

CONTRIBUTION RESTRICTIONS

Although the Political Reform Act ("Act") is primarily a disclosure law, there are several important restrictions and prohibitions on receiving contributions. This chapter reviews these restrictions and prohibitions, as well as some that are contained in laws other than the Act.

In addition, while the receipt of campaign contributions generally will not create a conflict of interest for an elected officeholder in the performance of his or her duties, contributions may be the source of a conflict of interest for officeholders or candidates who are also appointed to certain boards or commissions. The section on "Campaign Contributions and Disqualification" covers this area of the law.

The Act also imposes the following restrictions on state candidates. These issues are reviewed in Chapter 1.

- Contribution limits
- Voluntary expenditure ceilings
- Loans
- Transfers of committee funds for future elections
- Post election fundraising limits

A. Restrictions under the Political Reform Act

Reporting the True Donor

If a contribution of \$100 or more is received from a single source in a calendar year, the source must be identified on the committee's Form 460. If a contribution is received through an intermediary, both the intermediary and the true source of the contribution must be identified.

Failure to disclose the true source of a contribution is often referred to as campaign money laundering, which is a serious violation of the Act. One type of common violation is when an employer reimburses individual employees for contributions so that the committee receiving the contributions discloses the employees rather than the true source of the contribution (the employer) on campaign disclosure reports.

Another occurrence is when a person (organization, business, individual) makes a contribution to another person with the condition, agreement or understanding that the payment will be subsequently used for political purposes, such as a contribution to another committee. It is a violation for persons to conceal their identities by contributing through another person.

Committee treasurers must inquire about any information that a person of reasonable prudence would question based on all available information. It is not possible to describe every situation that might trigger a duty for a treasurer to inquire if a contribution is identified correctly. Some examples are the size of the contribution, the reported source, and the likelihood of that source making a contribution of the size reported.

If it is discovered that a committee received a contribution and the donor and intermediary were not properly identified, the contribution must be paid to the Secretary of State for deposit in the State General Fund.

Cash Contributions

A committee may not accept a cash contribution of \$100 or more. Such a contribution will not be deemed “received” if it is not deposited or spent and is returned to the contributor prior to the end of the reporting period of the campaign statement on which the contribution would otherwise be reported. Even if the contribution is inadvertently deposited, it is not deemed “received” if it is refunded within 72 hours of receipt. However, a cash contribution of \$1,000 or more that is received in the 90 days before the election that is inadvertently deposited must be refunded within 48 hours in order to not be deemed “received.”

Ex 5.1 - A committee receives contributions of \$1,000 each from six different individuals in the same week. The committee treasurer and campaign fundraiser did not make specific solicitations to the individuals. Upon the treasurer’s request, the individuals state that they all work for the same employer. The committee treasurer has a duty to inquire to determine if the employer reimbursed the employees and should be reported as the donor.

Quick Tip

Even if change is immediately provided, a committee may not accept \$100 or more in cash from a single source. For example, if the committee is holding a fundraiser and charging \$50 per person, an attendee may not pay with a \$100 bill. The payment must be made by personal check, debit card, or credit card.

Campaign contributions must be kept separate from personal funds and may not be used for personal expenses.

Anonymous Contributions

Anonymous contributions of \$100 or more are prohibited. If a committee receives a cash contribution of \$100 or more from an unknown source, it must be sent to the Secretary of State for deposit in the State General Fund.

Missing Contributor Information

A contribution of \$100 or more must be returned within 60 days of receipt if the candidate or committee has not obtained the contributor's name, address, and in the case of a contributor who is an individual, his or her occupation and employer. (See Chapter 3.)

Contributions Made by Money Orders/Cashier's Checks/Traveler's Cheques

Contributions of \$100 or more made by money order, cashier's check, or traveler's cheque are prohibited and must be returned to the contributor, or, if made anonymously, sent to the Secretary of State for deposit in the State General Fund.

