



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 16, 2024

Melissa Blaustein  
Councilmember, City of Sausalito

Re: Your Request for Advice  
**Our File No. A-24-138**

Dear Ms. Blaustein:

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 only providing advice under Section 84308 of the Act and not under other general conflict of interest prohibitions such as common law conflicts of interest or any local contribution limits.

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.

### QUESTION

Does Section 84308 of the Act prohibit you, as a member of the Sausalito City Council, from voting to approve a lease for the Sausalito Center for the Arts (“SCA”), even though the nonprofit’s uncompensated board members contributed a cumulative \$450 to your reelection campaign?

### CONCLUSION

No. Because non-compensated nonprofit officers’ contributions are not aggregated under Section 82015.5, and because non-compensated officers do not qualify as “agents” under Section 84308, you may vote on the approval of SCA’s lease despite having accepted contributions totaling more than \$250 from SCA board members.

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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 an elected member of the Sausalito City Council, having won reelection in the recent November 2024 election. At its December 17, 2024 meeting, the City Council will vote on the approval of a lease for the Sausalito Center for the Arts (SCA), a local nonprofit organization dedicated to programming for the arts and currently housed in a city-owned building. SCA's board of directors (the "Board") is comprised of local community members, three of whom donated a cumulative \$450 to your recent reelection campaign—one contribution of \$250 and two contributions in the amount of \$100. All of SCA's board members are uncompensated. You ask whether Section 84308 permits you to vote on SCA's lease, given that you have accepted over \$250 in cumulative campaign contributions from Board members in the preceding 12 months.

## ANALYSIS

One of the Act's findings and declarations is that "public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests *or the financial interests of persons who have supported them.*" (Section 81001(b), emphasis added.) To this end, the Act's "pay to play" restrictions, contained in Section 84308, aim to ensure that state and local government officers are not biased by significant campaign contributions from contributors who might appear before them in a proceeding involving a license, permit, or entitlement for use (an "entitlement for use proceeding").<sup>2</sup>

Relevant here, Section 84308 places two restrictions on officers. First, officers are prohibited from soliciting, directing, or accepting contributions of more than \$250 from a party, participant, or their agent while an entitlement for use proceeding is pending before the officer's agency, and for 12 months thereafter. (Section 84308(b).)<sup>3</sup> Second, if an officer has received such a contribution in the preceding 12 months, the officer must disclose this fact on the record and recuse themselves from the proceeding. (Section 84308(c).)<sup>4</sup>

As an elected member of the Sausalito City Council, you are an "officer" within the meaning of Section 84308. (Section 84308(a)(4).) Likewise, a lease is a form of contract and therefore falls squarely within the definition of a "license, permit, or other entitlement for use"

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<sup>2</sup> Recently enacted legislation—SB 1181 and SB 1243—amends Section 84308 in significant ways, including: raising the contribution threshold from \$250 to \$500; defining the terms "pending," and "license, permit, or other entitlement for use"; specifying that contributions from agents are not aggregated with those of parties; and extending the period during which a disqualifying contribution may be returned from 14 to 30 days. These changes take effect on January 1, 2025.

<sup>3</sup> Section 84308(d)(2) provides that an officer who is involved in a contribution in the 12 months following the final decision in violation of subdivision (b) may cure the violation by returning the contribution or excess amount within 14 days—but only if the officer did not knowingly or willfully accept, solicit or direct the prohibited contribution.

<sup>4</sup> Section 84308(d)(1) provides that an officer may participate in the proceeding if the contribution is returned within 30 days of when the officer knew or should have known about the contribution and the proceeding.

under Section 84308. (Regulation 18438.2(a)(3).) Meanwhile, “party” is defined as “any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.” Here, SCA is the subject of a decision concerning a lease and is thus a “party.” Finally, a decision is “pending” for purposes of Section 84308 if it is “placed on the agenda for discussion or decision at a public meeting of the body.” (Regulation 18438.2(b)(1)(A).) SCA’s lease is on the agenda for the City Council’s December 17, 2024 meeting; therefore, it is “pending.”

The operative question is whether the \$450 worth of cumulative contributions from the Board members are disqualifying under Section 84308. When determining whether a party has contributed more than \$250 to an officer during a 12-month period, contributions made by the party are ordinarily aggregated with the contributions of individuals and entities specified in Section 82015.5, including the party’s agent(s). (Regulation 18438.5(a).) However, a person is only an “agent” of a party to a pending entitlement for use proceeding if that person receives compensation. (Regulation 18438.3(a).) Moreover, Regulation 18438.5(a)(3) expressly provides that the aggregation requirements of Section 82015.5 do not apply to “an uncompensated officer of a nonprofit organization.”

Here, SCA is a nonprofit organization and its Board is uncompensated. SCA’s Board members are not “agents,” and contributions from Board members need not be aggregated. Therefore, Section 84308 does not prohibit you from participating in the upcoming City Council vote on SCA’s lease, despite the fact that you have received greater than \$250 in cumulative contributions from its Board members in the past 12 months.

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Toren Lewis  
Counsel, Legal Division

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