



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Silver, Commissioners Baker, Ortiz, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Subject: Gov't Code §84308 (Levine Act) Update
Date: May 6, 2024

In 2022, the Governor signed SB 1439 into law, effective January 1, 2023. SB 1439 amended Section 84308 of the Political Reform Act. Section 84308 places limitations on public officials' ability to take part in licensing, permitting, and other use entitlement proceedings when a person with a specified interest in the proceeding has contributed more than \$250 to the official. The statute also prohibits officials from receiving contributions exceeding \$250 during such a proceeding and for a period after a final decision in the proceeding. SB 1439 broadened the scope of Section 84308 to apply to local elected officials and extended the period in which a contribution of more than \$250 is prohibited from three months after the decision to 12 months after the decision.

In response to the greatly expanded reach of Section 84308, the Commission adopted comprehensive regulatory amendments in May of 2023 (Regulations 18438 – 18438.8). At the time, the Commission asked staff to report back periodically on advice and educational efforts related to Section 84308 and its updated regulations. The last report, presented in October of 2023 covered through the end of September, 2023. Here's a summary of advice and educational efforts from October 2023 through March 2024.

Advice Letters

The Legal Division issued a total of 11 advice letters in 2023 concerning Section 84308, including 3 from October through December. Through the first three months of 2024, the Legal Division issued 4 advice letters concerning Section 84308. In 2020 and 2021, we issued 3 letters each year and in 2019 and 2022 we issued 0 letters. Below are summaries of each letter concerning Section 84308 between October of 2023 and March of 2024, along with links to the letters.

Amanda Freeman

[A-23-145](#)

Although the contract never came before the City Council for the Councilmembers' consideration, a contract for ambulance services executed by the City Manager was a decision "by the agency" for purposes of Section 84308. Thus, the contracting party is prohibited from

making any contribution greater than \$250 to a councilmember for 12 months following the date the final decision was rendered.

Inna Zazulevskaya

[I-23-157](#)

The sale of property by Board of Supervisors pursuant to the competitive bidding requirements of Section 25520, *et seq.* (which include public notice, resolution with a stated minimum sale price, sale terms, set time for consideration of the bids, and that the contract be awarded to the highest responsible bidder or that all bids be rejected and the property pulled from sale) meets the definition of a “competitively bid contract” that is not subject to the requirements and restrictions in Section 84308.

Phil Pogledich

[I-23-172](#)

Where a final decision in an entitlement proceeding was reached prior to an official’s appointment to the elected office, and the official did not otherwise have decision making authority over the proceeding or exercise authority or budgetary control over County officials who did, the official does not meet the definition of “an officer of an agency” for the particular proceeding. The Section 84308 prohibition on accepting, soliciting or directing contributions from a party or participant to the proceeding for 12 months following the final decision will not apply to the appointed official for contributions from a party or participant in the proceeding.

Tony Lopresti

[I-23-177](#)

County’s award of a \$1000 “sponsorship” to a non-profit organization is an entitlement for use proceeding under Section 84308. Generally, a county supervisor’s ability to accept a contribution greater than \$250 from individuals associated with the non-profit will depend on whether the individual qualifies as a party, participant, agent, or individual whose contributions are required to be aggregated under Section 82015.5.

Robert Fabela

[I-23-178](#)

The mandated periodic review of a development agreement by a city council is a proceeding subject to Section 84308, as it is a substantive review of a contract agreement between the city and the applicant (project proponent) that involves a determination of substantial evidence of good faith compliance and may result in modifying or terminating the agreement.

Tyler Haskell

[I-24-008](#)

In a contract proceeding between a local agency and a county, the local agency’s employee who makes direct contact with the county is not an “agent” of the party for purposes of Section 84308. Due to the exclusions of government salary and benefits from the definition of “income” under the Act, the local agency employee is not representing the party “for compensation,” as required under Regulation 18438.3.

John Bakker

[A-24-004](#)

A proceeding affecting parking rules for an entire downtown specific plan area, affecting many and diverse interests, does not qualify as a proceeding involving a license, permit, or other entitlement for use for purposes of Section 84308. Additionally, under Section 84308, the

circumstances in which an officer “knows or has reason to know” about a proceeding include where the officer has actual knowledge of the proceeding, which may predate the publication of a meeting agenda relating to the proceeding.

Email Advice

In 2023 we received 116 email question about Section 84308. From January through March this year we received 24 email questions about Section 84308. In 2021, we received 20 email advice requests concerning Section 84308. In 2022, we received 50 email advice requests.

Here are summaries of notable recent email advice concerning Section 84308:

Landon Wolf November 21, 2023 Spouses as Separate Participants Under Section 84308

A requestor asked if the spouse of a donor is considered a separate participant and can donate an additional \$250 under the rules of Section 84308. We advised that generally the contributions would be considered separate unless the proceeding involves a jointly owned property or business or is of any other matter that impacts the spouses jointly or if one spouse is acting as an agent on behalf of a party or participant spouse. As the standard requires a fact specific analysis, we advised that if there is a particular contribution or proceeding the requestor would like additional assistance with they should provide additional information surrounding the contributors and the proceeding at issue.

James Harman October 11, 2023 Section 84308 and Presiding Non-Voting Officer

A requestor asked if an official is presiding over a proceeding involving a contributor who contributed more than \$250 to the official, even without the official actually voting, would result in “participating” in the decision or “using official position to influence a decision” under Regulation 18704. We advised it almost certainly would. Therefore, the official should recuse themselves from the proceeding entirely (and not preside over it).

Daniel Cederborg October 20, 2023 Section 84308 and Transferred Contributions

A requestor asked if the restrictions under 84308 apply to transfers from a candidate’s previous committee for a different office to their current committee when the original contributions to the previous committee were made before January 1, 2023. We advised that the contribution would have been made at the time of original receipt for purposes of triggering the application of the restrictions of Section 84308 so the restrictions would not apply upon transfer because AB 1439 does not apply to contributions made prior to January 1, 2023.

84308 Trainings

Date	Requestor	Trainers	# of Attendees
11/1/2023	FPPC Hosted	Kevin Cornwall Chloe Hackert	181
11/2/2023	California Alliance of Child and Family Services, the Association of Community Human Services Agencies (ACHSA), and the Silicon Valley Council of Nonprofits	Kevin Cornwall Toren Lewis	70
12/19/2023	FPPC Hosted	Kevin Cornwall Chloe Hackert	66
1/8/2024	CA Contract City Association	Dave Bainbridge	70
1/16/2024	Behavioral Health Collaborative of Alameda County	Toren Lewis	36
2/15/2024	CA Contract City Association	Kevin Cornwall Toren Lewis	42
2/15/2024	FPPC Hosted	Kevin Cornwall Toren Lewis	145

Future Regulatory Amendments

Through the advice and education process, staff has identified clarifying regulatory amendments that we plan to present to the Commission in 2024. This regulation project may be delayed due to pending legislation proposing to amend Section 84308.