

CONTRIBUTION RESTRICTIONS

Although the Political Reform Act (Act) is primarily a disclosure law, there are several important restrictions and prohibitions on receiving contributions. This chapter reviews these restrictions and prohibitions, as well as some that are contained in laws other than the Act.

In addition, while the receipt of campaign contributions generally will not create a conflict of interest for an elected officeholder in the performance of their duties, contributions may be the source of a conflict of interest for officeholders or candidates who are also appointed to certain boards or commissions. The section on “Disqualification and Campaign Contributions” covers this area of the law.

A. Local Contribution Limits

The Act does not contain contribution limits for local candidates, but provides that cities and counties may adopt contribution limits applicable to their elections. Many California cities and counties have adopted campaign ordinances that include contribution limits and other disclosure provisions.

QUICK TIP: Check with your local elections office to determine if local campaign finance rules apply to your campaign.

Effective January 1, 2021, a default contribution limit applies to city and county candidates when the city or county has not already enacted a contribution limit. Please see AB 571 (2019).

The FPPC’s website lists cities and counties with local campaign finance rules and links to the ordinances. For questions about local contribution limits, candidates and committees should contact their city clerk, county elections office, or their City Attorney’s or County Counsel’s office.

B. Restrictions under the Political Reform Act

Reporting the True Donor

If a contribution of \$100 or more is received from a single source in a calendar year, the source must be identified on the committee's Form 460. If a contribution is received through an intermediary, both the intermediary and the true source of the contribution must be identified. (See Chapter 3 for additional information about intermediaries.)

Failure to disclose the true source of a contribution is often referred to as campaign money laundering, which is a serious violation of the Act. One type of common violation is when an employer reimburses individual employees for contributions so that the committee receiving the contributions discloses the employees rather than the true source of the contribution (the employer) on campaign disclosure reports.

Another occurrence is when a person (organization, business, individual) makes a contribution to another person with the condition, agreement or understanding that the payment will be subsequently used for political purposes, such as a contribution to another committee. It is a violation for persons to conceal their identities by contributing through another person.

Committee treasurers must inquire about any information that a person of reasonable prudence would question based on all available information. It is not possible to describe every situation that might trigger a duty for a treasurer to inquire if a contribution is identified correctly. Some examples are the size of the contribution, the reported source, and the likelihood of that source making a contribution of the size reported.

Ex 5.1 - A committee receives contributions of \$1,000 each from ten different individuals in the same week. The committee treasurer and campaign fundraiser did not make specific solicitations to the individuals. Upon the treasurer's request, the individuals state that they all work for the same employer. The committee treasurer has a duty to inquire to determine if the employer reimbursed the employees.

If it is discovered that a committee received a contribution and the donor and intermediary were not properly identified, the contribution must be paid to the Secretary of State for deposit in the State General Fund. When the action is brought under a local campaign ordinance, a local committee may pay the contribution to the local jurisdiction for deposit in its general fund.

Cash Contributions

The committee may not accept a cash contribution of \$100 or more. Such a contribution will not be deemed “received” if it is not deposited or spent and is returned to the contributor prior to the end of the reporting period of the campaign statement on which the contribution would otherwise be reported. Even if the contribution is inadvertently deposited, it is not deemed “received” if it is refunded within 72 hours of receipt. However, a cash contribution of \$1,000 or more that is received in the 90 days before the election, including the date of the election, that is inadvertently deposited must be refunded within 48 hours in order to not be deemed “received.”

QUICK TIP: Even if change is immediately provided, a committee may not accept \$100 or more in cash from a single source. For example, if the committee is holding a fundraiser and charging \$50 per person, an attendee may not pay with a \$100 bill. The payment must be made by personal check, debit card, or credit card.

Anonymous Contributions

Anonymous contributions of \$100 or more are prohibited. If a committee receives a cash contribution of \$100 or more from an unknown source, it must be sent to the Secretary of State for deposit in the State General Fund.

Contributions Made by Money Orders/Cashier’s Checks/ Traveler’s Cheques

Contributions of \$100 or more made by money order, cashier’s check, or traveler’s cheque are prohibited and must be returned to the contributor, or, if made anonymously, sent to the Secretary of State for deposit in the State General Fund.

All monetary contributions of \$100 or more must be made by written instrument (such as a check) containing the name of the donor and drawn from the account of the donor or the intermediary. Contributions may also be received by credit card (including over the Internet), wire transfer, or other electronic means. (See Chapter 3.)

Contributor's Legal Name

Contributions must be made in the name by which the contributor is identified for legal purposes.

