



# California Fair Political Practices Commission

September 14, 1987

Teresa Craigie  
Law Offices of Pillsbury,  
Madison & Sutro  
225 Bush Street  
P.O. Box 7880  
San Francisco, CA 94120

Re: Your Request for Advice  
Our File No. I-87-204

Dear Ms. Craigie:

You have requested advice on behalf of a corporate client regarding their duties under the Political Reform Act ("the Act").<sup>1/</sup> Your letter does not seek advice concerning a specific decision and does not identify the client on whose behalf you have requested advice. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTION

Do the campaign contribution disqualification provisions of Section 84308 apply to the State Treasurer and the State Controller when they are serving as members of the California Pollution Control Financing Authority?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).) We do not ordinarily provide even informal assistance when the requestor seeks advice anonymously. (See Regulation 18329(c)(4)(B).) However, since the advice sought here involves a legal issue which does not involve analysis of specific facts, we have agreed to provide informal assistance.

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constitutional office are not subject to the provisions of this section.

(Former Section 84308(d), Stats. 1983, Ch. 1049.)

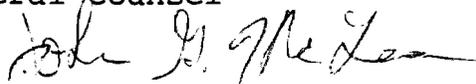
Based on this 1983 provision, we advised that state constitutional officers who were mandated by statute to sit on the State Lands Commission as a requirement of their constitutional office were not subject to Section 84308. (See Pessner Advice Letter, No. A-83-134, copy enclosed.) The present version of Section 84308 similarly leads us to the conclusion that the State Treasurer and State Controller (both constitutional officers) are not subject to the provisions of Section 84308 when serving as members of the California Pollution Control Financing Authority.

The first sentence of Section 84308(a)(3) sets out the general rule that members of certain agencies and constitutional offices are exempt from the provisions of Section 84308. The second sentence then specifies that "a member of an exempted agency" may in specified circumstances still be subject to Section 84308. We do not believe this sentence is applicable to constitutional officers when they are serving in an ex officio capacity. The general rule does not exempt members of the State Treasurer's or the State Controller's agency, but exempts those two constitutional officers. The second sentence, which deals with members of exempted agencies, thus does not apply to constitutional officers. Accordingly, the campaign contribution disqualification provisions of Section 84308 do not apply to decisions made by the State Treasurer and State Controller while they are serving as members of the California Pollution Control Financing Authority.

If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: John G. McLean  
Counsel, Legal Division

DMG:JGM:plh  
Enclosure

### CONCLUSION

The campaign contribution disqualification provisions of Section 84308 do not apply to the State Treasurer or the State Controller when they are serving as members of the California Pollution Control Financing Authority.

### FACTS

Health and Safety Code Section 44515 provides:

There is in the State Government the California Pollution Control Financing Authority. The Authority constitutes a public instrumentality and a political subdivision of the State of California, and the exercise by the authority of powers conferred by this division shall be deemed and held to be the performance of an essential public function. The Authority shall consist of three members: the Director of Finance, the State Treasurer, and the State Controller.

### ANALYSIS

Section 84308 prohibits officers of certain agencies from making, participating in making, or in any way attempting to use their official position to influence a decision in a proceeding involving a license, permit, or other entitlement for use, if the officer has received campaign contributions of \$250 or more from a party or participant in the proceeding within the 12 months preceding the decision. The term "agency" is defined as follows:

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

Section 84308(a)(3).

Prior to its amendment in 1983, Section 84308 provided in part:

State constitutional officers who serve on a board or commission as a requirement of their

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July 24, 1987

Mr. John McLean  
Counsel  
Fair Political Practices Commission  
428 J Street  
7th Floor  
Sacramento, California 95814

Dear John:

This is a request for formal written advice pursuant to Government Code, section 83114(b). Specifically, we request your advice as to whether a campaign contribution of \$250 to either the State Treasurer or the State Controller or their controlled committees triggers the disqualification provisions of Government Code section 84308 with respect to decisions made by these officials while serving as members of the California Pollution Control Financing Authority (the "Authority").

The Authority was established by the California Pollution Control Financing Authority Act (Health & Safety Code, §§ 44500 through 44563):

"There is in the State Government the California Pollution Control Financing Authority. The Authority constitutes a public instrumentality and a political subdivision of the State of California, and the exercise by the authority of powers conferred by this division shall be deemed and held to be the performance of an essential public function. The Authority shall consist of three members: the Director of Finance, the State Treasurer, and the State Controller" (Health and Safety Code § 44515).

Under section 84308, public officials must disqualify themselves from participating in proceedings involving the issuance of a license, permit or other entitlement for use, if they have received contributions of \$250 or

Mr. John McLean  
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more from a party or participant in the proceeding. It is unclear whether section 84308 is applicable to the Treasurer and Controller with respect to decisions they may make while acting as members of the Authority for the following reasons:

1. Constitutional Officers Are Generally Exempt.

Section 84308(a)(3) exempts "constitutional officers" (such as the Controller and the Treasurer) from the definition of agency for purposes of section 84308. However, the last sentence of section 84308(a)(3) provides that, regardless of the exemption, "this section [84308] applies to any person who is a member of the exempted agency but is acting as a voting member of another agency." (Gov.Code § 84308(a)(3)). This would seem to indicate that although the Treasurer and Controller are generally exempt, they are nonetheless subject to section 84308 when acting as voting members of the Authority.

