



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
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August 5, 2024

Sean Mill  
City Council- Ward 5  
City of Riverside  
3580 Mission Inn Avenue  
Riverside, CA 92501

Re: Your Request for Advice  
**Our File No. A-24-083**

Dear Mr. Mill:

This letter responds to your request for advice regarding Section 84308 (the “Levine Act”) of the Political Reform Act (the “Act”).<sup>1</sup>

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

Under the Act, as a member of the Riverside City Council, may you take part in settlement decisions regarding litigation involving the City, given that an attorney representing the opposing party has contributed more than \$250 to you within the preceding 12 months?

### CONCLUSION

Because the attorney represents the opposing party solely with respect to the trial aspect of litigation, which does not qualify as a proceeding subject to Section 84308, and he is not authorized to and has not negotiated with the City regarding a potential settlement agreement, the attorney does not qualify as an “agent” for purposes of Section 84308. Consequently, his contribution of more than \$250 does not disqualify you from taking part in settlement decisions on behalf of the City.

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<sup>1</sup> 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 a member of the Riverside (“City”) City Council. The City is a named party in certain court cases currently before a Superior Court Judge. An attorney representing a client in those cases has donated more than \$250 to your campaign within the calendar year. His fees are paid directly by the client and are not paid on a contingency basis. The attorney’s representation is limited in scope; he was hired specifically for the trial portion of the legal process, has not been involved in any negotiations with the City outside of courtroom proceedings, and he is not authorized to participate in any settlement discussions with the City. Rather, the client will either participate in settlement discussions with the City directly or will hire a different agent to do so.

You are seeking clarification on whether Section 84308 requires you to recuse yourself from taking part in settlement discussions for those cases due to the contribution exceeding \$250 you received from the attorney.

## 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. Section 84308 defines the term “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.” “A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810-811, citing *Gorman v. Holte* (1985) 164 Cal.App.3d 984, 988.)

Section 84308(c) requires, “[p]rior to rendering any decision” in an entitlement for use proceeding, that an officer disclose a contribution greater than \$250 that the officer has received within the preceding 12 months and generally prohibits the officer from making, participating in making, or in any way attempting to use the officer’s official position to influence a decision in the entitlement for use proceeding if such a contribution has occurred within that time frame. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency. (Regulation 18704(a).) A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official: (1) contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision; or (2) contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official’s authority or on behalf of the official’s agency in making the contact. (Regulation 18704(c).)

Section 84308 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 84308(a)(1).) A person is a “participant” if the person is not a party but actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and has a financial interest in the decision. (Section 84308(a)(2).) A person is the “agent” of a party to, or a participant in, a pending proceeding involving a license, permit or other entitlement for use only if the person 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. (Regulation 18438.3(a).)

Here, the attorney has not filed an application, nor is he the subject of potential settlement negotiations and, as such, he does not qualify as a “party.” The attorney also has not actively supported or opposed a particular decision in potential settlement negotiations, as he has not discussed the matter with the City and, therefore, he does not qualify as a “participant.” The client has hired the attorney solely for representation in the trial stage of the legal process. The attorney’s representation is limited in scope. The attorney has not been involved in any negotiations with the City outside of courtroom proceedings, and he is not authorized to participate in any settlement discussions with the City. Further, you state that the client will either participate in settlement discussions with the City directly or will hire a different agent to do so. Consequently, the attorney has not appeared before or otherwise communicated with the City for the purpose of influencing a potential proceeding involving settlement negotiations. Therefore, the attorney does not constitute an “agent” for purposes of Section 84308 and you are not required to recuse yourself from the settlement negotiation process with the client, despite having received a contribution greater than \$250 from the attorney within the preceding 12 months.

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

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Senior Counsel, Legal Division

KC:aja:bc