

State of California



Fair Political Practices Commission

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Technical Assistance •• Administration •• Executive/Legal •• Enforcement
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June 14, 1985

Lloyd W. Pellman
Assistant County Counsel
Public Works Division
County of Los Angeles
648 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. A-85-094

Dear Mr. Pellman:

Thank you for your request for advice on behalf of the Los Angeles County Local Agency Formation Commission ("LAFCO") concerning the application of Government Code Section 84308^{1/} to LAFCO proceedings. We have recently advised that certain LAFCO proceedings are covered by Section 84308; I enclose a copy of the advice letter for your information (A-85-050).

You asked a series of specific questions on the application of the disqualification requirements of Section 84308 which raise the basic issues of which LAFCO proceedings are covered and who is considered a "party" or "participant" in a covered proceeding.

As you know, Section 84308 applies to licenses, permits and other entitlements for use pending before state and local agencies, boards and commissions. The law generally prohibits accepting or soliciting contributions of \$250 or more by the official from the parties and other participants during the proceedings. The law also requires the official's disqualification from such proceedings if contributions of \$250 or more

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

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have been received during the 12 months preceding the decision, and it requires the disclosure of all such contributions.

As the above mentioned advice letter concludes, it is our view that incorporation proceedings are not covered by Section 84308. Thus, the disqualification requirement does not apply with respect to any of the persons you listed in your questions 1, 2 and 3 on page 2 of your letter. The law also does not apply to "sphere of influence" proceedings which answers your question 9 and partially answers questions 10 and 11.

On the other hand, annexations (and deannexations) are covered by Section 84308. Accordingly, the answers to your remaining questions are as follows:

Question 4: You asked whether a LAFCO member would have to disqualify from voting where the member has received a campaign contribution of \$250 or more from the chief petitioner, or any other petitioner, in an annexation proceeding.^{2/}

Section 84308 provides that an officer must disqualify from a decision if the officer has received a contribution of \$250 or more from a party to the proceeding. "Party" is defined in the statute as "any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use." Section 84308(a)(1). Accordingly, the person or persons who initiate an annexation proceeding would be considered parties to the proceeding. On the other hand, individuals whose only connection to the proceeding was that their names and signatures were affixed to an annexation petition would not be considered parties to the proceedings. Nor would such persons be considered participants within the meaning of Section 84308 unless these persons do something to actively support or oppose a decision or otherwise attempt to influence the proceedings in addition to signing the petition. We have previously advised that where a financially interested person merely signs a petition (defined as any communication signed by 10 or more individuals), that does not constitute actively supporting or opposing a decision in the proceeding.

Question 5: You asked whether a LAFCO member would have to disqualify from voting where the member has received a

^{2/} For the purposes of this discussion, I am assuming that the contribution is received within 12 months of the annexation decision.

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contribution of \$250 or more from the owner, lessee or holder of an option on real property who opposes annexation. A person opposing annexation will not normally be a party to the proceeding since he or she did not initiate the proceeding. However, a person who has a financial interest in a proceeding and seeks to influence the decision makers in the proceeding will be considered a "participant" within the meaning of Section 84308; contributions from participants and their agents are included within the disqualification requirement. Thus, if the contributor to a LAFCO member is financially interested in the outcome of an annexation proceeding^{3/} and either actively supports or opposes a particular decision,^{4/} that person is a "participant."

Question 6: You asked the same question as No. 5 only with reference to an owner, lessee or holder of an option on real property who requests exclusion from annexation. Assuming that the LAFCO board makes the decision on the requested exclusion and that the decision is not ministerial, a person who requests exclusion^{5/} will normally be considered a participant.

Question 7: Here you asked whether contributions from a partner in a law firm or other business entity would count toward the disqualification requirement if another partner in the firm represented someone in a LAFCO proceeding. Contributions from parties or participants and their agents are included in the statute. By regulation, the Commission has defined the term "agent" as follows:

(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

^{3/} The Commission recently approved the adoption of a regulation (2 Cal. Adm. Code Section 18233, copy enclosed) which excludes month to month tenancies from the definition of an interest in real property.

^{4/} See 2 Cal. Adm. Code Section 18438.4 for what it means to actively support or oppose a decision.

^{5/} It is not clear to me how a lessee or the holder of an option may request exclusion of property they do not own.

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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."

2 Cal. Adm. Code Section 18438.3(a)

Accordingly, if the partner who is not acting as a representative in the LAFCO proceeding contributes to a LAFCO member that contribution does not count toward the disqualification requirement so long as: (1) the partner makes the contribution as an individual and does not do so at the request of, or in coordination with the firm or the partner who is representing someone in the annexation proceeding, and (2) the contribution is not reimbursed by the firm.

Question 8: This question concerns a contribution from one LAFCO member to another. Unless the donor/LAFCO member is otherwise a party or participant in a LAFCO proceeding, Section 84308 does not apply to such contributions.

Questions 10 and 11:^{6/} Both of these questions raise the issue of aggregation of contributions from related business entities. First, you asked, when a business entity has made a contribution to a LAFCO member and an individual corporate officer is a party or participant to an annexation proceeding, whether the contribution required disqualification by the LAFCO member. If the annexation is unrelated to the business entity and the corporate officer is acting solely on his or her own behalf, then the contribution does not require disqualification. I am assuming that the contribution is not reimbursed by the corporate officer or otherwise a part of his or her compensation. Second, you asked whether a contribution from a parent corporation would require disqualification by a LAFCO member when a subsidiary corporation was a party or participant in an annexation proceeding. Generally, contributions from parent corporations and their wholly owned subsidiaries would be considered as coming from one entity unless there are facts which indicate that the contribution by the parent was given totally independently of the subsidiary and the LAFCO proceeding.

^{6/} Question 9 related only to sphere of influence proceedings which, as I pointed out above, are not covered by Section 84308.

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Lastly you asked a question concerning a contributor who supports or opposes an annexation but does not appear at the hearing. Please note the definition of "participant" in Section 84308(a)(2) and 2 Cal. Adm. Code Section 18438.4. A financially interested person will be considered a participant if he or she lobbies in person, testifies in person, or otherwise acts to influence the decision of the agency as those terms are defined in the regulation;^{1/} an appearance is not necessarily required.

I would also like to note that the disqualification requirement of Section 84308 is not triggered unless the LAFCO member has actual knowledge of the contribution, the pending proceeding, and the contributor's financial interest in the proceeding. 2 Cal. Adm. Code Section 18438.7. In addition, an official may return that portion of the contribution over \$249 within 30 days of acquiring this knowledge and then participate in the proceeding.

Please feel free to contact me at (916) 322-5901 if I can be of further assistance.

Sincerely,

Diane Maura Fishburn

Diane Maura Fishburn
Counsel
Legal Division

by plh

DMF:plh
Enclosure

^{1/} Acting to influence a decision does not include statements made to the public or press outside of the proceedings before the LAFCO. 2 Cal. Adm. Code Section 18438.4(d).



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

DE WITT W. CLINTON, COUNTY COUNSEL

April 16, 1985

974-1904

Fair Political Practices Commission
State of California
P.O. Box 807
Sacramento, California 95804

Attention: Diane Fishburn, Esq.

Dear Ms. Fishburn:

Our office represents the Los Angeles County Local Agency Formation Commission. Members of the Commission have asked questions regarding the application of the provisions of Section 84308 of the Government Code. As you know that statute was amended subsequent to the issuance of your Opinion 83-003.

It is questionable whether any of the actions of a Commission constitute the making of decisions concerning a "license, permit, or other entitlement for use." This issue was raised in your former opinion request Number 83-003, but was not addressed in the resulting opinion.

The Local Agency Formation Commission makes determinations related to boundary adjustments (annexations, detachment, reorganization, spheres of influence, etc.; Government Code Sections 54774, 54790, 56250 and 35150) in a quasi-legislative function.

By statute, the Commission in Los Angeles County consists of seven members, two of whom must be county supervisors, and one of whom must be a member of the Los Angeles City Council. In addition, one county supervisor and one Los Angeles city council member must serve as alternates. Further two city officers and one alternate member must be designated by a city selection committee. See Government Code Section 54780.1. Thus, of the seven members, five must be either elected or appointed officers of public agencies and the other two members could be elected or appointed officers of public agencies although they are selected as members of the general public. Currently, the two public members are not elected or appointed officers of any other public agency.

Section 84308 as it currently is written might be construed to apply to the elected officials when they act as members of the Commission on some of the decisions coming before the Commission. Yet the same individuals clearly would be exempt when the same elected officials act as members of their respective governing bodies and make determinations on the same quasi-legislative action, such as an annexation.

The Los Angeles County Local Agency Formation Commission, therefore, has requested that we request a letter of advice from your agency on the following questions:

Does Section 84308 of the Government Code apply to a county supervisor or city council member sitting as a member of the Local Agency Formation Commission, requiring him to disqualify himself from voting where he has accepted a campaign contribution of \$250 or more from:

1. the chief petitioner, or any other petitioner, for an incorporation proceeding;
2. the owner, lessee, or holder of an option on real property who opposes incorporation;
3. an owner, lessee or holder of an option on real property who requests exclusion from incorporation;

4. the chief petitioner, or any other petitioner, for an annexation proceeding;
5. the owner, lessee or holder of an option on real property who opposes annexation;
6. an owner, lessee, or holder of an option on real property who requests exclusion from annexation;
7. a partner in a law firm or other business enterprise which includes a partner who represents any of the above during Local Agency Formation Commission proceedings;
8. another member of the Local Agency Formation Commission;
9. the owner, lessee or holder of an option on real property who opposes a sphere of influence or requests exclusion from a sphere of influence;
10. a private business enterprise which employs or has as a corporate officer, an individual who is a supporter or opponent of a proceeding involving incorporation, annexation, detachment, or a sphere of influence;
11. a corporation which is affiliated with a separate corporation (e.g. "parent corporation") which supports or opposes a proceeding involving incorporation, annexation, detachment or a sphere of influence.

Further, is there a prohibited conflict, if such a contributor is an owner, lessee, or holder of an option on real property and supports or opposes an incorporation, annexation, or sphere of influence decision, but is not a petitioner and does not appear at the hearing?

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In a County with a population in excess of seven million, it is not uncommon for an elected official to have thousands of campaign contributors. The business interests of the individual constituents may be so complex that the constant review of each action's possible effect on any one contributor's property would be an administrative nightmare.

The request for a letter of advice is submitted on behalf of the current members of the Los Angeles County Local Agency Formation Commission. Their names are listed on the attachment.

Very truly yours,

DE WITT W. CLINTON
County Counsel

By 
LLOYD W. PELLMAN
Assistant County Counsel
Public Works Division

LWP/fsl

Enclosure

Current Members of the Los Angeles County
Local Agency Formation Commission

Kenneth I. Chappell, Chairman

Michael D. Antonovich

Hal Bernson

Bert Boeckmann

Thomas E. Jackson

Henri F. Pellissier

Peter F. Schabarum

George Aiassa, Alternate

James DiGiuseppe, Alternate

Deane Dana, Alternate

Robert C. Farrell, Alternate

Nell Mirels, Alternate