



California Fair Political Practices Commission

December 26, 1989

Larry Kaye
283 Livorna Heights Road
Alamo, CA 94507

Re: Your Request for Informal Assistance
Our File No. I-89-685

Dear Mr. Kaye:

As an appointed member of the San Ramon Valley Planning Commission you are seeking advice regarding application of the campaign contributions and conflict of interest provisions of the Political Reform Act ("the Act")¹ to you as an intended candidate in 1990 for a seat on the East Bay Municipal Water District Board. Because your question does not refer to a specific pending governmental decision, we are treating your request as one for informal assistance, pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

May you receive campaign contributions from individuals who come before the planning commission on matters concerning subdivisions?

CONCLUSION

You may not accept, solicit, or direct contributions of \$250 or more from any person who has an application pending before the planning commission for a license, permit, or other entitlement for use, and for three months following the date of the final decision on such an application.

Furthermore, you are required to disqualify yourself from any decision concerning an application for a license, permit or other

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.

² 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).)

entitlement for use if you have received contributions aggregating \$250 or more during the preceding 12 months from a party to or participant in a proceeding involving a license, permit or other entitlement for use.

FACTS

You are a commissioner on the San Ramon Valley Planning Commission. The commission is responsible for development matters in certain unincorporated areas of Contra Costa County. All commissioners are appointed.

You plan to run for a seat on the East Bay Municipal Water District Board in 1990 and may be receiving contributions from individuals who have appeared, or may appear, before the commission on subdivision matters.

ANALYSIS

Section 84308 restricts the ability of certain public officials to receive, solicit or direct contributions, and participate in certain governmental decisions. Section 84308 is applicable to the planning commission because it is a local government agency (Section 82003), and is applicable to you as an officer of that agency (Regulation 18438.1(d), copy enclosed).

Section 84308 imposes two requirements upon officers of agencies. First, no officer is permitted to accept, solicit, or direct contributions of \$250 or more from any party or participant in a proceeding pending before the agency which involves a license, permit, or other entitlement for use, and for three months after a final decision has been reached in such proceeding (Section 84308(b)).³ Second, no officer is permitted to participate in, or otherwise attempt to influence, any decision in a proceeding involving a license, permit, or other entitlement for use involving a party or participant from whom the officer has received contributions totalling \$250 or more within the preceding 12 months (Section 84308(c)).

A "party" to a proceeding is the person or persons filing the application for a license, permit or use, or the subject of the application (Section 84308(a)(1)); a "participant" in the proceeding is any person, other than a party, who actively supports or opposes a particular pending decision and who has a financial interest in the decision. (Section 84308(a)(2); Section 87103. See Pleines Advice Letter, A-87-220, copy enclosed.)

³ Section 84308(b) specifies that the prohibition applies to the acceptance, solicitation, or direction of contributions by the official for himself or herself, for any other official, or on behalf of any candidate for office or committee.

In its consideration of a subdivision proposal, the planning commission is being asked to approve a particular use of property -- the division of land -- for purposes of sale, lease, or financing. Section 84308 defines "license, permit, or other entitlement for use" to include all entitlements for land use. (Section 84308(a)(5).) Therefore, a subdivision application constitutes an entitlement for use under Section 84308.

A subdivision decision is initiated when the subdivider makes the required application under Government Code Section 66451 et seq. A decision regarding a subdivision is thus "pending" when the application has been filed. (Regulation 18438.2(b)(1).)⁴

Therefore, as a planning commissioner, you may not accept, solicit, or direct contributions of \$250 or more from a party to or a participant in a subdivision proceeding once application for subdivision has been submitted to the commission, and for three months following the commission's final decision in the matter. Additionally, if any party to or participant in a pending subdivision proceeding has already contributed \$250 or more to you within 12 months prior to the matter being considered, you must disclose the receipt of such contribution and disqualify yourself from participation in the proceeding.

You have asked only about decisions concerning subdivisions. There are, of course, a variety of decisions made by the planning commission involving a license, permit, or other entitlement for use. These other decisions would also invoke the limitations and disclosure and disqualification provisions of Section 84308.

For your information I have enclosed some advice letters that consider when other decisions may concern a license, permit or other entitlement for use. (Coleman Advice Letter, I-89-265; Hickling Advice Letter, A-87-215, Andrus Advice Letter, A-85-035.)

In addition, I am sending an information pamphlet concerning Section 84308 that you may find helpful, and a copy of the Commission regulations which clarify application of Section 84308.

I trust this letter has provided you with the guidance you requested. If specific questions arise that are not addressed by

⁴ The Fair Political Practices Commission does not provide advice concerning or interpretations of Government Code Sections other than the Political Reform Act (Sections 81000 - 91015). These other sections are provided for your information and reference only.

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the general advice provided by this letter and the attached materials, please contact this office for advice particular to the facts involved.

Sincerely,

Kathryn E. Donovan
General Counsel



Jonathan S. Rothman
Counsel, Legal Division

KED:JSR:plh

Enclosures

FPPC

Nov 30 1 30 PM '89

283 Livorna Heights Road
Alamo, CA 94507
November 28, 1989

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

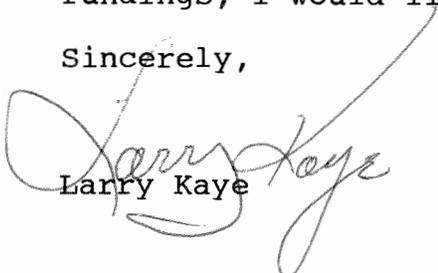
To Whom it May Concern:

Could you please advise as to the following.

I sit as an appointed Commissioner on the San Ramon Valley Planning Commission. All the members of this commission are appointed. We rule on development in the unincorporated area of Contra Costa County. It is my intention to run for the East Bay Municipal Water District Board in November of 1990.

My concern is that while I sit as a Planning Commissioner, my campaign may be receiving contributions from individuals that come before me for subdivisions. Since the campaign will entail major fundings, I would like a letter from you as to what I need to do.

Sincerely,


Larry Kaye

