



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 9, 2025

Daniel G. Sodergren
City Attorney
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566-0802

Re: Your Request for Informal Assistance
Our File No. I-25-026

Dear Mr. Sodergren:

This letter responds to your request for advice on behalf of City of Pleasanton Mayor Jack Balch regarding Section 84308 of the Political Reform Act (the “Act”).¹ Because your question is general in nature, we are treating your request as one for informal assistance.²

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

Does Section 84308 prohibit Mayor Balch from appointing an individual to a city board, commission, or committee, if that individual has made a campaign contribution of more than \$500 to Mayor Balch in the last 12 months?

CONCLUSION

No. Appointments to boards, commissions, and committees are personal employment contracts and not “entitlements for use” under the Act. Thus, Section 84308 does not apply, and Mayor Balch may appoint individuals to City boards, commissions and committees even if they have made over \$500 in campaign contributions to him in the last 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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Pleasanton (“City”) and request advice on behalf of Mayor Jack Balch. The City is a general law city where the office of mayor is an elective office. Pursuant to Government Code Section 40605 and the City Council Rules of Procedure, the mayor, with the approval of the city council, makes all appointments to City boards, commissions, and committees, unless otherwise provided by statute. Most City boards, commissions, and committees pay their appointed (volunteer) members \$50 per board, commission, or committee meeting attended, up to a maximum of \$100 per month.

You ask whether Section 84308 of the Act permits Mayor Balch to appoint individuals to City boards, commissions, and committees if those individuals have made campaign contributions to him within the past 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”).

Relevant here, Section 84308 places two restrictions on officers. First, officers are prohibited from soliciting, directing, or accepting contributions of more than \$500 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).) 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).)

As an elected mayor, Mayor Balch is an “officer” within the meaning of Section 84308 and thus subject to its prohibitions. (Section 84308(a)(4).) The operative question is whether the act of appointing an individual to a City board, commission, or committee would meet the definition of an “entitlement for use proceeding” under Section 84308. Section 84308(a)(5)(A) defines “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, and all franchises.” An appointment to a City board, commission, or committee is not a business, professional, trade, or land use license or permit within the ordinary meaning of these terms.

Less obvious is whether such an appointment could fall within the definition of an “other entitlements for use.” Unlike other key terms such as “agency,” “officer,” “party,” and “participant,” Section 84308 does not define “entitlement for use.” The overall scheme and purpose of Section 84308 suggests that the types of proceedings which should be covered by Section 84308 are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants.

Examples of the types of decisions covered by Section 84308 include decisions on professional license revocations, conditional use permits, rezoning of real estate parcels, zoning variances, tentative subdivision and parcel maps, consulting contracts, cable television franchises, building and development permits, public street abandonments, and private development plans. (*Washington Advice Letter*, No. I-91-521.)

Appointment of an individual to a City board, commission, or committee is not analogous to any of these examples. Here, instead of being awarded a benefit, appointed board members would instead serve the City in exchange for compensation. Such an arrangement constitutes a personal employment contract, which is exempt from the definition of “entitlement for use proceeding.” (Section 84308(a)(5)(B)(ii) and Regulation 18438.) For these reasons, Section 84308 does not apply, and Mayor Balch may appoint individuals to City boards, commissions and committees even if they have made over \$500 in campaign contributions to him in the last 12 months.

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

Sincerely,

Dave Bainbridge
General Counsel



For

By: Toren Lewis
Counsel, Legal Division

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