



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

December 01, 2021

Wendy Root Askew  
Alternate Commissioner  
2616 1st Avenue  
Marina, CA 93933

Re: Your Request for Advice  
**Our File No. A-21-155**

Dear Ms. Askew:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Would either contributor described below be considered a “participant” under Section 84308(a)(2) such that receiving contributions from them would preclude you from participating in making a decision on the application filed by the Monterey Peninsula Water Management District (“MPWMD”)?

### CONCLUSION

Section 84308(c) applies where an officer has received a contribution of more than \$250 during the past 12 months from a party or participant in a proceeding involving a license, permit or other entitlement for use pending before an agency. Neither of the contributions about which you have inquired meet the threshold for disqualification under Section 84308.<sup>2</sup>

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> You also ask whether a Local Agency Formation Commission (“LAFCO”) proposal to activate a latent power under Government Code Section 56824.10, *et seq.* is a “license, permit, or other entitlement for use” under Section 84308(a)(5). However, in light of our conclusion that neither contribution meets the threshold for a conflict of interest under Section 84308(c), no further analysis is necessary.

## FACTS AS PRESENTED BY REQUESTER

You serve as an appointed member of the Monterey County LAFCO on behalf of the County of Monterey Board of Supervisors. On September 28, 2020, you received a contribution of \$1,000 from *Public Water Now, Yes on J* in connection with your campaign for Monterey County Supervisor. *Public Water Now, Yes on J* was a 2018 citizens' initiative that compelled MPWMD to undertake a feasibility study on the public takeover of a privately owned water system and pursue that takeover if it was determined to be feasible. The contribution from *Public Water Now, Yes on J* was made to you within 12 months of the MPWMD's filing an application with LAFCO to activate a latent power, but not within 12 months of the public hearing on the proposal before the Commission. MPWMD filed its application on February 26, 2021, and the public hearing was opened on October 25, 2021, and continued until December 6, 2021.

Additionally, on May 4, 2021, you received \$250 from Mr. George Riley. Mr. Riley is a member of the MPWMD board. Mr. Riley co-founded *Public Water Now* in 2013, and served as a leader in the Measure J initiative. LAFCO is now in the process of considering MPWMD's application, which MPWMD.

## ANALYSIS

### *Contributions and Conflicts of Interest for Appointed Members of Boards*

Section 84308 aims to ensure that appointed members of boards or commissions are not biased by contributors or potential contributors of large campaign contributions, who might appear before them in a proceeding involving a license, permit or entitlement for use.

Section 84308 imposes two requirements on officers subject to the section. First, Section 84308(b) states: “[n]o officer of an agency shall accept, solicit, or direct a contribution of *more than* two hundred and fifty dollars (\$250), from any party, or his or her agent, or from any participant or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding . . .” (Emphasis added.)

Second, Section 84308(c) requires that if an officer has received a contribution of more than \$250 during the past 12 months from a party or participant in a proceeding involving a license, permit or other entitlement for use pending before an agency, the officer must disclose that fact on the record of the proceeding and must disqualify himself or herself from participating.

A “party” is “any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.” (Section 84308(a)(1).) A “participant” is:

“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 as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the

officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(Section 84308(a)(2); see also Regulation 18438.4 [defining what constitutes lobbying, testifying and acting to influence].)

The prohibitions of Section 84308 apply where an officer of an agency receives a contribution exceeding \$250 from a party or participant within the 12 months prior to rendering a decision in a proceeding involving a license, permit, or other entitlement for use. Here, we examine two contributions you received in connection with your campaign for Monterey County Supervisor. In this case, the contribution of \$1,000 from *Public Water Now, Yes on J* was received on September 28, 2020, more than 12 months from the time you would make a potential decision. Since more than 12 months has passed from the date of receipt, the restrictions of Section 84308 would not apply. Additionally, the \$250 contribution from George Riley would not preclude you from participating in the proceeding because Section 84308(b) sets a threshold for disqualification where the official has received “a contribution of *more than* two hundred and fifty dollars” (Emphasis added.) As such, this contribution would not disqualify you from participating in the decision on MPWMD’s application.<sup>3</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

*Zachary W. Norton*

By: Zachary W. Norton  
Senior Counsel, Legal Division

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<sup>3</sup> Because neither contribution would disqualify you from participating in the decision, we do not reach the question of whether either contributor is a “participant” under Section 84308(a)(2).