



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 24, 2024

Tyler Haskell
Vice President, Government Relations and Compliance
6201 San Ignacio Ave
San Jose, CA 95119

Re: Your Request for Informational Assistance
Our File No. I-24-008

Dear Mr. Haskell:

This letter responds to your request for advice regarding Section 84308 of the Political Reform Act (the “Act”).¹ Please 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. Your request for advice is general in nature as it does not specifically identify a particular governmental decision. Accordingly, we are treating your request as one for informal assistance.²

QUESTION

Under Section 84308, where a Santa Clara Family Health Plan (“SCFHP”) (a public agency) employee makes direct contact with Santa Clara County (“County”) employees to initiate and conduct contract discussions for a contract proceeding between SCFHP and the County, would the SCFHP employee meet the definition of “an agent” such that the SCFHP employee or SCFHP would be subject to Section 84308’s disclosure requirements and prohibitions?

CONCLUSION

No. SCFHP would meet the definition of a party to the contract proceeding under Section 84308; however, due to the exclusion of an individual’s government salary and benefits from the definition of “income” under the Act, SCFHP’s employee in contact with the County would not meet the definition of SCFHP’s agent under Regulation 18438.3. Accordingly, Section 84308’s prohibitions and requirements would not be applicable to the SCFHP employee. The SCFHP

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

employee would not be limited to contributing \$250 or less to a County officer in their individual capacity notwithstanding the contract proceeding, and the employee's contribution would not be attributed to SCFHP or required to be disclosed under Section 84308.

FACTS AS PRESENTED BY REQUESTER

Santa Clara Family Health Plan (SCFHP) is a "health authority" and a community-based Medi-Cal managed care Plan, created by, but independent from, the County under Welfare and Institutions Code section 14087.38. As a health authority, SCFHP is a public agency and a unit of local government. Generally, SCFHP enters into provider contracts with the County, under which the County provides health care services to SCFHP's Medi-Cal members in exchange for payment from SCFHP.

ANALYSIS

The Act's "pay to play" restrictions, contained in Section 84308, aim to ensure that officers of 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 provider contract at issue is an entitlement for use proceeding subject to Section 84308. (Section 84308(a)(5).)

Section 84308 is aimed not only at actual corruption or bias but also at the appearance of corruption or bias that may occur if a public officer were to solicit or accept contributions from a party, participant, or their respective agent while a proceeding is pending before the public officer's agency or has recently concluded. Under Section 84308, officers, parties, participants, and agents may be subject to certain contribution limits and disclosure requirements, among other restrictions.

Party & Party's Agent Defined

Section 84308(a)(1) defines a party as "any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use." Section 82047 defines a "person" to include an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. Regulation 18438.3(a) defines an "agent" as a person who "represents that party or participant for compensation and appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding."

SCFHP, as a local agency, would meet the definition of a party to a proceeding regarding its provider contracts with the County. However, SCFHP's employee would not meet the definition of a party's "agent." Due to the fact that a government salary and benefits are excluded from the definition of "income" under the Act,³ the SCFHP employee is not "representing a party or

³ Section 82030(b)(2) states:

"Income" also does not include:

(2) Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency

participant for compensation” in their communications with the County related to the contract proceeding. Accordingly, Section 84308’s prohibitions and requirements would not be applicable to the SCFHP employee. The SCFHP employee would not be limited to contributing \$250 or less to a County officer in their individual capacity, and the employee’s contribution would not be attributed to SCFHP or required to be disclosed for purposes of Section 84308.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

LKH:aja