



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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Memorandum

To: Chair Miadich, Commissioners Baker, Wilson, and Wood
From: Dave Bainbridge, General Counsel
Subject: Gov't Code §84308 (Levine Act) Update
Date: October 9, 2023

In 2022, the Governor signed SB 1439 into law, effective January 1, 2023. SB 1439 amended Section 84308 of the Political Reform Act. Section 84308 places limitations on public officials' ability to take part in licensing, permitting, and other use entitlement proceedings when a person with a specified interest in the proceeding has contributed more than \$250 to the official. The statute also prohibits officials from receiving contributions exceeding \$250 during such a proceeding and for a period after a final decision in the proceeding. SB 1439 broadened the scope of Section 84308 to apply to local elected officials and extended the period in which a contribution of more than \$250 is prohibited from three months after the decision to 12 months after the decision.

In response to the greatly expanded reach of Section 84308, the Commission adopted comprehensive regulatory amendments in May of 2023 (Regulations 18438 – 18438.8). At the time, the Commission asked staff to report back periodically on advice and educational efforts related to Section 84308 and its updated regulations. Here's a summary of advice and educational efforts through the end of September.

Advice Letters

Through September, the Legal Division has issued 8 advice letters in 2023 concerning Section 84308. In 2020 and 2021, we issued 3 letters each year and in 2019 and 2022 we issued 0 letters. Below are summaries of each letter concerning Section 84308 issued so far in 2023, along with links to the letters.

March

Randall Sjoblom

[I-23-027](#)

Section 84308 applies to any proceeding or action to grant, deny, revoke, restrict or modify "licenses, permits, or other entitlements for use." A decision to vacate an irrevocable offer of dedication or a public easement is a proceeding involving an entitlement for use.

Thai Viet Phan

[I-23-052](#)

Although Section 84308 prohibits officers including city councilmembers from accepting, soliciting, and directing contributions of more than \$250 from parties in a proceeding involving “a license, permit, or other entitlement for use,” the statutory definition of that term excludes labor contracts. Accordingly, Section 84308 does not apply to contributions to councilmembers from an organization entering into a labor agreement with the City.

April

Matt Strabone

[I-23-037](#)

Disclosure and disqualification requirements of Section 84308 apply to contributions received as a candidate for county central committee. So long as an official is an officer subject to Section 84308 at the time of the decision, the official will be subject to its provisions.

May

Jonathan Velasquez

[I-23-065](#)

In general, contracts are considered entitlement for use proceedings for purposes of Section 84308 regardless of value. Accordingly, small contracts, including purchase orders, are subject to Section 84308’s provisions. Likewise, charter school petitions, which are also contracts, are subject to Section 84308. However, labor contracts, such as collectively bargained project labor agreements, are expressly exempted from Section 84308.

Eric May

[I-23-077](#)

When a landowner initiates a process to change the use designation of a specific parcel of property under the County’s general plan, both the pre-application to authorize the filing of a formal application, and the formal application for a general plan amendment, are “proceeding[s] involving a license, permit, or other entitlement for use” under Section 84308. Under the existing regulatory language and the most conservative reading of 84308, the proceeding should be considered “pending” once the pre-application has been submitted.

June

Ashlee Titus

[A-23-103](#)

The restrictions in Section 84308(b) are applicable to an “officer of an agency” which is defined under newly amended Regulation 18438.1(d) to include a person who is a candidate for elected office or has been in a candidate for elected office in the 12 months prior to the proceeding, who also has decisionmaking authority with respect to a license, permit or other entitlement for use proceeding. A person who is solely a candidate for elective office is not “an officer of an agency” and is not subject to the restrictions in Section 84308(b) unless the candidate is elected or subsequently becomes an officer of the agency.

July

Adrian Granda

[I-23-102](#)

A “strong mayor” empowered by a city charter to approve or veto a city council decision on a license, permit, or other entitlement for use decision may exercise that power without violating Section 84308 even if the mayor has a financial interest in the decision because the mayor’s participation is legally required. However, the legally required participation exception does not excuse other violations of Section 84308 and a strong mayor taking part in an entitlement

proceeding pursuant to the exception is still required to refrain from soliciting, directing, or receiving contributions from parties/participants while the proceeding is pending and for 12 months thereafter, and must also make all necessary disclosures.

