



California Fair Political Practices Commission

July 11, 1988

Roger W. Krauel
Krauel & Krauel
Central Savings Tower
225 Broadway, Suite 1750
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-88-205

Dear Mr. Krauel:

You have requested advice on behalf of Gloria D. McColl, Deputy Mayor of San Diego and former member of the San Diego Service Authority for Freeway Emergencies Board, concerning her duties under the Political Reform Act (the "Act").^{1/} This advice is limited to Ms. McColl's future actions; we make no comment regarding whether or not her past conduct may have violated the Act. This letter confirms the telephone advice I provided to you on July 6, 1988.

QUESTION

On March 29, 1988, Ms. McColl received a contribution in excess of \$250 from a bidder on a contract with the San Diego Service Authority for Freeway Emergencies Board (the "SAFE Board"). She has since resigned from the SAFE Board, plans to return all contributions from bidders on the contract or their agents, and will not accept contributions from the bidders or their agents for the next three months. Is there any further action required of Ms. McColl?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

Since she has resigned from the SAFE Board, there is no further action required of Ms. McColl.

FACTS

Ms. McColl is Deputy Mayor of San Diego. She was appointed to the governing board of the San Diego Service Authority for Freeway Emergencies (the "SAFE Board"). Ms. McColl resigned from the SAFE Board effective May 28, 1988.

The SAFE board is comprised of elected officials appointed from San Diego County and from four cities in the county. Prior to Ms. McColl's resignation, the SAFE Board solicited proposals from prospective bidders on a contract to provide emergency call boxes on the San Diego freeways. At the time of Ms. McColl's resignation there were two bidders under consideration: Cubic Corporation and COMARCO, Inc. The SAFE Board is not required to award the contract to the lowest bidder.

On March 29, 1988, Ms. McColl received from Cubic Corporation a contribution in excess of \$250. On June 3, 1988, the SAFE Board was scheduled to decide whether to award the contract to Cubic Corporation or to COMARCO.

You have informed us that Ms. McColl will take or has taken the following actions, in addition to resigning from the SAFE Board:

- (1) She has returned the contribution from Cubic Corporation.
- (2) She will review all campaign contributions received during the preceding 12 months.
- (3) She will return those contributions which appear to be from Cubic Corporation or COMARCO or their agents.
- (4) She will not accept contributions from Cubic Corporation or COMARCO or their agents for the next three months.

ANALYSIS

Section 84308 imposes campaign contribution limits and related disqualification requirements on members of appointed boards and commissions.

Section 84308 requires appointed board and commission members to comply with three requirements. First, the law prohibits those officials from accepting or directing campaign contributions of \$250 or more from parties, participants or their agents in any proceeding involving a license, permit or other entitlement for use, while the proceeding is pending and for three months after the final decision in the proceeding. Second, the law requires the officials to disqualify themselves from participating in those proceedings if the officials have received campaign contributions of \$250 or more from a party or participant within the 12 months prior to the decision. Finally, Section 84308 requires the officials to disclose, on the record, all campaign contributions totaling \$250 or more received from parties or participants within the 12 months prior to the decision.

Members of the SAFE Board are members of an appointed board and thus are required to comply with Section 84308. (Section 84308(a)(1); Regulation 18438.1 (copy enclosed).) Accordingly, when Ms. McColl was a member of the SAFE Board, she was subject to the contribution limitation, disqualification and disclosure requirements of Section 84308.

Section 84308 applies only to decisions involving a "license, permit or other entitlement for use." This term is defined as follows:

(5) "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).

The SAFE Board proceeding in question involves award of a contract for installing emergency call boxes on the

Roger W. Krauel
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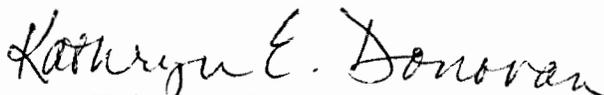
San Diego freeways. The information you provided with your letter indicates this contract is not competitively bid.^{2/} Thus, the contract award proceeding is a proceeding for a license, permit or other entitlement for use, as that term is used in Section 84308.

