



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 20, 2024

Shante Sylvester
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Re: Your Request for Advice
Our File No. A-24-129

Dear Ms. Sylvester and Mr. Winuk:

This letter responds to your request for advice on behalf of the County of Los Angeles regarding Section 84308 and the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under Section 84308 and the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also 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. Under Section 84308, may a Los Angeles County (“County”) Supervisor take part in a decision to grant host approval for the issuance of private activity tax-exempt bonds to be issued by the City of Los Angeles (“City”) if the Supervisor has received a contribution greater than \$250 from the developer/bond guarantor within the preceding 12 months?

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. Is the decision described above considered a new proceeding, or a continuation of a previous proceeding, given that the City and County had previously approved the issuance of the bonds for the same development project, but involving a different borrower?
3. May the disqualified officials take part in delegating authority to another County official to make the decision?
4. If the Supervisors who received contributions greater than \$250 are generally prohibited from taking part in the decision, does the “legally required participation” exception apply?

CONCLUSIONS

1. No, because the issuance of private activity tax-exempt bonds involves a contract, it qualifies as a proceeding involving an entitlement for use for purposes of Section 84308 and, therefore, the Supervisors who have received excess contributions from parties to the proceeding within the preceding 12 months are prohibited from taking part in the approval decision.
2. Yes, because the proceeding involves different parties contracting with the City, it is considered a new proceeding separate from the previous approved issuance of private activity tax-exempt bonds.
3. No, the disqualified officials are prohibited from taking part in delegating authority to another County official to make the decision, as doing so would constitute “making a decision” in the proceeding.
4. No, the “legally required participation” exception does not apply, because there exists an alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

FACTS AS PRESENTED BY REQUESTER

Tax Equity and Fiscal Responsibility Act (“TEFRA”) Background

To encourage certain types of projects that benefit the public, State or local government agencies may issue bonds that carry certain financial benefits, called private activity bonds.² Generally, private activity bonds carry lower interest rates because the federal income tax is not paid on the interest the bond earns. Issuance of these bonds requires public approval by the governmental unit issuing the bond, and from the host governmental unit that has jurisdiction over the area in which the facility is located (called the “host unit”).³ The bonds must be approved by the “applicable elected representative” of the governmental unit after a public hearing or by voter referendum.⁴ “Applicable elected representative” means an elected legislative body of the governmental unit or the chief elected executive officer, the chief elected State legal officer of the

² *Poway Royal Mobilehome Owners Ass'n v. City of Poway* (2007) 149 Cal.App.4th 1460, 1481; 26 U.S.C. section 141.

³ 26 U.S.C. section 147(f).

⁴ 26 U.S.C. section 147(f)(2)(B).

executive branch, or any other elected official of the governmental unit designated for purposes of TEFRA by the chief elected executive officer or State law.⁵ If the County lacks a local “applicable elected representative,” as defined by TEFRA, to approve the reissuances, federal regulations permit an applicable elected representative of the next higher governmental unit from which the governmental unit derives its authority (in this case, the State) to provide approval if a jurisdiction does not have an applicable elected representative.⁶

The Board is the elected legislative body of the County and has historically approved public financing bonds by way of resolution. The Assessor, the Sheriff, and the District Attorney are the County’s only other elected officers. However, none of these other County elected officers have been granted the authority by the Board to make TEFRA decisions at this time. The County does not have a chief elected executive officer.

Projects Background

Two development projects (“Projects”) are located on the West Los Angeles Veterans Affairs Campus located at 11301 Wilshire Boulevard, Los Angeles, California 90073, which is an unincorporated island surrounded by the City. The City issued bonds to Building 205 Preservation, LP and Building 208 Preservation LP (“Building LPs”) to fund the construction of the Projects. Because the Projects are located in the jurisdiction of the County and not the City, the County must also approve the issuance or reissuance of the private activity bonds as the “host unit” under TEFRA. The County previously approved the issuance of bonds for the Projects in 2018 for a different borrower.⁷ Bonds issued to the Building LPs were approved by the County in 2020. The Building LPs now seek to have the bonds reissued, and once again require approval from the County as the host unit.⁸ The Building LPs are the borrowers for the respective bonds. The developer, Friendship for Affordable Housing, LLC (“FFAH”) is the bond guarantor.

After the City approved the reissued bonds in June 2024, bond counsel for the City contacted the Los Angeles County Development Authority (“LACDA”)⁹ to initiate the approval process by the Board.¹⁰ In response to LACDA’s request for Levine Act disclosures, FFAH disclosed contributions to three of the five County Supervisors of more than \$250 that were made in the 12 months prior.

