



California Fair Political Practices Commission

December 15, 1988

Melvyn W. Price
Office of the County Counsel
700 H Street, Suite 2650
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-88-418

Dear Mr. Price:

You have requested advice on behalf of Sandra Smoley about application of Section 84308 of the Political Reform Act (the "Act")^{1/} to her duties on the Capitol Area Plan Committee.

QUESTION

The Capitol Area Plan Committee was established to advise the Legislature and the Department of General Services about development of the area around the State Capitol Building. Sacramento County Supervisor Smoley has been appointed to the committee.

Does Section 84308 apply to Ms. Smoley's participation on the Capitol Area Plan Committee?

^{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

Based on the information provided, the Capitol Area Plan Committee is an advisory body to the Department of General Services and the Legislature. Also, the proceedings of the Capitol Area Plan Committee do not involve proceedings for entitlements for use. Therefore, Section 84308 does not apply to members of the Capitol Area Plan Committee.

FACTS

The Department of General Services is in charge of managing and developing state property in downtown Sacramento, in conformity with the Capitol Area Plan. (Sections 8165(b), 8169 and 8169.1.)

The Legislature established the Capitol Area Plan Committee (the "committee") to serve as an advisory body to the Department of General Services and the Legislature. (Section 8164.3.) The committee reviews the annual report from the Department of General Services to the Legislature about use of state property in the downtown area. The committee also advises the department about projects in the downtown area by reviewing and commenting on plans the department is considering. If the committee does not reach a consensus, the committee makes no recommendation.^{2/}

Ms. Smoley is on the Board of Supervisors of Sacramento County. She also serves on the committee as a representative of Sacramento County.

ANALYSIS

Section 84308 prohibits an appointed officer of an agency from knowingly accepting, soliciting or directing a contribution of \$250 or more from a party or a participant in a proceeding involving a license, permit or other entitlement for use, while the proceeding is pending before the agency and for three months after the date a final decision is made in the proceeding. Section 84308 also requires the appointed officer to disqualify herself from participating in the proceeding if she received contributions totaling \$250 or more from a party or participant in the 12 months prior to the decision.

^{2/} Ms. Peg Hudson of the Office of Project Development and Management provided this information by telephone on December 2, 1988.

An "entitlement for use" proceeding means all business, professional, trade and land use licenses, permits, and all entitlements for use, such as land use permits, contracts not competitively bid, and all franchises. (Section 84308(a)(5).) Regulation 18438.2(a) (copy enclosed) further defines an entitlement for use proceeding to include any proceeding "to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use." The law applies to decisions that will have a direct and significant effect on specific parties. (Pleines Advice Letter, No. A-87-220, copy enclosed.)

Ms. Smoley is an officer of the Capitol Area Plan Committee, a state agency. (Section 84308(3) and (4).) The Legislature intended this committee to be an advisory body to the Department of General Services and the Legislature. (Section 8164.3.) The committee reviews and comments on proposals submitted to the Department of General Services. The committee also reviews the department's annual report to the Legislature.

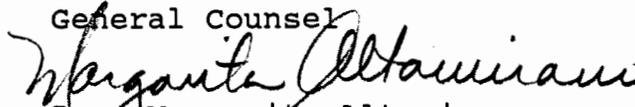
This committee, however, does not have the authority to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use. Proposals are submitted to the committee for comments, not final decisions. In turn, if the committee reaches a consensus, it may make a recommendation to the department or the Legislature. If there is no consensus, no recommendation is made.

Therefore, because the committee's functions are advisory, do not involve entitlements for use, and committee officers are not legally required to make a decision, the committee is not subject to Section 84308. (Price Advice Letter, No. A-84-310, copy enclosed.) Consequently, Ms. Smoley's participation on the committee is not subject to Section 84308.

I hope this letter provides you with adequate guidance for Ms. Smoley. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa
Enclosures



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OFFICE OF THE COUNTY COUNSEL

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October 25, 1988

L.B. Elam
County Counsel
Robert L. Pleines
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Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Applicability of Section 84308 to the
Capitol Area Committee

Dear sirs:

We hereby request advice concerning the application of Government Code Section 84308 to the Capitol Area Committee.