You have indicated that Ms. McColl has resigned from the SAFE Board and returned the contribution from Cubic Corporation. Furthermore, she plans to return any other contributions from either Cubic Corporation, COMARCO or their agents, and will not accept contributions from those persons for the next three months. If Ms. McColl were still a member of the SAFE Board, she could be required to disclose the contribution from Cubic Corporation and disqualify herself from participating in decisions concerning the contract because of that contribution. However, since Ms. McColl has resigned from the SAFE Board, she cannot participate in decisions on the contract and the disclosure and disqualification requirements are moot. Because she has resigned from the SAFE Board, there is no further action required of Ms. McColl.

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

Sincerely,

Diane M. Griffiths
General Counsel


By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:ld

Enclosure

^{2/} The exception for competitively bid contracts in Section 84308(a)(5) applies only to contracts where the bidders submit fixed amounts in their bids and the agency is required to select the lowest qualified bidder. (Thatch Advice Letter, No A-84-318, copy enclosed.)

LAW OFFICES OF
KRAUEL & KRAUEL

CENTRAL SAVINGS TOWER
225 BROADWAY, SUITE 1750
SAN DIEGO, CALIFORNIA 92101

5/29 / 5 23 47 58

AREA CODE 619
231-3603

ROGER W. KRAUEL
FRANCESCA MECIA KRAUEL

May 28, 1988

California Fair Political
Practices Commission
Attn: Legal Assistance
P.O. Box 807
Sacramento, CA 95804

Re: SAFE BOARD/SAN DIEGO/McCOLL

Gentlemen:

Please be advised that in the May 28, 1988 edition of the San Diego Union, the San Diego County Counsel announced that certain legal issues, not previously disclosed to board members of the San Diego Service Authority For Freeway Emergencies Board (SAFE), may impose a previously unrealized obligation on board members. On that same morning, I met with Gloria D. McColl who is the Deputy Mayor of San Diego and who serves as an appointee to the SAFE board.

Though the County Counsel has advised that a definitive answer will be forthcoming, in an abundance of caution, Deputy Mayor McColl sought my assistance in determining an immediate and proper course of action. The issue involves Government Code Section 84308 and its application to the SAFE board.

Cubic Corporation and COMARCO have submitted proposals to provide call boxes on San Diego freeways. On June 3, the SAFE board will select one of the proposals. On March 29, 1988, Deputy Mayor McColl received from Cubic Corporation a campaign contribution in excess of \$250 for her State Assembly campaign. This contribution was properly disclosed by the campaign.

To avoid any appearance of impropriety, Deputy Mayor McColl is doing the following:

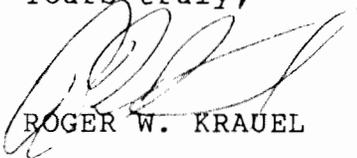
1. Resigning from the SAFE board (see attachment);
2. Reviewing all campaign contributions received during the preceding twelve months;

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California Fair Political
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SAFE BOARD/SAN DIEGO/MCCOLL
Page Two

3. Returning those contributions which bear any appearance of being related to Cubic or COMARCO;
4. Not accepting contributions from Cubic or COMARCO for the next three months, as provided for in the campaign regulations; and
5. Immediately returning the Cubic contribution in full.

Please advise us as to what further action is required.

Yours truly,



ROGER W. KRAUEL

RWK:hs

Encs: San Diego Union article of May 28, 1988 (copy)
Resignation of Deputy Mayor McColl from SAFE board (copy)



THE CITY OF
SAN DIEGO

May 28, 1988

GLORIA D. McCOLL
DEPUTY MAYOR

TO: Mayor and Council

FROM: Deputy Mayor Gloria McColl

A handwritten signature in cursive script that reads "Gloria D. McColl".

Please accept my resignation from the SAFE Board. In the May 28, 1988, San Diego Union, the County Counsel accounced that certain legal issues, not previously diclosed to the Board, may impose a previously unknown obligation on board members.

The safety of our motoring public must come first. I do not want to have any legal doubt cast which might delay the installation of these much needed call boxes.

Though the County Counsel has advised that a definitive answer will be forthcoming, in an abundance of caution, I am tendering this resignation immediately.