On the other hand, the Commission has taken the position that the Treasurer and Lieutenant Governor were exempt from 84308 while serving as voting members of an otherwise non-exempt agency.\* (See Advice Letter A-83-134 (copy attached)).

2. License, Permit or Other Entitlement for Use.

The Authority may issue bonds to finance pollution control facilities (Health and Safety Code, § 44526). The bonds are issued in accordance with the provisions of Article 5 of the Pollution Control Financing Act (Health and Safety Code, §§ 44540 through 44549). It is unclear whether a bond is a "license, permit or other entitlement for use" for purposes of section 84308.

For the above-stated reasons, we request clarification regarding the application of section 84308 to the

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\* I note, however, that this opinion was based on a provision of section 84308 which was subsequently amended.

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Controller and Treasurer when, as a member of the Authority, they participate in decisions concerning the issuance of a bond.

If I may be of further assistance to you on this matter, please contact me.

Very truly yours,

  
Teresa Craigie

Attach.

# State of California



## Fair Political Practices Commission

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May 20, 1983

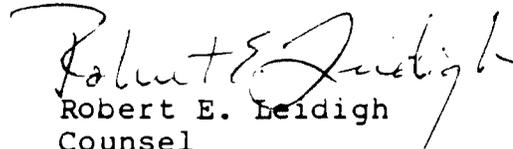
Kirk Alan Pessner  
Administrator  
Political Reports/Research Unit  
Dobbs & Nielsen  
Suite 2500, The Alcoa Building  
One Maritime Plaza  
San Francisco, CA 94111

Re: Your Letter of May 13, 1983,  
Our No. A-83-134

Dear Mr. Pessner:

This letter will confirm receipt of your letter confirming my telephone advice to you on May 4, 1983. Your recapitulation of our conversation is accurate.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:km



# California Fair Political Practices Commission

July 31, 1987

Teresa Craigie  
Pillsbury, Madison & Sutro  
225 Bush Street  
P.O. Box 7880  
San Francisco, CA 94120

Re: Your Request for Advice  
Our File No. 87-204

Dear Teresa:

You have requested advice concerning the disqualification duties of the state treasurer and the state controller under the Political Reform Act (the "Act").<sup>1/</sup> Our regulations require that requests for advice include the name, title, and mailing address of the person whose duties are in question. They also require that a request made by an authorized representative of another person include a specific statement that such authorization has been made. (Regulation 18329(b)(2)(B).) Your letter does not include this necessary information.

Please send us a supplemental letter with the necessary information. Unless more information is needed, you may expect a response within 21 working days after we receive your supplemental letter if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can after receipt of your supplemental letter. (See Regulation 18329.)

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

MAY 10 8 25 AM '83

DOBBS & NIELSEN

*Attorneys and Counselors at Law*

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(916) 446-6752

May 13, 1983

Robert E. Leidigh  
Legal Department  
Fair Political Practices  
Commission  
P.O. Box 807  
Sacramento, CA 95804

RE: Applicability of Government Code §84038  
to the State Lands Commission

Dear Bob:

Pursuant to our telephone conversation May 4, 1983,  
I wish to confirm the telephone advice you gave me.

I had asked whether all members of the State Lands Commission were included under the provisions of Government Code §84308. You indicated that the State Lands Commission is a hybrid commission, inasmuch as the Controller and the Lieutenant Governor were required, by statute, to serve on the State Lands Commission and therefore Government Code §84308 was not applicable to them. You thought, however, that the Director of Finance would be subject to the provisions of Government Code §84308. This determination is based on the language contained in Government Code §84308(d) which states in part "State Constitutional officers who serve on a board or commission as a requirement of their constitutional office are not subject to the provisions of this section." Since Public Resources Code §6101 states that the members of the State Lands Commission shall be the Controller, the Lieutenant Governor and the Director of Finance, both the Controller and the Lieutenant Governor are, in fact, serving on the State Lands Commission as a requirement of their constitutional office.

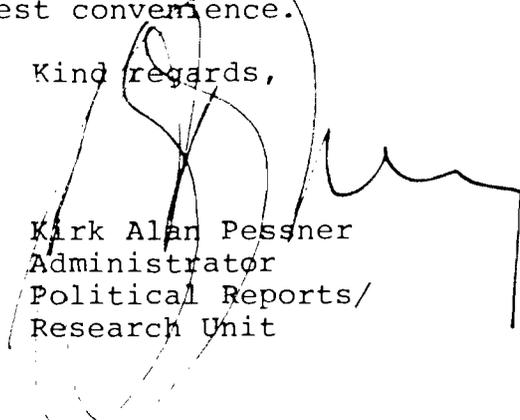
Therefore, contributions to the controlled campaign committees of the State Controller and the State Lieutenant

Robert E. Leidigh  
May 13, 1983  
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Governor by persons who are applicants before the State Lands Commission do not require disqualification by the Controller or the Lieutenant Governor if over \$250 within the last twelve months.

If I have misstated any information herein, please advise me at your earliest convenience.

Kind regards,



Kirk Alan Pessner  
Administrator  
Political Reports/  
Research Unit

KAP/a