In a follow-up email, you clarified that the dates and amounts of the contributions received by the County Supervisors from FFAH were as follows:

⁵ 26 U.S.C. section 147(f)(2)(E).

⁶ 26 Code of Federal Regulations section 1.147(f)-1(e)(2).

⁷ Board Motion dated November 7, 2018, “Adopt Resolution Approving Issuance of Tax-Exempt Multifamily Housing Mortgage Revenue Bonds for Multifamily Housing in the Unincorporated West Los Angeles.”

⁸ The City held a public hearing on the bond reissuances as required by TEFRA on June 7, 2024, and approved the bond reissuances on June 21, 2024.

⁹ LACDA is a community development commission formed pursuant to Health and Safety Code section 34120. The Board serves as the LACDA Board of Commissioners. (Los Angeles County Code Section 2.58.020.) Here, LACDA was acting as an agent of the County when it prepared to bring the TEFRA approval to the Board.

¹⁰ It is your understanding a representative for FFAH has also contacted officers or employees of the County directly to request the County approve the bond reissuances.

- a. Supervisor Janice Hahn, 12/27/23, \$1,500;
- b. Lindsey Horvath Ballot Measure Committee for Accountability and Progress, 12/29/23, \$5,000; and
- c. Supervisor Kathryn Barger, 1/16/24, \$1,500;

ANALYSIS

Entitlement for Use Proceedings and Disqualification Under Section 84308

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 significant campaign contributions who might appear before them in a proceeding involving a license, permit, or entitlement for use. 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.

Section 84308(c) provides:

Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a 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 in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

Section 84308's restrictions and requirements only apply in the context of a "proceeding involving a license, permit, or other entitlement for use." Section 84308 defines "[l]icense, permit, or other entitlement for use" to mean "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." Regulation 18438.2 further defines the phrase "proceeding involving a license, permit, or other entitlement for use" to mean:

...any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use, that does not solely involve purely ministerial decisions and is:

- (1) Applied for by the party;
- (2) Formally or informally requested by the party; or

(3) A contract between the agency and the party or a franchise granted by the agency to the party, other than a contract that is competitively bid, a labor contract, or a personal employment contract.

(Regulation 18438.2(a).)

The issuance of private activity bonds involves a contract or contracts between the borrower(s), the guarantor(s), and the bond-issuing agency. Section 84308(c) prohibits public officials from “rendering any decision in a proceeding involving a license, permit, or other entitlement for use” pending before the agency. Although the County would not be a party to the contract, the County would be making and participating in making a decision in a proceeding involving a contract. Additionally, the proceeding does not affect “many and diverse interests,” but primarily affects the Building LPs and FFAH, who are requesting the bond issuance. Further, because the proceeding involves different parties contracting with the City, the proceeding is separate from the 2018 proceeding in which the County initially approved the bond issuance for different borrowers. As such, the County Supervisors who have received contributions exceeding \$250 within the preceding twelve months from FFAH—the bond guarantor and a party to the contract—are prohibited from taking part in the County decision on whether to approve the issuance of the private activity bonds.

Consequently, Supervisor Hahn is prohibited from taking part in the proceeding until December 27, 2024. Supervisor Horvath is prohibited from taking part in the proceeding until December 29, 2024. Supervisor Barger is prohibited from taking part in the proceeding until January 16, 2025.

Delegation of Authority

Under Section 84308(c), an official who has received a contribution greater than \$250 from a party within the preceding 12 months may not “make, participate in making, or in any way attempt to use the officer’s official position to influence the decision” 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 disqualified official is therefore prohibited from taking part in the decision to delegate decisionmaking authority in the proceeding, as the official would be authorizing action and appointing a person in doing so. If such conduct were permitted under the Act, a disqualified official could easily thwart the purpose of disqualification by merely delegating authority to an official with the expectation the selected official would vote similarly as the disqualified official would.

Legally Required Participation

You have also inquired about the potential application of the “legally required participation” exception. Regulation 18705(a) provides:

A public official . . . who has received a disqualifying contribution under Section 84308 may establish that the official is legally required to make or participate

in the making of a governmental decision within the meaning of Section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

You have indicated that if the County lacks a local “applicable elected representative” to approve the reissuances, federal regulations permit an applicable elected representative of the next higher governmental unit from which the governmental unit derives its authority (in this case, the State) to provide approval if a jurisdiction does not have an applicable elected representative. Because there exists an alternative source of decision consistent with the purposes and terms of the statute authorizing the decision, the disqualified officials are not legally required to make or participate in making the decision under Regulation 18705(a). Instead, so long as the County official’s are disqualified, the State can make the decision in lieu of the County.

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

KMC:aja