This request for advice is made on behalf of Sandra Smoley, a member of the Sacramento County Board of Supervisors, who has been appointed to the Capitol Area Committee.

The Capitol Area Plan is the official State master plan for the location of State buildings and other improvements in the central city of the City of Sacramento. A change in the objectives of the Capitol Area Plan must be approved by the State Legislature. See Government Code Section 8160.

State real property projects in the capitol area are undertaken by the Department of General Services in conformity with the Capitol Area Plan. See Government Code Sections 8169 and 8169.1. The State Department of General Services is required to submit an annual report to the State Legislature listing real property projects in the capitol area and appraising the degree to which such projects conform to the Capitol Area Plan. See Government Code Section 8164.

An advisory body, entitled the Capitol Area Committee, has been established solely for the purpose of independently monitoring the conformity of State projects in the capitol area to the Capitol Area Plan. More specifically, the Capitol Area Committee is charged with the responsibility for independently reviewing the above-described annual report of the Department of

October 25, 1988

General Services to the Legislature (with authority to provide separate comments on the Departmental Report to the Legislature), and to advise the Department in the carrying out of its responsibilities related to the Capitol Area Plan. See Government Code Section 8164.3.

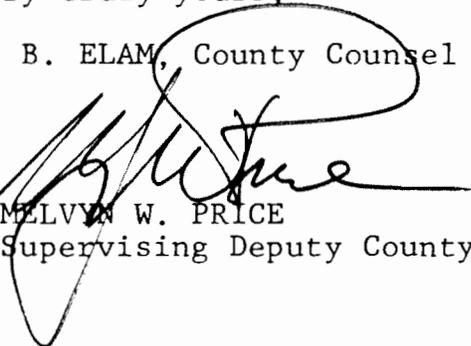
Based upon the foregoing statutory provisions as well as discussions with certain officials in the Department of General Services and on the Committee, we have preliminarily concluded that the Committee is solely advisory and that its proceedings do not involve entitlements for use. However, we are submitting the question to you for a final determination of the question whether the Committee is covered by Section 84308.

For your information, we contacted the Chairman of the Committee (Albert Dreyfus: 453-1234); counsel at the Department of General Services (Thomas Clayton: 322-5833); and an official in the Division of the Department of General Services which serves as liaison with the Committee (Michael Smith: 445-0780).

If I can be of any further assistance, you may telephone me at 440-5558.

Very truly yours,

L. B. ELAM, County Counsel

By 

MELVYN W. PRICE

Supervising Deputy County Counsel

LWP:lm

1-legal

(Regulations of the Fair Political Practices Commission,
Title 2, Division 6 of the California Administrative Code)

18438.2. Proceedings Under Government Code Section 84308

(a) For purposes of Government Code Section 84308, a "proceeding involving a license, permit or other entitlement for use" includes any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use.

(b) A proceeding involving a license, permit or other entitlement for use is "pending before" an agency:

(1) When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action;

(2) It is the type of proceeding where the officers of the agency are required by law to make a decision, or the matter has been otherwise submitted to the officers of the agency for their decision; and

(3) The decision of the officer or officers with respect to the proceeding will not be purely ministerial.

(Gov. Code Section 84308)

History: (1) New section filed 12/27/82; effective 1/26/83.
(2) Amendment filed 11/10/83; effective 12/12/83.
(3) Amendment filed 2/22/85; effective 3/25/85.



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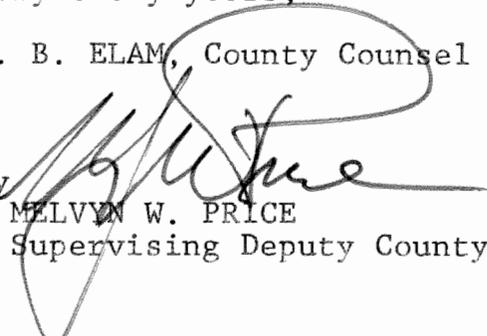
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