All monetary contributions of \$100 or more must be made by written instrument (such as a check) containing the name of the donor and drawn from the account of the donor or the intermediary. Contributions may also be received by credit card (including over the Internet), wire transfer, or other electronic means. (See Chapter 3.)

Contributor's Legal Name

Contributions must be made in the name by which the contributor is identified for legal purposes.

Commingling Funds

Campaign funds may not be commingled with any individual's personal funds; they must be kept in an account separate from any account that contains personal funds. In general, campaign funds may not be used for personal expenses.

Cryptocurrency Contributions

No contribution may be made or received in cryptocurrency.

Contributions Delivered in State Office Buildings

A contribution may not be delivered to or received by another person, personally or through an agent, in the State Capitol or any other state office building for which the State of California pays the majority of the rent. “Personally delivered” includes the delivery of a copy or facsimile of a contribution, and the original or a copy of a contribution transmittal letter. This prohibition does not apply to contributions received or delivered in a legislative district office or those sent by postal mail.

Contributions from State Lobbyists

A state lobbyist may not make a contribution to an elected state officer or a candidate for elective state office if the lobbyist is registered to lobby the governmental agency of the elected officer or the agency to which the candidate is seeking election. The lobbyist also may not contribute to a local committee controlled by a state officer or candidate for elective state office.

State Lobbyist and Lobbying Firm Fundraisers

A fundraiser held in the home of a state lobbyist is considered a contribution; therefore, a lobbyist or a cohabitant of a lobbyist is prohibited from holding a fundraiser in his or her home for a candidate seeking election to a governmental agency that the lobbyist is registered to lobby. This includes a local candidate/officeholder that is seeking election to a state office. A similar prohibition applies to lobbying firms holding fundraisers at their offices.

Soliciting Contributions from Public Employees

Government Code Section 3205 prohibits a local candidate from knowingly, directly or indirectly, soliciting a political contribution from any employees of his or her agency or from a person on an employment list of that agency. There is an exception for solicitations that are made to a significant segment of the public. For further information, contact the Attorney General’s office or the local district attorney.

Federal Law Prohibitions: Contributions from Foreign Nationals (including Foreign Principals and Foreign Governments)

Committees may not solicit or accept contributions from foreign nationals. Federal law prohibits contributions and expenditures solicited, directed, received or made directly or indirectly by or from foreign nationals in connection with any election — federal, state or local. This prohibition includes contributions made to political committees. Furthermore, it is a violation of federal law to knowingly provide substantial assistance in the making, acceptance or receipt of contributions or in connection with federal and nonfederal elections to a political committee. This prohibition includes, but is not limited to, acting as an intermediary for foreign national contributions. (52 USCS Section 30121.) Contact the Federal Election Commission for information at (800) 424-9530 or info@fec.gov.

Federal Law Prohibitions: Contributions from National Banks or Federally-Chartered Corporations

National banks and federally-chartered corporations are subject to federal law prohibiting particular contributions and expenditures in connection with local, state, or federal elections. (The Federal Election Campaign Act, 52 USCS Section 30101, et seq. and specifically Section 30118; and see 11 C.F. R. Section 114.2.) Contact the Federal Election Commission for information at (800) 424-9530 or info@fec.gov.

B. Public Funds and Public Resources

Under Government Code Section 85300, the use of public moneys for the purpose of seeking elective office is prohibited unless:

- The governmental entity establishes a dedicated fund for this purpose by statute, ordinance, resolution, or charter; and
- Public moneys held in the fund are available to all qualified, voluntarily participating candidates for the same office without regard to incumbency or political party preference; and
- The state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter.

Quick Tip

Using public resources for campaign purposes is prohibited.

Please note that at the time of this publication, recently enacted provisions of Section 85300 are currently the subject of a court challenge. (See *Howard Jarvis Taxpayers Assn. v. Brown*, Super. Ct. Sacramento County, 2016, No. 34-2016-80002512.)

