



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

June 27, 2023

Ashlee N. Titus  
Bell Mc Andrews & Hiltachk  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-23-103**

Dear Ms. Titus:

This letter responds to your request for advice regarding the application of Section 84308 of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also 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

Is David Butler, in his capacity as a candidate for the Placer County Board of Supervisors, an “officer of an agency” subject to the restrictions in Section 84308(b) where he is not an elected official or other officer of a government agency at the time of his candidacy?

### CONCLUSION

No. Mr. Butler, solely in his capacity as a candidate for elective office, does not meet the Regulation 18438.1(d) definition of “an officer of an agency” for purposes of Section 84308(b) as detailed below. However, in the event that he is elected or otherwise meets the definition of an officer of an agency he will be subject to the restrictions in Section 84308, and contributions

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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 18104 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.

received during his candidacy may impact his ability to take part in part in license, permit, or other entitlement use proceedings.

### **FACTS AS PRESENTED BY REQUESTER**

Dave Butler is a candidate running for the Placer County Board of Supervisors in 2024, and is actively raising campaign contributions. If he is successful in his election in 2024, he will take office in December 2024. Mr. Butler is not currently an elected officer or appointed officer of any government agency. Additionally, you note that Mr. Butler is not an “other officer of a government agency.”

### **ANALYSIS**

Section 84308 places limitations on certain public officials’ ability to take part in licensing, permitting, and other use entitlement proceedings when a party or participant in the proceeding has contributed more than \$250 to the official; the statute also prohibits officials from receiving contributions exceeding \$250 during such a proceeding and for a defined period after a final decision in the proceeding. Effective January 1, 2023, Section 84308 applies to local elected officials when serving in a position directly elected by the voters and extends the period in which a post-proceeding contribution of more than \$250 is prohibited from three months after the final decision to 12 months after the final decision.

At issue is whether the prohibitions in Section 84308(b) are applicable to Mr. Butler as a candidate who is not otherwise an elected official or officer of a government agency.

Section 84308(b) sets forth the following prohibitions applicable to an “officer of an agency,” as follows:

While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party’s agent, or from any participant or a participant’s agent if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer’s own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

Section 84308(a)(4) defines an “officer” as “any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.”

Regulation 18438.1 further defines “officers and agencies” for purposes of Section 84308 and specifically defines “an officer of an agency” in subdivision (d). On June 15, 2023, the

Commission adopted amendments to Regulation 18438.1(d) to reflect the recent changes to Section 84308.<sup>2</sup> Newly amended Regulation 18438.1(d) defines an “officer of an agency” as follows:

(d) An officer of an agency includes only those persons who may make, participate in making, or in any way attempt to use their official position to influence a decision in the license, permit, or entitlement for use proceeding, or who exercise authority or budgetary control over the agency of officers who may do so, and:

(1) Serve in an elected position, including any official appointed to an elected position due to an interim vacancy or an election otherwise canceled because the official was the sole candidate for the position;

(2) Serve as a member of a board or commission;

(3) Serve as the chief executive of a state agency or county, city or district of any kind; or

(4) Have decisionmaking authority with respect to the proceeding involving a license, permit, or other entitlement for use and is also a candidate for elected office or has been a candidate for elected office in the 12 months prior to the proceeding.

Accordingly, a candidate without decisionmaking authority with respect to a license, permit or entitlement for use proceeding would not meet the definition of an “officer of an agency.” Section 84308(b) applies to persons who are, or have been, a candidate for elected office when the person also has decisionmaking authority with respect to the license, permit or other entitlement for use proceeding.

Because Mr. Butler is a candidate for the County Board of Supervisors but does not meet any of the categories defining “an officer of an agency” in items (1) through (4) above, Section 84308(b)’s restrictions as to an officer of an agency’s ability to accept, solicit, or direct a contribution of more than \$250 from a party or participant to certain proceedings would not be applicable to Mr. Butler at this time.

In the event that Mr. Butler is elected to the County Board of Supervisors or otherwise meets the definition of an “officer of an agency,” he will be subject to the full restrictions in Section 84308. For example, once elected he must disclose any contribution of more than \$250 from a party or from a participant with a known financial interest in an entitlement for use proceeding received within the preceding 12 months, regardless of whether he was an “officer of an agency” at the time of receiving the contribution, and generally must not participate in the proceeding unless he is able to return the contribution. (Section 84308(c)-(d).)

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<sup>2</sup> Regulation 18438.1 was recently amended by the Commission and submitted to the Office of Administrative Law for subsequent posting in the California Code of Regulations.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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