



# California Fair Political Practices Commission

May 31, 1989

Curtis L. Coleman  
District Counsel  
South Coast Air Quality Management District  
9150 Flair Drive  
El Monte, CA 91731

Re: Your Request for Informal Assistance  
Our File No. I-89-265

Dear Mr. Coleman:

This is in response to your letter requesting assistance on behalf of the governing board of the South Coast Air Quality Management District concerning its duties under the Political Reform Act (the "Act").<sup>1</sup> Since your advice request does not refer to a specific governmental decision, we are treating your question as a request for informal assistance.<sup>2</sup>

## QUESTION

Is the governing board of the South Coast Air Quality Management District subject to the provisions of Section 84308 of the Act?

## CONCLUSION

Section 84308 applies to all permit decisions rendered by the governing board. Thus, where the governing board considers a permit application, Section 84308 applies. Moreover, where the governing board decides whether to approve a request for a hearing on a permit application, Section 84308 also applies.

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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 Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

### FACTS

The South Coast Air Quality Management District (the "district") is a multi-county government entity headed by a 12-member governing board. Nine of the board members are local elected officials appointed by their respective jurisdictions. One member is appointed by the governor, one member is appointed by the Speaker of the Assembly and one member is appointed by the Senate Rules Committee.

The district is empowered to adopt rules and regulations to reduce air pollution in Los Angeles, Orange, Riverside and the non-desert region of San Bernardino counties. In addition, the district is charged with the adoption and revision of an Air Quality Management Plan, and considers permits for any new or modified sources of air pollution in its jurisdiction.

Every month, the district receives approximately 900 to 1,100 applications for permits for new or modified sources of air pollution. You have informed us that the district's executive director and district staff review and decide whether new or modified sources of air pollution receive a permit. A separate hearing board considers appeals of the permit decisions. The governing board does not participate in the permit decisions at either the initial review or appeal stages.

However, an applicant may petition the governing board under Health and Safety Code Section 40509 to hold a hearing concerning the permit application. If the governing board determines that a hearing is appropriate, the board will hold a quasi-judicial hearing to determine if the permit application should be approved. As of April 24, 1989, there have only been two appeals heard by the governing board under the provisions of Health and Safety Code Section 40509.

### ANALYSIS

Section 84308 prohibits officers of appointed boards or commissions from accepting, soliciting, or directing a contribution of \$250 or more<sup>3</sup> from any party or participant<sup>4</sup> in a proceeding involving a license, permit, or other entitlement for

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<sup>3</sup> The prohibition applies whether the contribution is accepted or solicited for the officer or another person.

<sup>4</sup> "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision. (Section 84308(a)(2); Section 87103.) Section 84308 is applicable regarding participants only if the officer knows or has reason to know of the participant's financial interest. (Steiner Advice Letter, No. A-83-080, copy enclosed.)

use<sup>5</sup> while the matter is pending before the agency and for three months following the date of a final decision. (Section 84308(b).)

If the officer has received a contribution of \$250 or more within the preceding 12 months from a party or participant, the officer must disclose the disqualifying interest on the record of the proceeding, and further, may not make, participate in making, or in any way attempt to use his or her official position to influence the decision. (Section 84308(c).)

All state and local government agencies must comply with Section 84308. (Section 84308(a)(3); Section 82003.) The following agencies are expressly excluded from the coverage of Section 84308<sup>6</sup>:

1. The courts or any agency in the judicial branch of government;
2. Local governmental agencies whose members are directly elected by the voters;
3. The Legislature;
4. The Board of Equalization; and,
5. All constitutional officers.

(Section 84308(a)(3).)

You have asked whether the district is subject to the contribution limits and disclosure and disqualification requirements of Section 84308. The governing board members are appointed by local jurisdictions and state constitutional officers. They are neither judicial or constitutional officers nor members of the Legislature or Board of Equalization. Therefore, the governing board of the district is subject to the provisions of Section 84308.

However, this section is not applicable where the governing board does not participate in the review of the permit application

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<sup>5</sup> "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).)

<sup>6</sup> The exemption applies only where the officers are acting as members of the exempted agency, and does not apply where the officer is appointed to and acting on another board or commission. (Hickling Advice Letter, No. A-87-214, copy enclosed.)

and makes no decision regarding the application. (Regulation 18438.2(b); Horne Advice Letter, No. A-84-066, copies enclosed.) You have informed us that the majority of the permits are dealt with by district staff without the governing board's involvement. Thus, in regard to these permit applications, the provisions of Section 84308 do not apply.

