

Prohibition on Soliciting Campaign Contributions and  
Disqualification Due to Receipt of Campaign Contributions  
Under Section 84308 of the Political Reform Act of 1974

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**A. Introduction.**

Government Code section 84308 was enacted in 1983 as a part of the Political Reform Act of 1974 (Gov. Code §81000 *et seq.*). Its purpose is to ensure that appointed members of boards and commissions are not biased by large campaign contributors or potential contributors who might appear before them in a proceeding. (Calvert Advice Letter, A-94-263.)

Section 84308 applies to members of the Planning Commission. This section has two distinct proscriptions. Under subsection (b), commissioners are prohibited from accepting, soliciting, or directing campaign contributions of more than \$250 (aggregate) from an individual involved in a project application or other proceeding pending before the Planning Commission. Under subsection (c), commissioners must disclose on the record and disqualify themselves from making or participating in any decision that involves an individual from which the commissioner has received, within the previous 12 months, a contribution of more than \$250 (aggregate).

Section 84308 and some of the implementing regulations are discussed in more detail below. This discussion is a summary only and addresses only some of the aspects of section 84308. It should not be relied upon as formal legal advice. The Fair Political Practices Commission (FPPC) is the authority responsible for interpretation and enforcement of the Political Reform Act. Because of the complexity and changing nature of this area of the law and the importance of individual facts, commissioners are encouraged consult with FPPC staff to answer questions concerning the applicability of the Act and implementing regulations to specific situations. Such advice may be obtained over the phone, as well as through written requests. A written response by the FPPC, under appropriate circumstances, will provide a valid legal defense to a claim that the Act has been violated. A verbal response or opinion from the FPPC staff, while helpful, is not binding and does not constitute a defense to a claim that the provisions of the Act have been violated. An opinion or advice from this office, whether written or verbal, likewise does not constitute a defense. The FPPC staff may be contacted at 1-866-ASK-FPPC (1-866-275-3772). Additional information is available at [www.fppc.ca.gov](http://www.fppc.ca.gov).

## **B. Summary of Section 84308.**

### **1. Prohibition on Accepting, Soliciting, and Directing Campaign Contributions (§84308(b)).**

Subsection (b) of section 84308 prohibits a planning commissioner from *accepting, soliciting, or directing* a contribution of more than \$250 from any *party or participant* to a proceeding that is *pending* before the Planning Commission and for three months following the date a final decision is rendered. The prohibition applies to any fund-raising done on behalf of *any* candidate or committee, regardless of whether the commissioner has disqualified himself or herself from the proceeding.

A *party* to a proceeding is defined as any person who files an application for, or is the subject of, a proceeding. A *participant* is defined as any person who is not a party but who lobbies or testifies in person or otherwise acts to influence the planning commission to support or oppose the subject of the proceeding. To qualify as a *participant*, the person must also have a financial interest in the decision. In addition, the prohibition applies equally to the *agent* of a party or participant. An *agent* is defined as a person who represents the party or participant in connection with the proceeding in question.

### **2. Requirement for Disclosure and Disqualification Due to Receipt of Campaign Contribution (§84308(c)).**

Subsection (c) of section 84308 requires a planning commissioner who *receives* a campaign contribution of more than \$250 within the preceding 12 months from any *party or participant* to a proceeding to disclose that fact on the record of the proceeding. In addition, the commissioner must disqualify himself or herself from making, participating in, or otherwise influencing the decision in the proceeding. For purposes of subsection (c), a commissioner *receives* a contribution only if the contribution is for that person's own candidacy or own controlled committee.

## **C. Statute and Regulations**

Section 84308 and the implementing regulations contain additional definitions and further clarification on, among other things, what does and does not constitute solicitation; when a commissioner is deemed *to know or have reason to know* that a party or participant has a financial interest in the decision; that a proceeding is pending; and whether or not a contribution has been made. The statute and a selection of the regulations are set out below:

**Statute: Gov. Code § 84308. Contributions to Officers of Agencies; Required Disclosure**

84308. (a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means 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.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other

officer, or on behalf of any candidate for office or on behalf of any committee.

(c) 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. No officer of an agency shall make, participate in making, or in any way attempt to use his or her 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 his or her agent, or from any participant, or his or her 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.

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

## **Selected Regulations Relating to §84308**

### **18438.2. Proceedings under Government Code Section 84308**

(a) For purposes of Government Code Section 84308, a "proceeding involving a license, permit or other entitlement for use" includes any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use.

