

State of California



Fair Political Practices Commission

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May 14, 1985

Terry C. Andrus
Deputy County Counsel
County of Orange
Hall of Administration
P.O. Box 1379
Santa Ana, CA 92702-1379

Re: Your Request for Advice
Our File No. A-85-079

Dear Mr. Andrus:

Thank you for your request for advice concerning the application of Government Code Section 84308 of the Political Reform Act.^{1/} I will answer your questions in the order you presented them.

Question 1: "Does Government Code Section 84308 apply to decisions to grant or deny applications by county employees for disability retirement in counties which have retirement systems governed by the 1937 Act (Govt. Code Sec. 31450 et seq.)?"

Note: Government Code Section 31520.1 permits a member of the County Board of Supervisors to be a member of the governing board of the retirement system. In Orange County, one supervisor does in fact sit on the governing board. We wish to know if Government Code Section 84308 applies to that supervisor, by virtue of Title 2 California Administrative Code Section 18438.1, or to all members of the governing body of the retirement system, including the supervisor."

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

Terry C. Andrus
May 14, 1985
Page 2

Answer: The governing board of the retirement system clearly falls within the definition of "agency" in Section 84308(a)(3) and is clearly not exempted pursuant to 2 Cal. Adm. Code Section 18438.1(b). Thus the question is whether a proceeding involving an application for disability retirement benefits is covered by Section 84308 as a proceeding involving a "license, permit, or other entitlement for use." We conclude that disability retirement proceedings fall within the exception for personal employment and labor contracts; it was not the intent of the law to cover matters relating to public employment. Thus Section 84308 does not apply to any of the members of the retirement board.

Question 2: "Does Government Code Section 84308 apply to county sheriffs or city police chiefs when considering the issuance of concealed weapons permits pursuant to Penal Code Section 12051 et seq.?"

Note: The issuance of said permits appears to be far more discretionary than ministerial. On the other hand, the issuance of concealed weapon permits appears to be quite different from the issuance of business, development and similar permits that have economic value to the recipient."

Answer: First, if a county sheriff is directly elected by the voters, he or she will be exempt from Section 84308 under Section 84308(a)(3) ("local governmental agencies whose members are directly elected by the voters..."). However, it does apply to appointed police chiefs and sheriffs. Second, a concealed weapons permit is a "permit" within the meaning of Section 84308; it does not fall within the exception for ministerial decisions since the Penal Code does confer discretion on the sheriff or police chief. In addition, while the impetus for Section 84308 was land use related permits, the coverage of the law is not so limited.^{2/} Accordingly, the issuance of concealed weapons permits is covered by Section 84308.

Question 3: "Where the head of an agency has received contributions of more than \$250.00 and, within the next twelve months an application for permit, license or entitlement is filed by the contributor, does Government Code Section 84308(c) allow the agency head to return the contribution within thirty

^{2/} Section 84308(a)(5) specifically includes all business, professional and trade licenses and permits as well as land use licenses and permits.

Terry C. Andrus
May 14, 1985
Page 3

days of the application and still grant (or deny) the application?

"a. If not, can the decision-making be delegated to a subordinate officer?

"b. If it cannot be delegated, does the 'rule of necessity' permit an agency head to participate where the alternative would be that no permit or license can be issued?"

Answer: If an official receives a contribution of \$250 or more from a person who becomes a party or participant in a proceeding covered by Section 84308,^{3/} the official should return to the person that portion of the contribution over \$249 and participate in the proceeding so long as the contribution is returned within 30 days of the official's having knowledge of the pending proceeding and of the contribution. See 2 Cal. Adm. Code Section 18438.7. If the official cannot return the contribution for some reason, he or she may delegate the decisionmaking authority in the proceeding to a subordinate officer so long as this is otherwise legally permissible; this delegation should be made in writing and expressly confer final decisionmaking authority on the subordinate officer. If the authority to make the final decision also cannot be legally delegated, then the rule of legally required participation in Section 87101 would apply to allow the official to make the decision; the rules set forth in 2 Cal. Adm. Code Section 18701 should be complied with.

Question 4: "Government Code Section 84308(d) requires the applicant to 'disclose on the record of the proceeding' any contribution of \$250.00 or more in the preceding twelve months. May counties and cities require licenses for businesses such as dog kennels, bingo games, poolrooms, mobile x-ray units, massage parlors, etc? It is unlikely that such applicants will know of the foregoing legal requirement. It is also unlikely that in a large county the health or police official in charge of the agency that issues such licenses will have personal knowledge concerning whether each applicant has also contributed over \$250.00.

"Therefore, we wish to know whether you believe the application forms could require the applicant to disclose any such contributions within the preceding twelve months."

^{3/} I'm assuming from your question that the contribution was received before the proceeding commenced.

Terry C. Andrus
May 14, 1985
Page 4

Answer: "Parties" (Section 84308(a)(1)) should be required to disclose on the record any contributions they have made to the covered officials. We are in the process of preparing forms for this purpose which we hope to have ready for distribution by early July. Parties should also be notified of the prohibition on contributions during the pendency of the proceedings; we will include this notification on our forms. We are also considering preparing a disclosure form for use by the "participants" (Section 84308(a)(2)); although the statute does not require disclosure by participants, it may assist the officials in complying with the disqualification requirement.

I trust that the foregoing answers your concerns. If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,

Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh
Enclosure