Commingling Funds

Campaign funds may not be commingled with any individual's personal funds; they must be kept in an account separate from any account that contains personal funds. In general, campaign funds may not be used for personal expenses. (See Chapter 5 for information about the use of campaign funds.)

QUICK TIP: Campaign contributions must be kept separate from personal funds and may not be used for personal expenses.

Contributions Delivered in State Office Buildings

A contribution may not be delivered to or received by another person, personally or through an agent, in the State Capitol or any other state office building for which the State of California pays the majority of the rent. "Personally delivered" includes the delivery of a copy or facsimile of a contribution, and the original or a copy of a contribution transmittal letter. This prohibition does not apply to contributions received or delivered in a legislative district office or those sent by postal mail.

Contributions from State Lobbyists

A state lobbyist may not make a contribution to an elected state officer or a candidate for elective state office if the lobbyist is registered to lobby the governmental agency of the elected officer or the agency to which the candidate is seeking election. The lobbyist also may not contribute to a local committee controlled by a state officer or candidate for elective state office.

State Lobbyist and Lobbying Firm Fundraisers

A fundraiser held in the home of a state lobbyist is considered a contribution; therefore, a lobbyist or a cohabitant of a lobbyist is prohibited from holding a fundraiser in their home for a candidate seeking election to a governmental agency that the lobbyist is registered to lobby. This includes a local candidate/officeholder that is seeking election to a state office. A similar prohibition applies to lobbying firms holding fundraisers at their offices.

Federal Law Prohibitions: Contributions from Foreign Nationals (including Foreign Principals and Foreign Governments)

Committees may not solicit or accept contributions from foreign nationals. Federal law prohibits contributions and expenditures solicited, directed, received or made directly or indirectly by or from foreign nationals in connection with any election — federal, state or local. This prohibition includes contributions made to political committees. Furthermore, it is a violation of federal law to knowingly provide substantial assistance in the making, acceptance or receipt of contributions or in connection with federal and nonfederal elections to a political committee. This prohibition includes, but is not limited to, acting as an intermediary for foreign national contributions. (52 USCS Section 30121.) Contact the Federal Election Commission for information at (800) 424-9530 or info@fec.gov.

Federal Law Prohibitions: Contributions from National Banks or Federally-Chartered Corporations

National banks and federally-chartered corporations are subject to federal law prohibiting particular contributions and expenditures in connection with local, state, or federal elections. (The Federal Election Campaign Act, 52 USCS Section 30101, et seq. and specifically Section 30118; and see 11 C.F. R. Section 114.2.) Contact the Federal Election Commission for information at (800) 424-9530 or info@fec.gov.

Soliciting Contributions from Public Employees

Government Code Section 3205 prohibits a local candidate from knowingly, directly or indirectly, soliciting a political contribution from any employees of their agency or from a person on an employment list of that agency. There is an exception for solicitations that are made to a significant segment of the public. For further information, contact the Attorney General's office at (800) 952-5225 or the local district attorney.

C. Public Funds and Public Resources

Under Government Code Section 85300, the use of public moneys for the purpose of seeking elective office is prohibited unless:

- The governmental entity establishes a dedicated fund for this purpose by statute, ordinance, resolution, or charter; and
- Public moneys held in the fund are available to all qualified, voluntarily participating candidates for the same office without regard to incumbency or political party preference; and
- The state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter.

QUICK TIP: Using public resources for campaign purposes is prohibited.

Please note that at the time of this publication, recently enacted provisions of Section 85300 are currently the subject of a court challenge. (See *Howard Jarvis Taxpayers Assn. v. Brown*, Super. Ct. Sacramento County, 2016, No. 34-2016-80002512.)

In addition, laws outside the Act prohibit the use of public resources, such as office equipment, staff time, etc., for campaign or personal purposes. (Education Code Section 7054; Gov. Code Section 8314; Penal Code Section 426; and *Vargas v. City of Salinas* (2009) 46 Cal 4th 1.)

Ex 5.2 - Three city councilmembers and two county supervisors serve on the Local Agency Formation Commission (LAFCO). Since the councilmembers and supervisors were appointed to the commission, they may not vote on a LAFCO issue if they have received a contribution in the last 12 months of more than \$250 from someone who is a party, participant, or agent in the proceeding.

Government Code Section 54964 prohibits an officer, employee or consultant of a local agency from expending or authorizing the expenditure of any local agency funds to support or oppose a candidate or ballot measure. For further information about laws outside the Act, contact the Attorney General's office at (800) 952-5225 or the local district attorney.