Saturday, May 28, 1988

Golding resigns from freeway call-

By Michael Abrams, Staff Writer

County Supervisor Susan Golding has resigned from the board of an agency established to provide freeway call boxes for San Diego, after questions were raised about a campaign contribution she received.

"I realize I may be acting out of an abundance of caution, but we've gone through so many twists and turns on this thing that I don't want the contract invalidated because of anything I do," Golding said yesterday.

Golding is being replaced by County Supervisor George Bailey on the seven-member board of the San Diego Service Authority for Freeway Emergencies, better known as SAFE, the agency charged with installing freeway call boxes in San Diego.

The agency's board, comprised of elected officials from the county and four cities in the county, is scheduled next Friday to let the lu-

crative call-box contract to either San Diego-based Cubic Corp. or a joint team of companies headed by COMARCO Inc. of Anaheim.

Cubic has presented a \$5.3 million bid for the contract, and COMARCO and Cellular Communications Corp. have submitted a \$5.2 million bid, said county public works official Roger Walsh.

Golding said County Counsel Lloyd Harmon told her "questions had been raised" about a campaign contribution she received from attorney Bob Steiner, who does legal work for Cubic.

News of Golding's decision to step down also sparked a call for the resignation from the SAFE board of San Diego Councilwoman Gloria McColl.

McColl has received a \$1,000 contribution from Cubic in her bid to be the Republican nominee for the state Assembly's 77th District.

A spokesman for McColl's GOP primary opponent, Carol Bentley, yesterday said McColl should resign from SAFE.

"It's an obvious conflict of interest; it's an ethical question," said David Lewis, Bentley's political consultant.

While Bentley has received a \$500 contribution from Cubic, she is not involved with SAFE, Lewis said. McColl was unavailable for comment.

Last summer, Golding, McColl and former Del Mar Mayor Ronnie Delaney were outvoted 4-3 in their attempt to have the call-box contract awarded to Cubic. Defenders of Cubic's proposal noted that it was the lowest bid by more than \$1 million.

After the vote to award the contract to COMARCO, Cubic filed suit in state Superior Court, contending the agency had violated state requirements of selecting the lowest bid-

State of California



Fair Political Practices Commission

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

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(916) 322-5662 322-5660 322-5901 322-6441 322-6444

February 6, 1985

Gregory D. Thatch
Law Offices
1700 L Street
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-84-318

Dear Mr. Thatch:

Thank you for your request for advice on behalf of the Sacramento Employment and Training Agency (SETA) concerning the application of Government Code Section 84308^{1/} to SETA Governing Board members.

In your letter, you gave the following background information regarding SETA:

SETA was formed in 1978 as a Joint Powers Agency comprised of the City of Sacramento and the County of Sacramento. Its governing board is comprised of two members of the Sacramento Board of Supervisors, two members of the Sacramento City Council, and one public member selected by both the Board of Supervisors and City Council. At the time of its formation, its purpose was solely to jointly administer the Comprehensive Employment and Training Act (CETA) funds on a consortium basis for the City and the County. With the demise of CETA, SETA became the grant administrator and grant recipient of funds from the state pursuant to the Job Training Partnership Act (JTPA). In addition, SETA has also become the Community Service Agency for Sacramento County and as such is the recipient of all Community Service Block

^{1/} All statutory references are to the Government Code unless otherwise noted.

Gregory D. Thatch
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Grant (CSBG) funds allocated by the State Office of Economic Opportunity. SETA is also the recipient of Indo-Chinese Refugee Targeted Assistance Program funds allocated by the State Department of Social Services. Finally, SETA is the Head Start Grantee for Sacramento County receiving these funds directly from the Federal Department of Health and Human Services, Administration for Children, Youth and Families. It should also be mentioned that in the future it is possible that SETA may be the recipient of other forms of human service monies for administration within the City and County of Sacramento.

Accordingly, as you can see, SETA is a principal recipient and administrator of human service funds in the City of Sacramento and County of Sacramento.