In addition, laws outside the Act prohibit the use of public resources, such as office equipment, staff time, etc., for campaign or personal purposes. (Education Code Section 7054; Gov. Code Section 8314; Penal Code Section 426; and *Vargas v. City of Salinas* (2009) 46 Cal 4th 1.)

Government Code Section 54964 prohibits an officer, employee or consultant of a local agency from expending or authorizing the expenditure of any local agency funds to support or oppose a candidate or ballot measure. For further information about laws outside the Act, contact the Attorney General's office at (800) 952-5225 or the local district attorney.

C. Campaign Contributions and Disqualification

Generally, campaign contributions received in connection with an elective office do not serve as the basis for disqualifying an official from voting on a matter affecting the contributor. However, if an elected official or candidate also holds a position on an appointed board or commission, he or she may be restricted from soliciting or receiving campaign contributions from persons with business before the board or commission. He or she may be subject to Government Code Section 84308 which:

- Prohibits an officer from soliciting, accepting, or directing campaign contributions of more than \$250 from any party, participant, or agent of a party or participant, while a proceeding involving a license, permit, or other entitlement for use is pending before the officer's agency and for three months following the date of that decision. This prohibition applies even when the contribution is for another candidate.
- Requires disclosure of all such campaign contributions and also requires an official's disqualification from making decisions in certain proceedings in which the official is acting in an appointed position if the official has received more than \$250 in campaign contributions from a party or participant within 12 months preceding the decision.

Who is Covered?

Generally, appointed board members, commissioners, or individuals who head state or local government agencies and who make decisions in proceedings involving licenses, permits, or other entitlements for use are subject to Section 84308. Common positions include:

- Planning Commissioners
- Local Agency Formation Commission (LAFCO) members

Ex 5.2 - A planning commissioner serves as the treasurer for a legislator's campaign. The planning commissioner may not solicit, accept, or direct a campaign contribution of more than \$250 for the legislator's campaign from a party, participant, or agent whose proceeding is pending before the planning commission.

- Members of redevelopment agencies which are not entirely comprised of elected members of the same agency
- Transportation Authority members
- Air Quality Management District members
- Waste Management Authority members
- California Coastal Commissioners

Exempted Agencies

Section 84308 does not apply to the following agencies:

- Judicial branch
- Legislature
- Board of Equalization (Gov. Code Section 15626 applies)
- Constitutional officers
- Local agencies whose members are elected by the voters (e.g., board of supervisors, city council, or school board)
- Committees of an agency that are comprised solely of elected members of the same agency (e.g., city councilmembers who serve on the city's budget and finance committee)
- Elected members of an agency, all of whom also serve as the governing body of another agency (i.e., city councilmembers who also serve on the city's redevelopment agency board)

Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

Government Code Sections

- 82015 Contribution.
- 84300 Cash and In-Kind Contributions; Cash Expenditures.
- 84301 Contributions Made Under Legal Name.
- 84302 Contributions by Intermediary or Agent.
- 84304 Anonymous Contributions; Prohibition.
- 84307 Commingling with Personal Funds.
- 84308 Contributions to Officers; Disqualification.
- 84309 Transmittal of Campaign Contributions in State Office Buildings; Prohibition.
- 85700 Donor Information Requirements; Return of Contributions.
- 85701 Laundered Contributions.
- 85702 Contributions from Lobbyists.
- 85704 Prohibition on Earmarking.

Title 2 Regulations

- 18215 Contribution.
- 18215.4 Cryptocurrency Contributions.
- 18432.5 Intermediary and Earmarked Funds Disclosure.
- 18438.1 Officers and Agencies Under Government Code Section 84308.
- 18438.5 Aggregated Contributions Under Government Code Section 84308.
- 18438.6 Solicitation, Direction, and Receipt of Contributions Under Government Code Section 84308.
- 18438.7 Prohibitions and Disqualification Under Government Code Section 84308.
- 18438.8 Disclosure Under Government Code Section 84308.
- 18439 Definition of “Personally Deliver.”
- 18572 Lobbyist Contributions – Making a Contribution Defined.