

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18438.7. Prohibitions and Disqualification Under Section 84308.**

(a) Knowledge of a Financial Interest. An officer knows or has reason to know that a participant has a financial interest in a decision only if the officer has actual knowledge of the financial interest, or the participant reveals facts in written or oral statements during the proceeding before the officer that make the person's financial interest apparent.

(1) In determining whether facts revealed by a participant in written or oral statements before the officer have made the participant's financial interest apparent, all relevant facts known by the official at the time of the decision must be considered including, but not limited to, the specificity with which the participant has described their economic interests, the potential for a material financial effect on those interests as a result of the decision, and the likelihood of such a financial effect.

(2) Notwithstanding subdivision (a)(1), an official aware of any of the following facts has reason to know of a participant's potential financial interest, and may not take part in the proceeding if the participant and the participant's agent have contributed more than two hundred fifty dollars (\$250) to the official within the preceding 12 months:

(A) The participant has an interest in property located within 500 feet of the real property at issue in the proceeding;

(B) The participant has an economic interest in a business entity that may see a significant increase or decrease in customers as a result of the proceeding; or

(C) The participant has a business relationship with the applicant that may result in additional services provided to the applicant.

(3) An officer with reason to know of a participant's financial interest as specified in subdivision (a)(2) may take part in the proceeding if clear and convincing evidence known by the officer establishes it is not reasonably foreseeable the decision will have material financial effect on the participant's interests.

(4) An officer does not know or have reason to know of a participant's financial interest in a decision solely as a result of the participant identifying an economic interest located in the general vicinity of a business entity or real property at issue in the proceeding.

(b) Willful or Knowing Receipt of a Contribution. For purposes of Section 84308(c), an officer may not make, participate in making, or in any way attempt to use the officer's official position to influence the decision if the officer willfully or knowingly received a contribution from a party, or participant with a financial interest, in the proceeding.

(1) An officer willfully or knowingly received a contribution if:

(A) The officer has actual knowledge of the contribution;

(B) The contribution has been disclosed by the party pursuant to Section 84308(e) and Regulation 18438.8; or

(C) The officer is aware of facts establishing other reasons to know of the contribution including, but not limited to:

(i) The party, participant, or another person has otherwise informed the officer that a contribution or contributions have been made to the officer;

(ii) The party or participant has previously made two or more contributions of more than \$250 to the officer;

(iii) The officer personally solicited the party or participant for a contribution; or

(iv) The officer personally accepted a contribution from the party or participant.

(2) An officer, without actual knowledge of a contribution from a party or participant with a financial interest, does not have reason to know of the contribution based solely on the fact that the contribution was previously reported under Chapter 4 or 5 of the Act.

An officer has reason to know of a contribution by a party previously reported under Chapter 4 or 5 of the Act in a proceeding noticed on an agenda for a public meeting before the body or board or, for officers not on a body or board, where the proceeding is otherwise before the officer in the officer's decisionmaking capacity.

(3) As used above, the phrase “make, participate in making, or in any way attempt to use the officer's official position to influence the decision” has the same meaning as specified in Regulation 18704.

(c) Return of Contribution. For purposes of Section 84308(d)(1), an officer can return a contribution if:

(1) The contribution was received from a party prior to the officer knowing or having reason to know that a proceeding involving the party had commenced. For purposes of this provision, an officer serving on a governing body or board knows or has reason to know a proceeding involving the party has commenced if the proceeding has been noticed on the agenda for a public meeting of the body or board; or

(2) The contribution was received from a participant prior to the officer knowing or having reason to know that the participant had a financial interest in the proceeding.

(d) Taking Part in Proceeding prior to Return of Contribution. An officer serving on a governing body or board, otherwise disqualified under Section 84308 from taking part in a proceeding, may take part in the proceeding prior to returning the contribution if all of the following criteria are met:

- (1) The decision is made at a public meeting of the governing body or board;
- (2) The officer has known or should have known about the contribution and proceeding for fewer than 30 days;
- (3) After learning of the contribution or proceeding and prior to taking part in any further discussion or decision, the officer discloses the fact of the disqualifying contribution on the record of the proceeding, as required by Section 84308(c), and confirms that the return will occur within 30 days from the time the officer knew, or should have known, about the contribution and proceeding; and
- (4) The contribution is returned within that timeframe.

### **CREDITS**

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

### **HISTORY**

1. New section filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
2. Amendment filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).
3. Amendment of subsection (a)(2) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 20).
4. Repealer and new section filed 7-13-2023; operative 8-12-2023 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing and printing pursuant to *Fair Political*

*Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2023, No. 28).

5. Editorial correction replacing incorrectly filed text of subsection (b)(2) (Register 2023, No. 34).