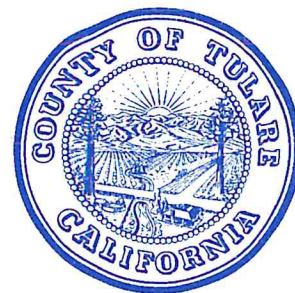


COUNTY OF TULARE
COUNTY ADMINISTRATIVE OFFICE



JASON T. BRITT
County Administrative Officer

April 18, 2023

Kevin Cornwall
Senior Commission Counsel
Fair Political Practices Commission

By email to: kcornwall@fppc.ca.gov

Re: Interested Persons Meeting
April 21, 2023
Regulations related to Section 84308 (Levine Act)

Dear Mr. Cornwall:

Tulare County appreciates the hard work the FPPC staff has undertaken in attempting to provide additional guidance for counties, now that they are subject to the Levine Act (Gov. Code, § 84308). The County believes that additional information would be valuable to staff as you continue to wrestle with this process.

In particular, counties have unique concerns not present in most other local agencies, since a county has not only a governing body but also individual elected officials. Under the California Constitution, the Legislature must provide for each county to have “an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body.” (Cal. Const., art. XI, § 1, subd. (b).) Tulare County also has an elected auditor-controller/treasurer-tax collector. Thus, the regulations need to encompass not only potential disqualification of the members of the governing body, but also for these four individual elected officials, who serve as heads of county departments which routinely receive applications for a wide range of items, such as permits for river events, business licenses, and concealed weapons permits.

Comments on proposed new Regulation 18438 – statute to apply only to contributions made on or after Jan. 1, 2023

No concerns.

Comments on proposed amendments to Regulation 18438.1 – officers and agencies

Tulare County appreciates the clarification in subdivision (d)(1) proposing that the definition of “officer” be limited to an elected official or someone appointed to an elected position. Counties have many statutory officers (see, e.g., Gov. Code, § 24000, which

includes a veterinarian and a librarian), and the County does not want the statute to be interpreted to apply to ordinary employees who happen to be county officers.

Tulare County believes the definition of “officer” in subdivision (d)(2) would be strengthened if the language in regard to a person who serves as a member of a board or commission was changed to emphasize that the regulation only applies to members of boards and commissions with decisionmaking authority. The County has many advisory boards, commissions, and committees, and does not want the statute to be interpreted to apply to the many local residents who volunteer their time on these bodies. The County proposes that this sentence be amended to include a cross-reference to the existing regulation regarding boards and commissions which exercise “governmental authority.” One wording of this is:

(1) (2) Serve as a member members of a board or commission governmental boards and commissions which possesses decisionmaking authority, as defined in Regulation 18700, subsection (c)(2); or

Tulare County also appreciates the clarification in subdivision (e) proposing that the term “constitutional officer” be defined as including only certain state officials. While as noted above certain individual county officers are mentioned in the California Constitution, the County agrees with FPPC staff that the Legislature probably did not intend to include individual elected county officers in this term.

Comments on proposed amendments to Regulation section 18438.2 – proceedings

Tulare County has no concerns in regard to the proposed definition of “proceedings” in subdivision (a).

As to the options for adding a definition of “pending” in subdivision (b), Tulare County prefers Option 1. In contrast to Option 2, Option 1 provides a brighter line for when a matter is likely to be heard by the particular officer or board. This is because a matter can be within the jurisdiction of the agency without being within the jurisdiction of the officer.

For example, when a Planning Commission decision is appealed to the Board of Supervisors, the Clerk receives the appropriate information regarding the parties and participants and can forward that to the members of the Board of Supervisors, long before the agenda item is scheduled to be heard. But many matters within the jurisdiction of the County which might be heard by the Planning Commission are never heard by the Board of Supervisors, either because they are resolved at the staff level with no involvement by any board, or because the Planning Commission decision is not appealed to the Board of Supervisors.

Under Option 2, the Board of Supervisors would be required to know when every development application is filed with the department in order to know whether an item “within the jurisdiction of the County” has been filed.

If FPPC staff proceed with a version of Option 2, it should be reworded to apply to the particular body or officer, rather than to the agency generally, such as the following:

[OPTION 2]

(b) “Pending.” A proceeding involving a license, permit, or other entitlement for use has commenced and is pending only when:

(1) The application has been filed with the officer or body; or

(2) The issue is otherwise within the jurisdiction of the agency officer or body for its determination or other action.