While SETA does provide some direct client services and employs staff for this purpose, it serves primarily as the administrator of the funds. Thus, in order to provide for the majority of direct client services, SETA enters into subgrant or contractual relationships with a variety of entities. Most typically, SETA contracts with community based organizations (nonprofit corporations which operate human service programs). In addition, however, SETA does allocate funding in some programs to sole proprietorships, partnerships and private for profit corporations. The vast majority of the human service programs which are operated through the funding allocated to SETA under the various federal and state grants are operated by these separate entities.

Each of the entities which operates these programs is selected through a competitive procurement process. This competitive procurement process is either mandated by federal law and regulations or state law and regulations. The most typical process to accomplish this competitive procurement is the use of Request for Proposal (RFP). SETA issues a Request for Proposal and interested entities when respond by the submission of a proposal to operate a certain type of program. A rather elaborate review process is then undertaken. Cost alone is not the determining factor in selection. Prior performance, staff capabilities, nature of program, and geographical area to be served are among the many factors considered. This review process includes not only staff review and recommendations but also the review of certain boards

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and commissions. While some of these boards and commissions issue advisory recommendations only, others, such as the Private Industry Council under the Job Training Partnership Act, must concur in the funding decisions. Ultimately all funding decisions are made by or concurred in by the SETA Governing Board.

Section 84308 applies to proceedings involving a "license, permit or other entitlement for use" which are pending before the officials of a state or local government agency. This term is now defined in Section 84308 as amended by AB 2992 (Stats. 1984, Ch. 1681) to include "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." (Emphasis added.) Section 84308(a) (5).

In this situation, the crucial issue is whether the contracts or grants entered into by SETA fall into the exception to the definition for competitively bid contracts. As you know, the Commission has not promulgated a regulation on this issue nor on several other issues which arise under the amended version of Section 84308. We hope that the Commission will consider most of these issues during the next year. In the meantime, it is our intent to give advice which seems most consistent with the intent and spirit of the statute and which is accompanied by the caveat that a Commission regulation or opinion issued in the near future may change the advice. Accordingly, it is our advice that the exception for competitively bid contracts should be narrowly construed to apply only to contracts where the bidders submit fixed amounts in their bids and the agency is required to select the lowest qualified bidder. The intent of this exception is to remove only those contracts where the agency has little, if any, discretion in choosing the contractor. It is our understanding that this narrow exception will primarily apply to contracts for goods or supplies and some subcontracts for services. It appears from your description of SETA's competitive procurement process that these contracts or grants will not fall within the exception. Therefore, these proceedings are covered by Section 84308, and the prohibitions and the disclosure/disqualification requirements apply. However, since most of SETA's grants and contracts are with nonprofit corporations or government agencies, the dictates of Section 84308 will not be relevant in most instances.

Gregory D. Thatch
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Please feel free to contact me if I can be of further assistance. I will place your name on the list of interested persons for any future amendments to the regulations implementing Section 84308.

Sincerely,



Diane Mauva Fishburn
Staff Counsel
Legal Division

DMF:plh

DEC 17 1 29 PM '84

December 12, 1984

Barbara Milman, General Counsel
Fair Political Practices Commission
1100 K Street, 2nd Floor
Sacramento, CA 95814

RE: Sacramento Employment and Training Agency

Dear Ms. Milman:

Please be advised that this firm serves as Legal Counsel to the Sacramento Employment and Training Agency (SETA). I am writing at this time pursuant to a conversation I had with Diane Fishburn of your staff with respect to AB2992/Government Code §84308. After a discussion with Ms. Fishburn, she suggested that I formally write you requesting your advice regarding the applicability of Government Code §84308 to my client and specifically its Governing Board.

