the office holders who appointed them.

A number of questions have been addressed to the Legal Department about the interpretation of this provision. This letter requests authorization from your Board to seek advice on an informal basis from the Fair Political Practices Commission (FPPC) to obtain guidance with respect to these questions. This letter will serve the dual purpose of obtaining guidance on a proper interpretation of this provision and alerting the Commission to fact situations which may need clarification in its pending regulations addressing Proposition 208.

Informal advice is sought because, under FPPC procedures, formal advice will not be rendered absent more specific fact situations. Also, informal advice may be obtained in a quicker time frame.

SBB:mg
Attachment
#4522



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of the General Counsel

--DRAFT--

_____, 1997

Steven Churchwell, Esq.
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, California 95814

Dear Mr. Churchwell:

Request for Advice

The Metropolitan Water District of Southern California is a special district and quasi-municipal corporation formed pursuant to the Metropolitan Water District Act (Statutes 1969, ch. 209, as amended) which can be found in Deering's Uncodified Water Acts Act No. 9129b and West's Water Code Appendix Section 109-1 et seq. Metropolitan serves water on a wholesale basis to its 27 member agencies, all of whom are public bodies (cities, municipal water districts, and one county water authority) of the State of California. Metropolitan is governed by a 51-member board of directors, each of whom is appointed by the member public agency which the director represents on Metropolitan's Board.¹

At the option of the appointing member public agency, Metropolitan Board members either are designated and appointed by the chief executive officer of the appointing agency, with the consent and approval of the governing body of the agency, or are selected directly by the governing body, by majority vote. (MWD Act, § 51.) A Board member may be selected for an indefinite term and continue to serve at the pleasure of the appointing agency, or may be appointed to a four-year term, subject to removal only for cause. (MWD Act, §§ 51, 54.)

As appointees to a public board, Metropolitan's directors are subject to Section 85705 of the Government Code, added by the California Political Reform Act of 1996 (Proposition 208). Section 85705 prohibits any person appointed to a public board from donating to, soliciting or accepting any campaign contribution for "any committee controlled by the person who made the appointment to that office."

¹ Under the MWD Act, each member agency is entitled to at least one representative (MWD Act, § 51), plus one additional representative for each full 3 percent of the assessed value within Metropolitan which is located within the territory of that member agency (MWD Act, § 52).

Pursuant to formal direction of the Board, we write to request general guidance concerning the interpretation of the term "person who made the appointment" in Section 85705.

In requesting guidance, we pose the following possible scenarios:

1. A director is appointed by the mayor of the city which she represents on Metropolitan's Board. The appointment is ratified by the city council. Who is the "person who made the appointment?" The mayor? The entire city council? The city clerk? (The city clerk may perform a ministerial role in the appointment.) Candidates for any of these offices?

2. A director is appointed by vote of the city council for an indefinite term of office, at the pleasure of the city council. The individuals on the city council who appointed the director no longer serve as council members. Are the current council members treated as the "person who made the appointment?"

3. A director is appointed by vote of the city council for a four-year term of office. The director's term is almost expired and the director's re-appointment will come before the city council. Are all of the current council members treated as the "person who made the appointment" even if some were not on the council at the time of the original appointment? Are candidates for city council also considered as part of the "person who made the appointment?"

Thank you for your consideration of our request. Please call Sydney Bennion, Senior Deputy General Counsel at (213) 217-7776, if you have any questions or would like further information.

Very truly yours,

N. Gregory Taylor
General Counsel

SBB:mg
#4470

cc: S. Bennion
J. Oley