



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

October 31, 2023

Amanda Freeman
Senior Deputy City Attorney
Fresno City Attorney's Office
2600 Fresno Street, Fresno, CA 93721

Re: Your Request for Advice
Our File No. A-23-145

Dear Ms. Freeman:

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.

QUESTION

Does Section 84308 prohibit a party to a contract with the City from making a campaign contribution over \$250 to a Councilmember, when the City entered into a short-term agreement, but the contract did *not* require Council approval because its value was low enough that the City Manager executed it on behalf of the City?

CONCLUSION

In the present circumstances, although the contract never came before the City Council for the Councilmembers' consideration, the contract was a decision "by the agency" for purposes of Section 84308, and 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.

FACTS AS PRESENTED BY REQUESTER

Earlier this year, the City entered into a short-term agreement with American Ambulance ("AA") to provide ambulance services at a City facility from June through August of 2023, valued at approximately \$27,000. The City Manager executed the agreement on behalf of the City, which

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.

is standard for an agreement under \$50,000 pursuant to Fresno Municipal Code 4-107(b), which authorizes the City Manager to enter into contracts under this threshold without City Council approval. You state that there was no Council involvement with the AA contract.

In a follow-up email, you stated that the Councilmembers were not made aware of the contract before it was executed. It was not on a consent calendar, or part of any report to the City Council. You also stated that it is conceivable that the City Manager could have placed the contract on the City Council's agenda for approval despite her authority. However, this would only be done in exceptional circumstances, for extremely high-profile or contentious matters. Once the City Manager uses her authority to execute an agreement, she would be the one to terminate it. There is no scenario in which it would go to Council once approved by the City Manager.

In follow-up emails, you provided a copy of the contract, and confirmed that the contract was not competitively bid. You also confirmed that the ambulance services in question were approved for Camp Fresno, a City-owned and operated camp, located in the Sierra Nevada mountains. Camp Fresno is operational seasonally, hence the short duration of the contract terms.

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. Section 84308 aims to protect California citizens not only against quid pro quo practices, but also the appearance thereof, as such corruption and its appearance threaten the confidence in our system of representative government. In furtherance of these purposes, Section 84308 places limits on both the receipt of contributions by officials, as well as the making of contributions by parties to such proceedings.

Making a Contribution

Section 84308 (a)(4) defines "officer" as any elected or appointed officer of an agency, and subdivision (a)(5) defines "license, permit, or other entitlement for use," in relevant part, as "all contracts (other than competitively bid, labor, or personal employment contracts)." As pertinent to the question posed, Section 84308(e)(2) states:

A party, or agent to a party, to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant, or agent to a participant, in the proceeding shall not make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding.

For a party, a proceeding involving a license, permit or other entitlement for use is pending when it is before the jurisdiction of the agency for its decision or other action. (Regulation 18438.2(b)(2).)

Based on the plain language of the statute, the \$250 limit applies to all agency decisions, not just those that come before the Councilmembers. As such, AA is prohibited from making a

contribution to members of the City Council for 12 months following the date on which the contract in question was entered into by the City.

Accepting a Contribution

As discussed above, Section 84308 also places restrictions on the acceptance of contributions by officers of agencies under specified circumstances. Section 84308 (b) states that, “[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.

Whereas a proceeding is considered “pending” for a party as soon as it is before the jurisdiction of the agency for its decision or other action, a proceeding is considered “pending” for an individual *officer* based on different criteria. For an officer, a proceeding involving a license, permit, or other entitlement for use is pending, under Regulation 18438.2(b)(1), when:

(A) The decision is before the officer for the officer’s consideration. If the officer is a member of a governing body, this includes any item placed on the agenda for discussion or decision at a public meeting of the body; or

(B) The officer knows or has reason to know a proceeding involving a license, permit or other entitlement for use is before the jurisdiction of the agency for its decision or other action, and it is reasonably foreseeable the decision will come before the officer in the officer’s decisionmaking capacity.

Based on these different standards for “pending” proceedings, scenarios may arise in which a proceeding is “pending” for a party who initiated the proceeding—thereby prohibiting them from making a contribution exceeding \$250—while the proceeding would not be considered “pending” for a particular officer—who would not violate Section 84308 by accepting a contribution exceeding \$250 from a party to a proceeding the officer was unaware of.

Here, Section 34851 authorizes a City Manager form of government to be established by ordinance. When such an ordinance is established, Section 34852 requires that it “define the powers and duties of the city manager and may fix the City manager’s compensation or the minimum amount the city manager is to receive.”

The City Manager oversees the City’s day-to-day operations. As required by Section 34852, the City’s Municipal Code sets forth the powers and duties of the City Manager. As noted above, Fresno Municipal Code Section 4-107(b) authorizes the City Manager to enter into contracts for goods and services under a specific amount without the approval of the City Council. As to the contract with AA, the Councilmembers were not made aware of the contract before it was entered into. It was not on a consent calendar, or part of any report to the City Council. There is no scenario in which the contract would go to the City Council once approved by the City Manager.

Based on these facts, the proceeding was never before the City Council for the Councilmembers’ consideration. If the Councilmembers did not know or have reason to know the

proceeding was before the jurisdiction of the City for its decision or other action, Section 84308 would not necessarily apply to prohibit a Councilmember from accepting a contribution. However, we need not determine whether receipt of a contribution from the party would be permissible because the party is prohibited from making a contribution for \$250 or more for 12 months after the decision.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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