D. Campaign Contributions and Disqualification

Campaign contributions received in connection with an elective office may serve as the basis for disqualifying an officer from voting on a matter affecting the contributor, and may limit the amount of a contribution an officer can receive from a contributor with certain matters pending before the officer's agency. These rules apply to decisions before both elected officers as well as appointed officers where the appointed officer is also a candidate for an elected office. Specifically, Government Code Section 84308:

- **Prohibits Contributions Over \$250:** Prohibits an officer from soliciting, accepting, or directing campaign contributions of more than \$250 from any party, participant, or agent of a party or participant, while a proceeding involving a license, permit, or other entitlement for use is pending before the officer's agency and for 12 months following the date of that decision. This prohibition applies even when the contribution is for another candidate.
- **Requires Disclosure:** Requires disclosure of all such campaign contributions and also requires an officer's disqualification from making decisions in certain proceedings if the officer has received more than \$250 in campaign contributions from a party or participant within 12 months preceding the decision.

- **Permits Return of Contributions After Proceeding:** Permits an officer who does not willfully or knowingly accept, solicit, or direct a contribution of more than \$250 during the 12 months after the date a final decision is rendered in the proceeding to cure the violation by returning the contribution, or the portion of the contribution in excess of the \$250, within 14 days of accepting, soliciting, or directing the contribution, whichever comes last. An officer's controlled committee, or the officer themselves if no controlled committee exists, must maintain records of curing any violation.
- **Permits Return of Contribution While Proceeding is Pending:** Allows an officer who receives a contribution that would otherwise require disqualification, who returns the contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding involves a license, permit, or other entitlement for use, to participate in the proceeding.

Who is Covered?

Generally, appointed board members, commissioners, or individuals who head state or local government agencies and who make decisions in proceedings involving licenses, permits, or other entitlements for use are subject to Section 84308. Common positions include:

- Local agencies whose members are elected by the voters (e.g., board of supervisors, city council, school board)
- Planning Commissioners
- Local Agency Formation Commission (LAFCO) members
- Members of redevelopment agencies that are not entirely comprised of elected members of the same agency
- Transportation Authority members
- Air Quality Management District members
- Waste Management Authority members
- California Coastal Commissioners

Ex 5.3 - A planning commissioner serves as the treasurer for a councilmember's campaign. The planning commissioner may not solicit, accept, or direct a campaign contribution of more than \$250 for the councilmember's campaign from a party, participant, or agent whose proceeding is pending before the planning commission.

Ex 5.4 - Sarah is a city council candidate. Sarah is also an appointed member of the city's planning commission. Christopher has a permit request pending before the planning commission. Sarah is prohibited from soliciting or receiving any contribution of more than \$250 from Christopher or Christopher's agent.

Ex 5.5 - Sarah wins the election and resigns from the position on the planning commission. Sarah is now serving solely in an elected position. Sarah is still required to disqualify herself from making decisions in proceedings involving a license, permit, or entitlement for use on the city council if Sarah has received contributions of more than \$250 from a party or participant in the proceeding within the preceding 12 months.

Exempted Agencies

Section 84308 does not apply to the following agencies:

- Judicial branch
- Legislature
- Board of Equalization (Gov. Code Section 15626 applies)
- Constitutional officers

QUICK TIP: Section 84308 applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

Government Code Sections

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| 82015 | Contribution. |
| 84300 | Cash and In-Kind Contributions; Cash Expenditures. |
| 84301 | Contributions Made Under Legal Name. |
| 84302 | Contributions by Intermediary or Agent. |
| 84304 | Anonymous Contributions. |
| 84307 | Commingling with Personal Funds. |
| 84308 | Contributions to Officers; Disqualification. |
| 84309 | Transmittal of Campaign Contributions in State Office Buildings. |
| 85700 | Donor Information Requirements; Return of Contributions. |
| 85701 | Laundered Contributions. |
| 85702 | Contributions from Lobbyists. |
| 85704 | Prohibition on Earmarking. |

Title 2 Regulations and Opinion

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| 18215 | Contribution. |
| 18432.5 | Intermediary and Earmarked Funds Disclosure. |
| 18438.1 | Officers and Agencies Under Government Code Section 84308. |
| 18438.5 | Aggregated Contributions Under Government Code Section 84308. |
| 18438.6 | Solicitation, Direction, and Receipt of Contributions Under Government Code Section 84308. |
| 18438.7 | Prohibitions and Disqualification Under Government Code Section 84308. |
| 18438.8 | Disclosure Under Government Code Section 84308. |
| 18439 | Definition of “Personally Deliver.” |
| 18572 | Lobbyist Contributions – Making a Contribution Defined. |

Pelham Opinion (2001) 15 FPPC Ops. 1