



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 30, 2023

Matt Strabone
7918 El Cajon Blvd Ste N118
La Mesa, CA 91942

Re: Your Request for Informal Assistance
Our File No. I-23-037

Dear Mr. Strabone:

This letter responds to your request for advice regarding application of Section 84308 of the Political Reform Act (the “Act”).¹ Note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. Does Section 84308 apply to individuals running for county central committees of qualified parties, who are not also elected officials or other officers of government agencies?

2. Do the contribution restrictions imposed by Section 84308 apply to the campaigns for county central committees of individuals who are separately elected officials or other officers of government agencies?

CONCLUSIONS

1. & 2. Yes. Disclosure and disqualification requirements of Section 84308 apply to contributions received as a candidate for county central committee. So long as you are an officer subject to Section 84308 at the time of the decision, you will be subject to its provisions. The contribution that triggers the requirements need only meet the requisite threshold and be received within the 12 months prior to the decision.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

You are currently the elected City Treasurer of La Mesa. You are considering running for a county central committee in 2024, and seek clarification as to the application of Section 84308.

ANALYSIS

The Act's "pay to play" restrictions, contained in Section 84308, aim to ensure that all officers of local government agencies are not biased by contributors or potential contributors of large campaign contributions, who might appear before them in a proceeding involving a license, permit or entitlement for use. The restrictions of Section 84308 originally applied only to decisions made by agencies with membership not directly elected by voters. However, recently enacted SB 1439 amends Section 84308 in two significant ways relevant here. First, the bill extends the period in which such a contribution is prohibited after a final decision is rendered from three months to 12 months. Second, it makes all local government agencies whose members are directly elected by voters subject to the application of Section 84308.² All state and local government agencies must comply with Section 84308. (Section 84308(a)(3); Section 82003.)

Section 84308 imposes two requirements on officers subject to the section. First, Section 84308(b) states: "[w]hile a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest" ³

Second, Section 84308(c) requires that if an officer has received a contribution of more than \$250 during the past 12 months from a party or participant in a proceeding involving a license, permit or other entitlement for use pending before an agency, the officer must disclose that fact on the record of the proceeding and must recuse from the proceedings.

So long as the official is an officer subject to Section 84308 at the time of the decision, the official will be subject to its provisions. The contribution that triggers the requirements need only meet the requisite threshold of an aggregate \$250, and be received within the 12 months prior to the decision involving a license, permit, or other entitlement for use.⁴

² The amended version of Section 84308 went into effect on January 1, 2023.

³ Section 84308(a)(5) defines "license, permit, or other entitlement for use" as "all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises."

⁴ See the *Davis* Advice Letter, No. A-02-344, where an unsuccessful candidate for city attorney, who held no public office and was not a public official at the time of receipt of the contribution, was disqualified from decisions involving those contributors when subsequently appointed to the city's planning commission.

Section 84308(a)(4) defines “officer” as “any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and *any candidate for elective office* in an agency.” (Emphasis added.)

Section 82023 defines “elective office” as any state, regional, county, municipal, district or judicial office that is filled at an election. “‘Elective office’ also includes membership on a *county central committee* of a qualified political party....” (Emphasis added.)

Section 84308(a)(6) defines “contributions” for purposes of the requirements of Section 84308 as including “contributions to candidates and committees in federal, state, or local elections.”

Section 84308 expressly applies to any decision in the proceeding involving a license, permit, or other entitlement for use, including all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises. (Section 84308(a)(5).)

Thus, the contributions you receive for your campaign for county central committee, if they meet the requisite threshold and if they are received within 12 months of the decision in question, will trigger disclosure and disqualification under Section 84308 in connection with a proceeding involving a license, permit, or other entitlement for use.⁵ In other words, if an entitlement for use proceeding came before you in your capacity as City Treasurer and involved a party or participant from whom you had received, solicited, or directed a contribution (or contributions) totaling more than \$250 within the preceding 12 months, Section 84308 and its related regulations would require you to disclose the relevant contribution(s) and recuse yourself from the proceeding. Similarly, you would also be prohibited from receiving a contribution (or contributions) totaling more than \$250 from any party or participant to such a proceeding while the proceeding is pending and for the 12 months following the proceeding.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

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By: Zachary W. Norton
Senior Counsel, Legal Division

⁵ See the *Bush* Advice Letter, No. A-17-161, advising that contributions received by an appointed member of a Bond Oversight Committee for that official’s campaign for Democratic County Central Committee would trigger Section 84308.