



California
Fair Political
Practices Commission

September 14, 1987

Douglas Hickling
Assistant County Counsel
County of Alameda
Fourth Floor, Administration Bldg.
1225 Oak Street
Oakland, CA 94612

Re: Your Request for Advice
Our File No. A-87-215

Dear Mr. Hickling:

You have written requesting an interpretation of Government Code Section 84308 as it applies to contracts for services to be provided to a retirement board.

QUESTION

Is a decision by a retirement board to contract for actuary services or investment advice included within the exceptions set forth under Government Code Section 84308(a)(5)?

CONCLUSION

This type of contract is not included within the exceptions set forth in Government Code Section 84308(a)(5). Therefore, it is a proceeding for a license, permit or other entitlement for use covered by Section 84308.

FACTS

The retirement board which you represent wishes to contract for certain services to be provided by outside contractors, including actuary services and investment advice. The board wishes to know whether the granting of such contracts are proceedings covered by the provisions of Section 84308 or whether they are excluded by the provisions of Section 84308(a)(5), which excludes "competitively bid, labor, or personal employment contracts."

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides in pertinent part that officers of certain agencies may not participate in certain decisions which affect campaign contributors who have contributed \$250 or more during the preceding 12-month period. (Section 84308.) However, this restriction only applies to certain types of proceedings. To be subject to Section 84308, a proceeding must involve a "license, permit, or other entitlement for use." (Section 84308.) A "license, permit, or other entitlement for use" means:

... all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

Section 84308(a)(5), emphasis added.

You have asked whether certain types of consulting contracts fall within the provision covering contracts or whether they fall within the exception thereto for personal employment contracts. In construing the statutory language, we look first to the inclusive nature of the basic provision that "all contracts" are covered. Thus, the consulting contracts which you describe are clearly covered unless subject to one of the exceptions. The exceptions are limited in nature and are to be interpreted narrowly in order to effectuate the purposes of the Act. (Section 81003; see In re Estate of Banerjee (1978) 21 Cal. 3d 527, 540.)

You have specifically inquired whether the consulting contracts fit within the exception for "personal employment" contracts. We conclude that they do not. Our conclusion is based upon the fact that the statute does not refer to "personal services" contracts. If it did, the contracts to which you have referred might be covered by the exception. However, the statute refers to labor and personal employment contracts. This exception was intended to cover contracts between the governmental agency and its various employees. The

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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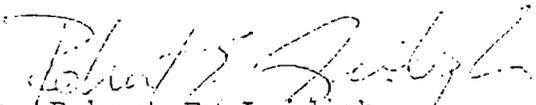
"labor contract" exception covers the rank-and-file employees and the "personal employment contract" exception covers the agency's management employees. The type of outside consulting contract which you describe was not intended to be covered by the exception. If it was covered, agency members would be in a position to solicit sizeable contributions from private consultants while those consultants' contracts are pending before the agency. Private consultants also would be permitted to make sizeable contributions to agency members within a 12-month period before an important decision to grant them contracts.

Because of the conclusion which we have reached regarding the scope of coverage of contracts, it is unnecessary for us to discuss the variations which you have presented in your letter. The response as to each variation is the same.

I trust that this letter adequately responds to your question. Should you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh



C O U N T Y C O U N S E L

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TELEPHONE 874-5728

RICHARD J. MOORE
COUNTY COUNSEL

27 AUG 10 8 40 AM '87

August 7, 1987

State of California
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804
Attn: Ms. Kathy Donovan

Dear Sir or Madam:

In advice letter No. A-85-079, your office advised the County Counsel of Orange County that Government Code section 84308 applied generally to the governing board of the county retirement system governed by the 1937 Act (Government Code section 31450 et. seq.), but that a proceeding involving an application for disability retirement benefits fell within the exceptions for personal employment and labor contracts. During our telephone conversation of August 5, 1987, you offered to answer in writing any remaining questions that we might have regarding the application of section 84308 to members of a board of retirement, and we now take advantage of that offer.

Question: Is a decision by a board of retirement to contract for actuary services or investment advice included within the exceptions set forth under section 84308(a)(5) as a "personal employment" contract where the contractor is (1) an individual person who will himself/herself perform the services, (2) a professional corporation in which the sole owner will himself/herself perform the services, (3) a partnership or corporation as to which there is an understanding--not specified in the contract--that a particular person--such as a named partner, owner, or employee--will perform the contract services, or (4) a partnership or corporation as to which the contract specifies that a particular person--such as a named partner, owner, or employee--will perform the contracted services?

We very much appreciate your assistance in this matter.

Very truly yours,

RICHARD J. MOORE,
County Counsel

By *Douglas Hickling*
DOUGLAS HICKLING,
Assistant County Counsel

DH/pb/5527J



C O U N T Y C O U N S E L

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COUNTY COUNSEL

272-6700 8 40 AM '87

August 7, 1987

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