Obviously, background information regarding SETA is in order. SETA was formed in 1978 as a Joint Powers Agency comprised of the City of Sacramento and the County of Sacramento. Its governing board is comprised of two members of the Sacramento Board of Supervisors, two members of the Sacramento City Council, and one public member selected by both the Board of Supervisors and City Council. At the time of its formation, its purpose was solely to jointly administer the Comprehensive Employment and Training Act (CETA) funds on a consortium basis for the City and the County. With the demise of CETA, SETA became the grant administrator and grant recipient of funds from the state pursuant to the Job Training Partnership Act (JTPA). In addition, SETA has also become the Community Service Agency for Sacramento County and as such is the recipient of all Community Service Block Grant (CSBG) funds allocated by the State Office of Economic Opportunity. SETA is also the recipient of Indo-Chinese Refugee Targeted Assistance Program funds allocated by the State Department of Social Services. Finally, SETA is the Head Start Grantee for Sacramento County receiving these funds directly from the Federal Department of Health and Human Services, Administration for Children, Youth and Families. It should also be mentioned that in the future it is possible that SETA may be the recipient of other forms of human service monies for administration within the City and County of Sacramento.

Barbara Milman, General Counsel
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Accordingly, as you can see, SETA is a principal recipient and administrator of human service funds in the City of Sacramento and County of Sacramento.

While SETA does provide some direct client services and employs staff for this purpose, it serves primarily as the administrator of the funds. Thus, in order to provide for the majority of direct client services, SETA enters into subgrant or contractual relationships with a variety of entities. Most typically, SETA contracts with community based organizations (nonprofit corporations which operate human service programs). In addition, however, SETA does allocate funding in some programs to sole proprietorships, partnerships and private for profit corporations. The vast majority of the human service programs which are operated through the funding allocated to SETA under the various federal and state grants are operated by these separate entities.

Each of the entities which operates these programs is selected through a competitive procurement process. This competitive procurement process is either mandated by federal law and regulations or state law and regulations. The most typical process to accomplish this competitive procurement is the use of Request for Proposal (RFP). SETA issues a Request for Proposal and interested entities then respond by the submission of a proposal to operate a certain type of program. A rather elaborate review process is then undertaken. Cost alone is not the determining factor in selection. Prior performance, staff capabilities, nature of program, and geographical area to be served are among the many factors considered. This review process includes not only staff review and recommendations but also the review of certain boards and commissions. While some of these boards and commissions issue advisory recommendations only, others, such as the Private Industry Council under the Job Training Partnership Act, must concur in the funding decisions. Ultimately all funding decisions are made by or concurred in by the SETA Governing Board.

In reviewing Government Code §84308, it is my impression that it is not applicable to SETA and its Governing Board in that the the contract or subgrant determinations that are made are not in the nature of a license, permit or other entitlement for use. This is especially true considering that a competitive procurement process, as mandated by the federal and/or state government, is utilized for all such determinations.

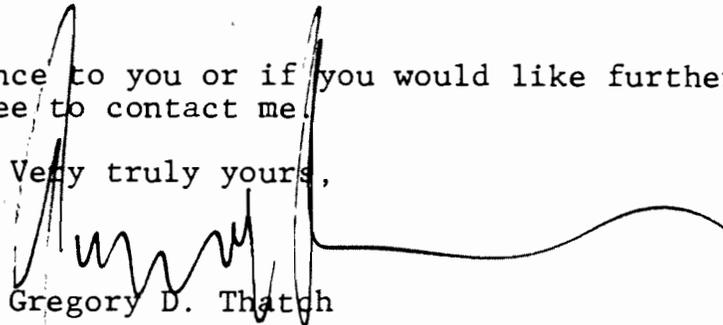
It is my understanding that the Fair Political Practices Commission has not yet promulgated regulations with respect to the statute and that Commission is in the process of developing those regulations. While, as stated, it is my view that the statute is inapplicable to SETA, I would nonetheless appreciate your advice and guidance at this time so that I may properly advise my client. It is my understanding from my conversation with Ms. Fishburn that the

Barbara Milman, General Counsel
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Commission is prepared to issue such advice during this interim period. As I am sure you can appreciate, time is very much of the essence.

If I can be of assistance to you or if you would like further information, please feel free to contact me.

Very truly yours,



Gregory D. Thatch

GDT:mlm

cc: Illa Collin, Supervisor
Toby Johnson, Supervisor
Grantland Johnson, Councilman
Joe Serna, Councilman
R.M. Carmody
Walter Slipe, City Manager
Brian H. Richter, County Executive
David R. Martinez, Director - SETA
• Melvin W. Price, Supervising Deputy County Counsel
James P. Jackson, City Attorney