Comments on proposed amendments to Regulation 18438.3 – agents

Tulare County appreciates the proposed language which would amend the regulation to provide that a person is only an “agent” for a party or participant in the proceeding if the person is compensated for the representation. Some proceedings within the definition of section 84308, such as controversial land use decisions, may generate comments by dozens of constituents, many of whom speak for groups. A bright line of compensation would be helpful to elected County officers in determining whether someone who has contributed to the officer’s campaign is an “agent.”

Comments on proposed amendments to Regulation 18438.4 – participants

No concerns.

Comments on proposed amendments to Regulation 18438.5 – aggregation of contributions

No concerns.

Comments on proposed amendments to Regulation 18438.6 – solicitation, direction, and receipt of contributions

Tulare County is concerned about the potential effect of the proposed amendments to subdivision (a) of this regulation regarding ballot measures. The County does place its own ballot measures on the ballot. It is therefore troubling to the County that the proposed amendments to subdivision (a) of Regulation 18438.6 include contributions to “ballot measure committees.”

The amendments do state that the contributions are covered only if they are for “the officer’s campaign or controlled committee, including but not limited to ... ballot measure committees.” If it is correct to assume that this regulation would not be interpreted to bar public officers from taking steps regarding a ballot measure which is not for the officer’s

own campaign or controlled committee, then Tulare County has no concerns with the proposed amendments to subdivision (a).

However, subdivision (b) would be amended to provide that an officer solicits a contribution if the officer requests a contribution to any campaign or committee, including those not controlled by the officer. The individual members of the Board of Supervisors might well seek contributions to a ballot measure committee for a measure placed on the ballot by the County.

Tulare County would prefer to see subdivision (b) be amended to a slightly different version of the current language, under which a requested contribution only counts as a solicitation under paragraph (1) if the contribution is requested for another candidate's or official's campaign or controlled committee:

(1) The officer or candidate personally requests a contribution for the officer's or candidate's own campaign or controlled committee, or for any other candidate's, or public official's campaign or controlled ~~or~~ committee, either orally or in writing; or

Comments on proposed repeal and re-enactment of Regulation 18438.7 – prohibition and disqualification

Tulare County prefers Option 2 for the determination of when an officer is deemed to have notice of a contribution from a party or participant with a financial interest.

Option 1 would provide that an officer does not have reason to know that a party or participant has made a contribution even if the contribution was previously reported, unless the officer has “actual knowledge” of the contribution. This is a far more difficult line to draw than under Option 2, where an officer is deemed to have reason to know of a previously reported contribution by a party in a proceeding noticed on an agenda for a public meeting.

However, this option needs some additional language to cover the individual county officers who may be involved in decisions before their departments (such as the Sheriff in regard to concealed weapons permits). The County suggests Option 2 be amended to read as follows:

[(2)] An officer has reason to know of a contribution previously reported under the Act's reporting provisions, by a party in a proceeding noticed on an agenda for a public meeting before the body or board, or before the officer for the officer's consideration.

Tulare County also has concerns with the definition of “pending” in this regulation. As noted above in regard to Regulation 18438.2, there is a significant difference between a matter “within the jurisdiction of the agency” and a matter “within the jurisdiction of the

officer.” The County would prefer to see the definition of “pending” in subdivision be amended to apply to the officer or body, rather than the agency generally:

(b) “Pending.” A proceeding involving a license, permit, or other entitlement for use has commenced and is pending only when:

(1) The application has been filed with the officer or body; or

(2) The issue is otherwise within the jurisdiction of the agency officer or body for its determination or other action.

Comments on proposed amendments to Regulation 18438 - disclosure

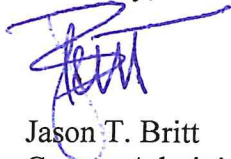
No concerns. The regulation already provides that where there is no public hearing, the disclosure must appear in the written record. This should provide sufficient guidance for the individual County officers.

Comments on proposed amendments to Regulation 18705 – legally required participation

No concerns.

Thank you for your consideration.

Sincerely,



Jason T. Britt
County Administrative Officer

cc: Members, Board of Supervisors
Sheriff
District Attorney
Assessor/Clerk-Recorder
Auditor-Controller/Treasurer-Tax Collector