

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

May 9, 1984

Jonathan S. Horne
City Attorney
City Hall
1685 Main Street
Santa Monica, CA 90401-3295

Re: Advice Letter No. A-84-066

Dear Mr. Horne:

I apologize for the delay in my response to you. Your request for advice is on behalf of Santa Monica Planning Commissioner Thomas R. Larmore.

FACTS

Thomas Larmore was recently appointed to the Santa Monica Planning Commission. The Commission acts in an advisory capacity, and as final decisionmaker on various quasi-judicial decisions. Prior to Mr. Larmore's appointment, he was the treasurer for the All Santa Monica Coalition, a recipient committee. In this capacity, he requested and accepted contributions on behalf of the Coalition and Coalition endorsed candidates. Some of the contributions were for \$250 or more. Mr. Larmore resigned as treasurer once he was appointed to the Planning Commission, but he plans to continue soliciting contributions for the Coalition. It is likely that some of the persons who have contributed, or who will contribute, \$250 or more to the Coalition will be financially interested in applications for permits or other entitlements for use before the Planning Commission.

GENERAL DISCUSSION

Government Code Section 84308(a)^{1/} provides that:

No ... appointed officer . . . who serves on a quasi-judicial ... commission . . . shall accept,

^{1/} Hereinafter all statutory references are to the Government Code unless otherwise indicated.

solicit, or direct a contribution of two hundred fifty dollars (\$250) or more, from any person, or his or her agent, who has an application for a license, permit, or other entitlement for use pending before any body of which the officer ... is a member and for three months following the date a decision is rendered on the application or from any person, or his or her agent, who actively supports or opposes the application.... This prohibition shall apply regardless of whether the officer ... accepts, solicits, or directs the contribution for himself ... or on behalf of any other officer, alternate, or candidate for office.

Section 84308(b) provides that:

Prior to rendering any decision on an application for a license, permit or other entitlement for use pending before a quasi-judicial ... commission.... each member . . . who has received a contribution to be used in a federal, state, or local election in an amount of two hundred fifty dollars (\$250) or more from an applicant or any person who supports or opposed the application . . . within the preceding 12 months must disclose that fact. No ... appointed officer . . . shall vote on any application for a license, permit or other entitlement for use pending before any body of which the officer is a member ... if the officer ... willfully or knowingly received a contribution to be used in a federal, state, or local election in an amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from the applicant or his or her agent, or from any person, or his or her agent who actively supports or opposes the application....

As a member of a planning commission, Mr. Larmore is covered by the provisions of Section 84308.

QUESTIONS AND RESPONSES

Question #1:

Does Section 84308(b) prohibit Mr. Larmore from voting on applications for permits or other entitlements for use filed by persons who made contributions of \$250 or more to the Coalition at Mr. Larmore's request?

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Response:

Section 84308(b) does not require Mr. Larmore to disqualify himself from voting on such applications because the section's disqualification provision only applies to contributions "received" by an official. A contribution is "received" by an official if the contribution is for the official's own candidacy or controlled committee. (2 Cal. Adm. Code Section 18438.6, copy enclosed.) The contributions to the Coalition were not for Mr. Larmore's candidacy, nor is the Coalition his controlled committee.

Question #2:

For purposes of Section 84308(b), is Mr. Larmore deemed to have "received" all of the contributions made to the Coalition during the period that he functioned as treasurer?

Response:

See the enclosed copy of 2 Cal. Adm. Code Section 18438.6, which defines the term "receives," and the response to Question #1.

Question #3:

Does the term "contribution," as used in Section 84308(a) and (b), include contributions which are to be used in support of a ballot measure?

Response:

The prohibition of Section 84308(a) applies to all contributions, including those to be used in support or opposition of ballot measures, which are "accepted," "solicited," or "directed" by an official. These terms are defined in 2 Cal. Adm. Code Section 18438.6. The disqualification provision of Section 84308(b) applies to all contributions, including those to be used in support or opposition of ballot measures, which are "received" by an official. The term "received" is defined in 2 Cal. Adm. Code Section 18438.6.

Question #4:

Do the provisions of Section 84308(a) and (b) apply if the Planning Commission acts in solely an "advisory" capacity on an application for a permit and another agency performs the final

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decisionmaking? If the answer is in the affirmative, is the "decision" referred to in Section 84308(a) and (b) the Planning Commission's "advisory" action or the final decisionmaking engaged in by the other agency?

Response:

The provisions of Section 84308(a) and (b) apply to situations in which the decisions made, or actions taken, by the Planning Commission are "advisory," in that they are subject to approval by another agency which has the final decisionmaking authority.^{2/} The term "decision," as used in subsection (a), refers to the Planning Commission's final action on an application, even if the Commission's decision is subject to approval by the final decisionmaker. The disclosure provision of subsection (b) applies to "voting" on "any decisions" by the Planning Commission, regardless of the type of decision involved. Thus, with respect to a member of the Planning Commission, the Planning Commission's vote is the "decision" referred to in Section 84308(a) and (b), not the vote of any other agency.

Question #5:

Do the provisions of Section 84308 apply if the decision on an application for a permit or other entitlement for use is handled by the staff and the Planning Commission does not review the application?^{3/}

Response:

Section 84308(a) prohibits an official from accepting, soliciting, or directing a contribution while an application is pending and for three months after a decision is rendered. This prohibition has no application if an application is handled without any involvement of the Planning Commission, or if the Commission's approval is purely ministerial. An application is only considered to be "pending":

(1) When the application has been filed, the proceeding has been commenced, or the issue has

^{2/} See 2 Cal. Adm. Code Sections 18438.2(c) and 18700.

^{3/} This occurs with applications for certain types of remodelings and changes of use.

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otherwise been submitted to the jurisdiction of an agency for its determination or other action; and

(2) It is reasonably foreseeable:

(A) That the members of the ... commission for the agency may render a decision affecting the application for a license, permit or other entitlement for use; and

(B) That the ... commission's decision with respect to the proceeding will not be purely ministerial.

(2 Cal. Adm. Code Section
18438.2(c).)

The disclosure and disqualification provisions of Section 84308(b) only apply if the official is engaging in decision-making.

Question #6:

At what point is an application considered to be "pending" for purposes of compliance with Section 84308(a)?

Response:

See the response to Question #5 and 2 Cal. Adm. Code Section 18438.2.

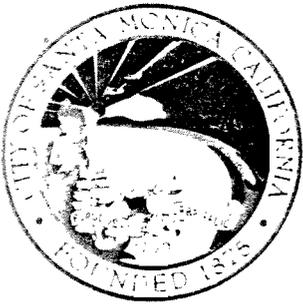
If I can be any further help to you, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

by plh

JSM:plh
Enclosures



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MAY 21 1984
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SANTA MONICA
CALIFORNIA

OFFICE OF THE CITY ATTORNEY

WRITER'S DIRECT DIAL NUMBER
(213) 458-

March 19, 1984

Fair Political Practices Commission
Legal Department
1100 K Street
Sacramento, California 95814

Re: Request for Written Advice

Gentlepeople:

Pursuant to Government Code Section 83114(b), this office, on behalf of Planning Commissioner Thomas R. Larmore, requests written advice on certain questions based upon the following material facts.

MATERIAL FACTS

1. Thomas R. Larmore was recently appointed as a Commissioner on the City of Santa Monica Planning Commission ("Planning Commission"). The Planning Commission is a local government agency, as defined in Section 82041 of the Government Code, which exercises quasi-judicial functions pursuant to Sections 1007 and 1008 of the Santa Monica City Charter.

2. The Planning Commission approves, conditionally approves, or denies applications for various types of permits or other entitlements for use including applications for tentative subdivision maps pursuant to Section 66410 et seq. of the Government Code, and Conditional Use Permits pursuant to Section 9146 of the Municipal Code.

The Planning Commission is the appellate body for the determinations of various city bodies. The Planning Commission further functions in an advisory capacity regarding the processing of Development Agreements pursuant to Section 9800 et seq. of the Municipal Code.

3. Prior to Mr. Larmore's appointment to the Planning Commission, he was the Treasurer, as defined in Section 84100 of the Government Code, of the All Santa Monica Coalition ("Coalition") and was quite active in fund-raising on behalf of this organization in the April, 1983 Santa Monica Municipal elections. Mr. Larmore was not, and never has been a candidate for office. Mr. Larmore resigned as Treasurer of the Coalition upon his appointment to the Planning Commission.

4. The Coalition was and is a "committee" as that term is defined in Section 82013 of the Government Code. The Coalition, through in part the efforts of Mr. Larmore, did accept, solicit or direct "contributions," as defined in Section 82015 of the Government Code, for use in the 1983 local election. Mr. Larmore, on behalf of the Coalition, will continue to solicit contributions for use in future local elections. Some of these contributions were, and will be, in excess of two hundred and fifty dollars (\$250) per person.

5. While functioning as Treasurer of the Coalition, Mr. Larmore did solicit contributions on behalf of the Coalition and Coalition-endorsed candidates in the recent municipal election. As mentioned above, Mr. Larmore will continue to solicit contributions to the Coalition for use in future elections, but will not serve as Treasurer for the Coalition. Mr. Larmore accepted contributions on behalf of the Coalition. These contributions were not made in a form payable directly to Mr. Larmore or for his personal benefit.

6. It is likely that some person or entity who has contributed, or will contribute, greater than two hundred and fifty dollars (\$250) to the Coalition will have a financial interest in an application for a permit or entitlement for use from the Planning Commission.

7. Mr. Larmore has requested an advisory opinion from the City Attorney's Office regarding his obligations as a Planning Commissioner pursuant to Section 84308 of the Government Code. Mr. Larmore has been advised and has consented to these matters being referred to the Fair Political Practices Committee for an advisory opinion.

REQUEST FOR WRITTEN ADVISORY OPINION

Based upon the foregoing material facts, Planning Commissioner Thomas R. Larmore requests an advisory opinion from the Fair Political Practices Committee with regard to the following questions:

1. Section 84308(a) of the Government Code deals with contributions solicited while applications are pending or for three months following while Section 84308(b) of the Government Code deals with voting on matters involving past contributions. The last sentence of Section 84308(a) clearly prohibits Mr. Larmore from soliciting contributions on behalf of other persons. Section 84308(b), however, applies to contributions "received" by an appointed officer to be used in a federal, state or local election, but is silent as to whether it applies when such a contribution is on behalf of any other officer, alternate or candidate for office. Specifically, Section 84308(b) contains no provision equivalent to the last sentence of Section 84308(a) and does not include the solicitation or direction of contributions. Does Section 84308(b) of the Government Code prohibit Mr. Larmore from voting on applications from persons who have made contributions to the Coalition at Mr. Larmore's request?

2. Would Mr. Larmore be deemed to have "received", within the meaning of Section 84308(b), all contributions made to the Coalition during the period he functioned as Treasurer?

3. Does either Section 84308(a) or 84308(b) include contributions to be used in support of or against a ballot measure?

4. Does Section 84308 of the Government Code apply where the Planning Commission functions solely in an advisory capacity and the final "decision" on the pending permit or application is vested in another agency? If the answer to this question is in the affirmative, is the "decision" referred to in Section 84308(a) the Planning Commission action or the final decision of the other agency?

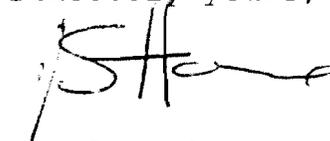
5. Does Section 84308 of the Government Code apply where the Planning Commission does not review an application for a permit or entitlement for use for a proposed development, such as certain remodellings and changes of use?

6. In certain cases, an applicant may initiate preliminary discussions with City staff prior

to filing a formal application for a permit or an entitlement for use. Furthermore, the Planning Commission may not be aware of the pending application, or the full identity of the applicant, until shortly before the hearing even though the application may have been on file with the City for some time. At what point does an application become "pending" for purposes of compliance with Section 84308(a) of the Government Code?

If you need any additional background information, do not hesitate to contact this office.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Horne". The signature is written in a cursive style with a prominent vertical stroke on the left side.

JONATHAN S. HORNE
Deputy City Attorney