(b) A proceeding involving a license, permit or other entitlement for use is "pending before" an agency:

(1) When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action;

2) It is the type of proceeding where the officers of the agency are required by law to make a decision, or the matter has been otherwise submitted to the officers of the agency for their decision; and

(3) The decision of the officer or officers with respect to the proceeding will not be purely ministerial.

### **18438.3. Agents under Government Code Section 84308**

(a) For purposes of Government Code Section 84308, a person is the "agent" of a party to, or a participant in, a proceeding involving a license, permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use. If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."

(b) To determine whether a contribution of more than \$250 has been made by a person or his or her agent, contributions made by that person within the preceding 12 months shall be aggregated with those made by his or her agent within the preceding 12 months or the period of the agency relationship, whichever is shorter.

### **18438.4. Participants under Government Code Section 84308**

For purposes of Government Code Section 84308,

(a) A person "lobbies in person" when he or she communicates directly,

either in person or in writing, with an officer of an agency for the purpose of influencing the decision in a proceeding.

(b) A person "testifies in person" when he or she testifies or makes an oral statement before an agency during a proceeding on a license, permit or other entitlement for use for the purpose of influencing the decision of the agency.

(c) A person "otherwise acts to influence" officers of an agency when he or she communicates with an employee of the agency, or when his or her agent lobbies in person, testifies in person or otherwise communicates with officers or employees of the agency, for the purpose of influencing the officers' decision in a proceeding.

(d) A person does not lobby, testify or otherwise act to influence the officers or employees of an agency by communications made to the public, other than those made in the proceedings before the agency.

#### **18438.6. Solicitation, Direction, and Receipt of Contributions under Government Code Section 84308**

For purposes of Government Code Section 84308,

(a) A person "accepts" or "receives" a contribution only if the contribution is for that person's own candidacy or own controlled committee.

(b) A person "makes a contribution" to an officer or candidate only if the contribution is made for that officer's or candidate's own candidacy or controlled committee.

(c) An officer "solicits" a contribution only if he or she knows or has reason to know that the person being solicited for a contribution is a party or agent of a party, or is a participant or agent of a participant and either:

(1) The officer or candidate personally requests a contribution for his or her own campaign or controlled committee, or for any other candidate, public official or committee, either orally or in writing; or

(2) The agent of the officer or candidate with the officer or candidate's knowledge, requests a contribution for the officer or candidate's own campaign or controlled committee.

(d) Notwithstanding subsection (c), a solicitation does not include a request made in a mass mailing sent to members of the public, to a public gathering, or published in a newspaper, on radio or TV, or in any other mass media. A person does not "solicit" solely because his or her name is printed with

other names on stationery or a letterhead used to request contributions.

(e) A person "directs" a contribution if he or she acts as the agent of another person or of a committee other than his or her own controlled committee in accepting a contribution on behalf of, or transmitting a contribution to, such other person or committee.

#### **18438.7. Prohibitions and Disqualification under Government Code Section 84308**

For purposes of Government Code Section 84308:

(a) An officer knows or has reason to know that a person has a financial interest in the decision in a proceeding if:

(1) The person is a party; or

(2) The person is a participant and reveals facts in his or her written or oral support or opposition before the agency which make the person's financial interest apparent.

(b) An officer knows, or should have known, about a proceeding pending before the agency if either:

(1) The officer has received notice of the license, permit or other entitlement proceeding. Notice includes receipt of an agenda or docket identifying the proceeding and the party or other persons affected by name; or

(2) The officer has actual knowledge of the proceeding.

(c) An officer knows, or should have known about a contribution if:

(1) The contribution has been disclosed by the party pursuant to Section 84308(d); or

(2) The officer has actual knowledge of the contribution.

#### **18438.8. Disclosure under Government Code Section 84308**

(a) An officer who is required by Government Code Section 84308(c) to disclose the receipt of a contribution shall make the disclosure on the public record at the beginning of a public hearing in a proceeding involving the license, permit, or other entitlement for use, if a hearing is held. If there is no public hearing, the disclosure shall be entered into the written record of the proceeding. A written record of any disclosure of receipt of a contribution made by an officer pursuant to Government Code Section 84308(c) shall be made available to the

public pursuant to Government Code Section 81008.

(b) Statements filed pursuant to Government Code Section 84308(d) by parties shall be incorporated into the written record of the proceeding and shall be made available to the public pursuant to Government Code Section 81008.