Karl Berger

[A-23-035](#)

Donations solicited by city officials for a charitable fund to benefit victims of a mass shooting are not “contributions” for purposes of Section 84308. However, elected city officials, who solicit donations totaling \$5,000 or more from one source must complete a Form 803 Behested Payment Report. Nonetheless, barring any other economic interest in the decision, the Act’s conflict of interest provisions do not prohibit city officials from participating in city decisions directly or indirectly involving the charitable fund’s partner, a 501(c)(3) charitable foundation, and Section 1090 does not prohibit the city from entering into further agreements with the foundation because the City Treasurer has only a noninterest in the foundation as a non-compensated officer of the fund.

Email Advice

Staff has seen a significant increase in email advice requests concerning Section 84308 this year. In 2021, we received 20 email advice requests concerning Section 84308. In 2022, we received 50 email advice requests. And in 2023 through September 30, we’ve received 96 email advice requests.

Here are summaries of the notable email advice this year concerning Section 84308:

- 01/17/23: A contribution made by the PAC directed and controlled by an individual are aggregated with contributions made by the individual in their personal capacity for purposes of Section 84308’s \$250 threshold.
- 01/19/23: Section 84308’s \$250 limit applies to the aggregate amount that may be contributed to all of a candidate’s committees.
- 02/24/23: Section 84308 applies to local elected officials and its provisions not only prohibit voting on certain decisions, but also participating in the making of those decisions, as well as using the official’s position to influence the decision. Thus, the prohibition is broader than merely voting on an item.
- 05/26/23: Referrals of defendants or would-be defendants (i.e., those who could, but have not yet, been charged with an alleged offense) by a DA’s Office/Prosecutor’s Office to “diversion” programs offered by non-profits do not qualify as entitlement for use proceedings for purposes of Section 84308, such that a donation to a DA candidate by a non-profit that offers diversion programs would not implicate Section 84308.
- 07/05/23: Contributions made by multiple members of the same governmental board, made to the same candidate(s), in the board members’ respective personal capacities are

not aggregated together or attributed to the government board for purposes of Section 84308.

- 07/10/23: Section 84308's provisions apply to a school board member/candidate, even if the proceeding involving the contributor occurs in the context of the candidate's separate role as a government employee (i.e., an "officer of the agency" who is a candidate for office and also is an employee with decisionmaking authority in the proceeding).
- 07/14/23: A contribution made by an individual prior to being hired to represent a client (i.e., acting as an "agent") are not aggregated with contributions made by the client.
- 07/19/23: Section 84308 does not prohibit a candidate for office who is neither a sitting elected official or an agency employee with decisionmaking authority in the proceeding from accepting contributions in excess of \$250 while a proceeding is pending, but such contributions would require disclosure and the officer's recusal or return of the contribution if the candidate was elected and the proceeding came before them.
- 07/26/23: Neither Section 84308 nor Regulation 18438.8 have specific requirements for the form that disclosure must take, apart from the requirements relating to making the disclosure a part of the agency's official records. Agencies may adopt different processes for making and accepting disclosures (e.g., an agency-created form or specific email address disclosures must be sent to).
- 08/30/23: Subcontractors listed on a bid are considered a "party" for purposes of Section 84308.

Educational Resources and Training

Commission staff recently created training curriculum on Section 84308 and are offering a webinar on November 1, 2023. Anybody interested in attending the webinar can register here: <https://www.fppc.ca.gov/learn/training-and-outreach.html>. Additional trainings will be scheduled for future dates based on demand.

Staff have also created a webpage with guidance on Section 84308 that includes recent advice letters, regulations, a Commission opinion, a brief fact sheet, and comprehensive guides for understanding Section 84308. See <https://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html>

Future Regulatory Amendments

Through the advice and education process, staff has identified clarifying regulatory amendments that we plan to present to the Commission in 2024. As with the regulations this year, we encourage suggestions from officials, agencies, organizations, and members of the public for regulatory changes to clarify the rules and ensure compliance with the law.