



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 31, 2025

Scott E. Porter
Deputy City Attorney
City of Westminster
3777 N. Harbor Blvd.
Fullerton, CA 92835

Re: Your Request for Formal Advice
Our File No. A-25-009

Dear Mr. Porter:

This letter responds to your request for formal advice regarding Section 84308 (the “Levine Act”) provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under 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.

QUESTION

Under Section 84308 of the Act, may Westminster City Councilmembers Carlos Manzo and Amy Phan West take part in governmental decisions relating to regulations pertaining to digital billboards, given that they each accepted a contribution of \$500 from a non-digital billboard operator within the preceding twelve months?

CONCLUSION

Yes, Councilmembers Manzo and West are not subject to any restrictions or requirements under Section 84308 because that statute pertains to contributions *greater* than \$500 and each councilmember received a contribution of *exactly* \$500.

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.

FACTS AS PRESENTED BY REQUESTER

Carlos Manzo and Amy Phan West are members of the City Council for the City of Westminster (“City”). On or about March 21, 2024, each councilmember received a campaign contribution of \$500.00 from a donor (the “Donor”) who operates a static (non-electronic) billboard located in the city.

The Westminster Municipal Code currently has few regulations or design standards relating to digital billboards along the I-405 and US-22 freeways within the City; essentially, the only regulations are not to exceed 35 feet in height and to obtain a conditional use permit.

On October 9, 2024, three members of the City Council conducted a public hearing on whether to approve an ordinance to add regulations regarding digital signs. The proposed ordinance would limit digital billboards to commercial and industrial properties with freeway frontage. The ordinance would apply only to digital signs, not static signs. In an abundance of caution, Councilmembers Manzo and Phan West recused themselves from consideration of the ordinance. No action was taken and the public hearing to consider the ordinance was continued to a date uncertain. As of the writing of this letter, the date for the continued public hearing (if any) has not been set.

The Donor’s billboard is on a lot adjacent to a freeway. That lot is one of roughly a dozen properties in the City that abut a freeway, is more than the state-imposed mandatory 660-foot setback from other freeway billboards, and which is also zoned commercial or industrial. As such, the lot is one of roughly a dozen lots that would allow billboards under the current version of the proposed ordinance.

Neither the Donor, nor any other party affiliated with the Donor has submitted any application to the City to install a digital billboard anywhere in the City. The Donor has not requested a conditional use permit or any other entitlement. The Donor has not made any direct or indirect request to the City that a digital billboard be approved on that property. Notwithstanding the foregoing, the Donor has made statements suggesting that he might request approval of the installation of a digital billboard on that property at some point in the future.

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 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)(1) provides:

Before rendering any decision in a proceeding involving a license, permit, or other entitlement for use, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than five hundred dollars (\$500) 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 if the officer has willfully or knowingly received a contribution in an amount of more than five hundred dollars (\$500) 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." With limited exceptions not relevant here, 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, and all franchises."

In the present scenario, there is some question as to whether the proposed regulations might qualify as an entitlement for use proceeding, given the limited number of properties directly targeted by the potential regulations. We have previously cautioned that the mere classification of an action as a "rulemaking proceeding" does not inherently indicate the proceeding will fall outside the scope of Section 84308. (See *Bakker* Advice Letter, No. A-24-004.) We do not need to reach a conclusion with respect to the above question, however, because Councilmembers Manzo and West would not be subject to any restrictions or requirements under Section 84308 in any case.

Councilmembers Manzo and West each received campaign contributions of *exactly* \$500. As recently amended and effective January 1, 2025, Section 84308's various provisions only apply with respect to contributions *more than* \$500. Consequently, Councilmembers Manzo and West are not required to return or disclose their respective contributions, nor are they required to recuse themselves from governmental decisions relating to the digital billboard regulations.

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

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