Where an applicant petitions the governing board directly to hold a hearing concerning a permit application, Section 84308 will apply. Thus, the officers of the district's governing board are prohibited from accepting, soliciting, or directing a contribution of \$250 or more from any party to or participant to the proceeding and from participating in making, or in any way attempting to use their official position to influence a decision in a proceeding involving a party or participant that has contributed \$250 or more to the official in the last 12 months.

In addition, any other decision that the governing board makes in a proceeding involving a license, permit or other entitlement for use would also invoke the limitations and disclosure and disqualification provisions of Section 84308. You have only asked about decisions concerning the air pollution permits. For your information, I have enclosed some advice letters that consider when other decisions may concern a license, permit or other entitlement for use. (Hickling Advice Letter, No. A-87-215; Pleines Advice Letter, No. A-87-220; Andrus Advice Letter, No. A-85-035, copies enclosed.)

I trust that this answers your questions. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosures



South Coast  
AIR QUALITY MANAGEMENT DISTRICT

9150 FLAIR DRIVE, EL MONTE, CA 91731 (818) 572-6200

April 24, 1989

John H. Larson, Chairman  
Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Applicability of Government Code Section 84308 to  
Members of the South Coast Air Quality Management  
District Board

Dear Mr. Larson:

The South Coast Air Quality Management District is a regional governmental entity exercising air pollution regulatory authority in Los Angeles, Orange, Riverside, and the non-desert portion of San Bernardino counties. The District is governed by a twelve (12) member governing board, nine (9) of which are local elected officials appointed by their respective appointing authorities, three (3) of which are public members, one (1) each appointed by the Governor, Speaker of the Assembly, and Senate Rules Committee (Health and Safety Code Section 40420).

The District Board is empowered to adopt rules and regulations to reduce emissions of air contaminants within the District, to assure attainment and maintenance of national and state ambient air quality standards. The District Board is also required to adopt and periodically revise, as necessary, an Air Quality Management Plan, outlining the measures necessary to achieve and maintain those ambient air quality standards. The District Board recently adopted a revised Air Quality Management Plan which, when implemented through the adoption of regulations, will impact the ways business, industry, and private individuals conduct their affairs within the District.

The District Board has provided rules to implement legislation authorizing a permit system for new or modified sources of air pollution. Those rules delegate to the District's Executive Officer the responsibility for determining whether or not a permit should be granted in a specific instance. As a result, the South Coast Air Quality Management District Board does not act on individual permit applications, nor consider permit appeals (such appeals are heard by a separate Hearing Board appointed by the District Board), except in one instance.

Health and Safety Code Section 40509 provides that "any person may petition the south coast district board to hold a hearing on any application to issue or renew a permit." In the event that such a petition is filed, the District Board determines, in its discretion, whether to hold a quasi-judicial hearing on the matter pursuant to

District Regulation XII. To date, there have only been two appeals heard under this provision: the SOHIO Pipeline project in 1977, and the Spadra Refuse-to-Energy project in 1987. The Spadra project hearing was discontinued after its sponsor, the Los Angeles County Sanitation Districts, decided to drop the project.

The District staff receives nearly 900 permit applications per month and takes action to grant or deny almost 1100 permits per month. None of those actions involve Board member participation, or input. It appears to me that 2 Cal.Code of Regs. Sec. 18438.2 limits the definition of "proceeding involving a permit . . ." to those situations where the permit application will actually be considered an acted upon by District Board members. Thus Government Code Section 84308 should not apply to District Board members unless they are considering a permit application pursuant to a pending Health and Safety Code Section 40509 proceeding.

This matter is of concern to District Board members, and I therefore request your opinion regarding the obligations, if any, imposed upon South Coast Air Quality Management District Board members by Government Code Section 84308, and under which circumstances such obligations attach.

If you have any further questions regarding this matter, or need any further information, please contact the undersigned at (818) 572-2045.

Very truly yours,



Curtis L. Coleman  
District Counsel

CLC:pc



# California Fair Political Practices Commission

May 4, 1989

Curtis L. Coleman  
District Counsel  
South Coast Air Quality  
Management District  
9150 Flair Drive  
El Monte, Ca 91731

Re: Letter No. 89-265

Dear Mr. Coleman:

Your letter requesting advice under the Political Reform Act was received on April 28, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh