



# California Fair Political Practices Commission

March 16, 1988

Ralph Faust, Jr.  
Chief Counsel  
California Coastal Commission  
631 Howard Street, 4th Floor  
San Francisco, California 94105

Re: Your Request for Advice  
Our File No. I-88-066

Dear Mr. Faust:

You have written requesting guidance with respect to application of Government Code Section 84308 to the activities of members of the California Coastal Commission. Because your letter seeks only general assistance, without regard to any particular coastal commissioner or any pending decision, we treat your request as one for informal assistance. <sup>1/</sup>

## QUESTIONS

You have asked a series of questions about disclosure of campaign contributions, return of contributions, and aggregation of contributions. In addition, you have asked several questions about use of certain disclosure forms developed by the California Coastal Commission. Because of the number and variety of the questions, we will address them in sequence.

## CONCLUSIONS

Although your questions are many and varied, in summary we conclude:

- ° Disclosure of contributions is required on the record, regardless of whether the contribution has been returned prior to the hearing. When disqualification is required, a simple statement on the record is sufficient.
- ° Contributions from a majority shareholder of a closed corporation are treated as if they were the contributions of the corporation. Contributions from comparable investors in other types of business entities are treated in a similar manner.

---

<sup>1/</sup> See 2 California Code of Regulations Section 18329(b)(9) and (c), copy enclosed. Informal assistance does not provide the immunity provided by formal written assistance. (Government Code Section 83114(b).)

- ° A contributor to one coastal commissioner may become a participant by communicating with another coastal commissioner if facts are revealed which indicate a financial interest in the proceeding.
- ° An agent's contributions are aggregated only if the agency relationship is revealed.
- ° The proceeding which is governed by the statute is only that proceeding which is actually before the Coastal Commission, not some preliminary or ancillary proceeding before another agency.
- ° Willful or knowing receipt of a contribution includes contributions for which campaign reports have been filed by the officer who received the contribution.
- ° The disclosure forms used for disclosure by parties and participants in proceedings should be similar to the model forms provided by the Fair Political Practices Commission, copies of which are enclosed.

#### FACTS

You are the chief counsel for the California Coastal Commission (Coastal Commission), which has twelve voting and three non-voting members, all of whom are part-time. The Coastal Commission's members are appointed.

#### ANALYSIS

The Political Reform Act (the "Act")<sup>2/</sup> generally prohibits public officials from acting when they have a financial interest in a decision. Section 84308 prohibits appointed public officials from acting when substantial campaign contributors have a financial interest in a decision. Among the findings made by the voters in adopting the Act in 1974 was the following:

---

<sup>2/</sup> 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.

Ralph Faust, Jr.  
March 16, 1988  
Page 3

Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

Section 81001(b).

Government Code Section 84308 addresses this finding in three ways. First, the law prohibits solicitation or receipt of campaign contributions by certain officials ("officers") from parties, participants or their agents in proceedings involving licenses, permits or other entitlements for use. (See City of Agoura Hills v. Los Angeles County Local Agency Formation Commission (1988) \_\_\_ Cal. App.3d \_\_\_, copy of slip opinion enclosed, for a discussion of what constitutes an entitlement for use.) Second, the law requires an officer's disqualification in such proceedings if the officer has received campaign contributions of \$250 or more from a party or participant within 12 months preceding the decision. Third, it requires the disclosure of all campaign contributions of \$250 or more received from a party or participant within 12 months preceding the decision.

Your questions deal with disqualification and disclosure. Disqualification is required when, prior to making a decision, an officer learns that a party or participant in a proceeding has made a contribution of \$250 or more to the officer within the preceding 12 months. However, if the officer returns the campaign contribution (or that portion of the contribution which is over \$249) within 30 days from the time he or she learns of the contribution and the proceeding, then disqualification is not required. In either case, the contribution must be disclosed.

Questions 1 and 2. Disclosure. You have asked whether an officer who is prohibited from participating under Section 84308 is required to disclose the fact of the contribution on the record of the proceeding.

The Fair Political Practices Commission (the "Commission") has prepared a pamphlet entitled "A Guide to Government Code Section 84308 of the Political Reform Act of 1974" which answers your question. A copy of that pamphlet is enclosed for your use. In the section headed "Disclosure: Who and How?" it states as follows:

Prior to rendering any decision, each officer who received a campaign contribution of \$250 or more within the preceding 12 months from a party, participant or agent of a party or participant must disclose that fact on the record of the proceeding. If there is a public hearing, the officer should make the disclosure on the public record at the beginning of the hearing. However, if no public hearing is held, the disclosure should be included in the written record of the proceeding.

When disclosure is required by Section 84308, disqualification is also required unless the contribution has not been returned in the manner provided.

You have asked whether it is sufficient for the officer to simply state:

I disqualify myself on this item per the requirements of the Political Reform Act.

While a more elaborate statement of disqualification might be preferable, the foregoing statement, coupled with the required disclosure, would suffice to meet the requirements of the Act.

Question 3. Return and Disclosure. You have asked whether disclosure is required even if the contribution has been returned prior to the date of the decision. Disclosure is required under these circumstances, even though disqualification is not. This is as much for the protection of the officer as it is for the public's information. Failure to disclose a \$250 contribution on the record and explain that it has been returned could lead to the public perception that the officer has acted improperly by participating when he or she should not have participated. This is particularly likely if the officer has already disclosed the contribution on a campaign report. (See Sections 84211(c) and 84308(e).)

Question 4. Majority Shareholder. You asked whether a coastal commissioner who has received a contribution from a majority shareholder of a closed corporation must disclose the contribution and disqualify when the corporation is actually the party or participant. Such a result is dictated by the statute. Section 84308(d) provides:

When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c) and this subdivision.

The disclosure and disqualification requirements of subdivision (c) apply to the officer who has received the contribution. Consequently, the reference to subdivision (c) quoted above must be interpreted to mean that the officer is required to disclose and disqualify if the majority shareholder of the party or participant has made the contribution.

Question 5. Investor Contributions. You asked a series of questions regarding the treatment of contributions by an investor in a business entity who is not a majority shareholder in a closed corporation. You asked whether other types of business entities are covered.

The legal form of organization of the business entity does not alter coverage under Section 84308 when the business entity is the party to the proceeding. The business may be a partnership, a corporation or a sole proprietorship. However, the rules regarding aggregation of contributions may change depending on the degree of ownership interest held by the contributor. Other forms of business entities would be treated in a manner similar to a closed corporation, so long as the investor was in a position similar to the majority shareholder in a closed corporation. (See In re Lumsdon (1976) 2 FPPC Ops. 140; In re Kahn (1976) 2 FPPC Ops. 151; and Advice Letters to Lowell, Nos. A-83-155 and A-85-262; Bane, No. A-83-048; and Pellman, No. A-85-094, copies enclosed.)

On the other hand, contributions from a less-than-majority owner of a business entity would not be aggregated with those of the business entity, absent circumstances indicating that the contributions were made by the partial owner as an agent for the business entity or that the owner and the business entity were "acting in concert." (See Section 82047; In re Lumsdon, supra; and In re Kahn, supra.)

You also have asked whether there are any circumstances in which an investor's interest in a business entity would make him or her the "subject of" a proceeding under Section 84308(a)(1). Certainly in the case of a sole proprietorship which owns the property that is the "subject of" a coastal permit proceeding, the sole owner of the proprietorship would also be considered the "subject of" the proceeding and would be treated as the party. The same is true, in essence, with respect to the majority shareholder in a closed corporation. Section 84308(d) mandates that the majority shareholder is subject to the same restrictions under Section 84308(b), (c) and (d) as if he or she were the party or participant.

Ralph Faust, Jr.  
March 16, 1988  
Page 6

Question 6. Communication with other Agency Officers. You have asked about a situation where a contributor to one coastal commissioner communicates with another coastal commissioner outside the presence of the coastal commissioner who received the contribution. Your question has two components. First, is such a communication sufficient to make the contributor a "participant" within the meaning of Section 84308? The answer to this question is yes. Regulation 18438.4(a) provides that a person "lobbies in person" within the meaning of Section 84308 when that person communicates directly with one of the officers of the agency. In your agency's case, that is one of the coastal commissioners. The commissioner contacted need not be the one to whom the contribution was made.

The second part of your question is whether the coastal commissioner who received the contribution needs to have actual knowledge of the fact of a communication with another coastal commissioner before the requirements of Section 84308 apply. If, in fact, the recipient coastal commissioner has no knowledge that a contributor has communicated with another commissioner and the recipient commissioner has not received any such communication himself or herself, he or she would not "know or have reason to know" that the contributor has a financial interest in the proceeding. (Section 84308(c).) However, written communications in the record of the proceeding, even if addressed to other commissioners would provide reason to know if the requirements of Regulation 18438.7(a) are satisfied. This would occur if the participant reveals facts which make the participant's financial interest apparent.

Question 7. Knowledge of Agency Relationship. You have asked about aggregation of contributions from parties or participants and their agents. Section 84308 requires that contributions of a participant or a party must be aggregated with contributions of any agents they may have, in order to determine whether a \$250 contribution has been received. An agent is defined to be someone who represents a party or participant in connection with the proceeding. (Regulation 18438.3.)

You have asked whether an officer must have actual knowledge of the agency relationship before the requirement of aggregation applies or whether constructive knowledge is sufficient. We believe that the "knows or has reason to know" standard utilized elsewhere in the statute is the appropriate one. If the agent never, in fact, reveals that he or she is an agent of the party or participant, it is obvious that the officer would neither know nor have reason to know that a contribution from the agent should be aggregated with a contribution from the party or participant.

However, if the agent files a document with the Coastal Commission indicating that he or she is acting as an agent for a party or participant, the officer has "reason to know" of the agency relationship, whether or not the officer actually looked at the document. Otherwise, enforcement of the statute would be impossible. Officers would simply deny that they ever read the document, even though it was in the materials which they were considering in the matter.

On the other hand, actual knowledge on the part of the officer is sufficient, even if gained outside the official record in the proceeding. For instance, an officer may know of an individual's affiliation with a law firm, even if the affiliation is not disclosed directly on the record (unlikely as that may be).

Question 8. Willful or Knowing Receipt. You have pointed out that in Section 84308(c) the language regarding the officer's disclosure responsibility differs from that regarding the officer's disqualification responsibility. The latter is triggered "if the officer has willfully or knowingly received a contribution . . ." The disclosure requirement does not contain this language. You have asked whether this difference in wording is significant and for our interpretation of the term "willfully or knowingly."

We believe the difference in wording is not significant. The term "willfully or knowingly received a contribution" is meant to protect the officer from being "blind-sided" by a contribution which he or she neither wanted nor knew about. Certainly, once contributions have been accepted, deposited and reported pursuant to other requirements of the chapter (Section 84100, et seq.), the contribution would appear to be "willfully or knowingly received." A return of the contribution prior to the close of a campaign reporting period would negate that appearance and would, of course, eliminate the need for disqualification.

In the case of a contribution that has not yet been reported because the reporting period has not ended, the issue of whether the contribution was "willfully or knowingly received" would be a question of fact. If the officer did not have any actual knowledge of the receipt of the contribution, then it could not have been "willfully or knowingly received." However, it should be remembered that both the giving and receiving of a contribution of \$250 or more from a party or participant while the matter is pending and for three months thereafter is prohibited by Section 84308(b).

Question 9. Knowledge Required for Disclosure. You have asked whether knowledge of the participant's financial interest in a decision is a precondition to the requirement of disclosure. You have pointed out that the disqualification requirement is specifically conditioned on knowing or having reason to know of the participant's financial interest.

We believe that the two requirements go hand in hand. The person is not a participant, as defined in Section 84308(a)(2), unless the person has a financial interest in the proceeding. Therefore, an officer would not know that a person qualifies as a participant unless the officer also knows that the person has a financial interest in the proceeding. Regulation 18438.7(a) defines when an officer knows or has reason to know that a person has financial interest in a proceeding. Knowledge or reason to know occurs when the person reveals facts in his or her written or oral support or opposition before the agency which make apparent the person's financial interest. Consequently, knowing or having reason to know of the participant's financial interest is a precondition of disclosure as well as disqualification.

Question 10. Knowledge of the Proceeding. You have asked whether the thirty-day period in which the contribution may be returned begins to run if the coastal commissioner gains actual knowledge that a proceeding may be forthcoming, but the proceeding is not currently "pending" before the coastal commission because no application has yet been filed. Regulation 18438.7(b) controls in these circumstances. It speaks only in terms of a proceeding before "the agency" of which the officer is a member.

The fact that a proceeding may have been initiated at the local level which may at some point reach the Coastal Commission, if pursued, does not mean that the matter will ever actually reach the Coastal Commission. Many events may intervene to delay or terminate the process. Consequently, only the pendency of the proceeding before the official's own agency is relevant to the issue of whether to return the contribution. The thirty-day period does not begin to run prior to an application being filed with the Coastal Commission.

Question 11. Compilation of Contributor Data. You have asked whether the general requirements of Section 84104 for record keeping by candidates, treasurers and elected officers require officers to maintain detailed records for purposes of Section 84308. The general requirements in Section 84104 are for the purpose of the reporting obligations contained elsewhere in Chapter 4 of the Act. While Section 84308 is a part of that chapter, the requirement does not mean that an

Ralph Faust, Jr.  
March 16, 1988  
Page 9

officer must carry around a list of contributors to all meetings. (See Pellman Advice Letter, supra.)

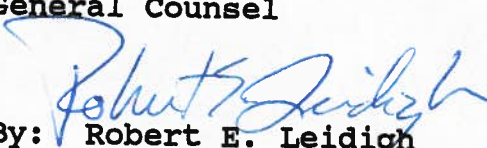
Question 12. Party and Participant Disclosure Forms. You have asked a series of questions regarding information to be requested from parties and participants. Essentially, you asked whether your agency's forms need revision and whether certain questions are necessary to comply with the law's requirements. I enclose a copy of a set of model disclosure forms prepared by this agency for use by agencies covered by Section 84308. We believe these forms contain the relevant questions without being overly intrusive. After you review them, please do not hesitate to ask any questions you may have regarding their use or modification.

Question 13. Speakers' Slips. Your question regarding "speakers' slips" is really one regarding participant disclosure, and is addressed by our response to question 12, above. After you review the model disclosure forms, please do not hesitate to ask any questions you may have. I note that when Section 84308 was amended in 1984, the requirement for participant disclosure was deleted. Consequently, no violation occurs if a participant fails or refuses to disclose.

I trust this letter adequately responds to your many questions. If you have further questions regarding its content, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Robert E. Leidigh  
Counsel, Legal Division

DMG:REL:jaj

Enclosures

## CALIFORNIA COASTAL COMMISSION

631 HOWARD STREET, 4TH FLOOR

SAN FRANCISCO, CA 94105

(415) 543-8555

F P P C

FEB 5 9 25 AM '88



February 4, 1988

Diane Griffiths, General Counsel  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804

Dear Ms. Griffiths:

I am writing on behalf of the California Coastal Commission ("Commission") to request assistance from the Fair Political Practices Commission ("FPPC") on the Commission's implementation of Government Code section 84308. We would like your advice on how to interpret the statute and applicable regulations, as well as your specific comments on proposed changes to our application form and speakers' slips.

1. Disclosure

Section 84308 provides that, in specified circumstances, an officer is required to disclose the fact of a contribution "[p]rior to rendering any decision". A question has been raised concerning whether an officer who is prohibited from participating under section 84308 is required to disclose the fact of the contribution on the record of the proceeding.

Because the statute provides that a commissioner who is disqualified does not render a decision, it may be inferred that he or she is not required to disclose the contribution. Although the regulations which implement that provision do not address that question, the FPPC has adopted regulations which implement other statutory provisions which require both disclosure and disqualification when the official has a financial interest which would disqualify him or her. (California Administrative Code, Title 2, sections 18700(b)(5), 18730(b)(9).) A campaign contribution is not a "financial interest" as specified in the statutory provisions implemented by those regulations (Govt. Code sections 87100, 87300-87302), thus we interpret that the regulations do not require disclosure in the event of disqualification for a campaign contribution. We would like your advice on whether the FPPC concurs with that interpretation.

2. Means of Disclosure

In the event that disclosure is required under section 84308, what statement is appropriate? I have enclosed a copy of an advice letter from Robert E. Leidigh, FPPC, which construes the disclosure requirement set forth

in section 18700(b)(5). (Attachment "A") Is the statement required therein satisfactory for purposes of compliance with Government Code section 84308? The statement is:

"I disqualify myself on this item per the requirements of the Political Reform Act."

3. Return of a Contribution

If a commissioner returns a contribution which would otherwise require his or her disqualification pursuant to section 84308(c), is that commissioner subject to the disclosure requirement set forth therein, prior to participating in the decision?

4. Contribution From a Majority Shareholder

Section 84308(d) provides that "[w]hen a closed corporation is a party to, or a participant in, a proceeding..., the majority shareholder is subject to the disclosure and prohibition requirements..." specified in section 84308. We interpret this provision to mean that if an officer has received a contribution from a majority shareholder in a closed corporation, the officer must disclose the contribution or disqualify himself or herself, despite the fact that the corporation is actually the party or participant. Is that interpretation consistent with that of the FPPC?

5. Contribution From an Investor

Although the statute addresses contributions from majority shareholders in closed corporations, it does not expressly regulate an officer's actions on a matter in which any other form of business entity is a party or participant, when the officer has received a contribution from an investor in that entity. Does the FPPC interpret the statute to require disclosure and/or disqualification for a contribution from a majority owner or investor in any other type of entity? Is disclosure and/or disqualification required when a contributor holds less than a majority ownership or investment interest in either a closed corporation or any other type of business? Are there any circumstances in which an investor's interest in a business or other entity would be such as to make him or her the "subject" of the proceeding, under section 84308(a)(1)?

6. Communication With Officers Other Than Recipient of Contribution

The statute and the regulations do not indicate whether a commissioner who received a contribution is required to disclose and/or disqualify himself or herself if the contributor communicates only with other commissioners or employees, and never communicates with the recipient.

Although section 84308 provides in part that a participant is a person who lobbies the officers or employees of an agency, the regulations which implement that section indicate that a person who communicates with any officer or employee is a "participant" under the FPPC's regulations, if that communication is intended to influence the decision in the proceeding.

(Cal.Admin. Code, Title 2, section 18438.4(a)) Thus, under the regulations, it may be inferred that the communication need not occur with the commissioner who received the campaign contribution, and it need not occur at the Commission hearing on the matter. As you may know, the Commission is a part-time body composed of twelve voting and three non-voting members. If this regulation is construed to mean that a commissioner is charged with constructive knowledge of any communication between his or her contributors and other officers or staff, it will pose obvious difficulties for a commissioner who may be located hundreds of miles away from other commissioners and the staff except during Commission meetings. We therefore interpret that the regulation requires actual knowledge, when it is read together with the statute. Does the FPPC concur with that interpretation?

#### 7. Knowledge of Agency Relationship

It is unclear whether an official must have either actual or constructive knowledge of an agency relationship in order to require disclosure or disqualification. The FPPC's regulations provide that an agent of a party or participant is a person who represents that person in connection with the proceeding. (Cal.Admin. Code, Title 2, section 18430.3(a).) If the agent is a member of a "law, architectural, engineering or consulting firm or a similar entity or corporation," both the firm and the individual are agents in the proceeding.

A person would clearly be an agent of a party or participant if he or she testifies or provides written comments which are identified to be made on behalf of that party or participant. If the person does not disclose the fact he or she is acting as an agent or does not disclose his or her affiliation with the firm, entity or corporation, it is unclear when a commissioner who has received the contribution would be charged with knowledge of that representation or affiliation. We interpret the regulation to require actual knowledge. Does the FPPC agree?

#### 8. Willful or Knowing Receipt

One of the criteria for disqualification is that the officer willfully or knowingly received the contribution. Willful or knowing receipt is not identified to be a requirement for disclosure. Neither the statute nor the regulations clarify what is meant by willful or knowing receipt. How does the FPPC interpret this provision?

#### 9. Knowledge of a Participant's Financial Interest Required For Disclosure

The statute does not require that knowledge of a participant's financial interest is required for disclosure. This creates an anomaly in that it would not be possible for a commissioner to disclose that he or she had received a contribution from a participant if he or she had no knowledge about whether or not the contributor met all the statutory criteria for a participant. (Those criteria of course include a financial interest in the decision.) We would like your advice about how the FPPC reconciles these requirements. Is the standard of knowledge applicable to disclosure different than that which would lead to disqualification? Or is the knowledge which would mandate disclosure

construed to occur at a different time than that which would require disqualification?

#### 10. Knowledge of the Proceeding

The statute provides that a commissioner who would otherwise be required to disqualify himself or herself may avoid disqualification by returning a contribution within 30 days from the time he or she knows or should have known about the contribution and the proceeding. (Government Code section 84308(c).) The regulations differ somewhat from the statute in that they specify the circumstances in which an official knows that a proceeding is pending before the agency, whereas the statute does not refer to a pending proceeding. (Cal.Admin Code, Title 2, section 18438.7(b).)

We would like your advice about whether the thirty day time period for return of a contribution would ever be construed to commence prior to the time that a matter is actually pending before the Commission. This question is relevant because the Commission may occasionally be on notice that a project which is currently pending before local government will likely be submitted to the Commission's jurisdiction.

#### 11. Commissioner Compilation of Contributor Data

We note that Government Code section 84104 imposes a duty upon "each candidate, treasurer and elected officer to maintain such detailed accounts, records, bills and receipts that are necessary ... to comply with provisions of [the] chapter," which includes section 84308. We would like your advice on the types of questions that should be posed and the types of records that should be maintained by officials to ensure compliance with the statute.

#### 12. Application Form

Section 83408(d) provides that a party has the duty to disclose on the record whether he or she or his or her agent has made a contribution within the preceding twelve months to any officer. The Commission has implemented that requirement by requesting information on the application form which includes but is not limited to, that information. We would like your advice on possible changes to the form.

The application form distributed by the Commission requests information about contributions to commissioners. (Attachment "B") As currently drafted, the form requests that the applicant disclose whether "applicants, agents, employees, and/or family and/or any person having a financial interest in the project" have contributed over \$250 in the "past year" to a commissioner or alternate.

##### a) Aggregation

We would like your advice on the circumstances in which it is appropriate to aggregate contributions. Aggregation is expressly required only with respect to contributions made by a party or participant and his or her agent. (Cal.Admin. Code, Title 2, section 18438.3(b).) The

regulations do not provide that contributions of various agents must be aggregated, although they do provide that when an individual representing a party or participant is also acting as an employee of a firm or organization, both the individual and the firm are considered to be agents. (Id., (a).)

Can you advise us whether the application form should be revised to clarify which contributions should be aggregated?

b) Contributions by Firms, Organizations, Companies, etc.

Can you advise us whether the form should be revised to request information on contributions by an agent's firm, organization or company, pursuant to section 18438.3(a) of Title 2 of the California Administrative Code? Additionally, should it be revised to indicate that an applicant which is an organization, firm or company, etc. should disclose relevant contributions made by the organization? This question is based upon reading section 84308(a)(1) together with section 82047. The former defines "party" to mean a "person who files an application for, or is the subject of a proceeding ...." The latter provision indicates that the word "person" includes in part such entities as corporations, firms, partnerships, and business trusts. Does the FPPC have any recommendations about the questions necessary to elicit that information? (For example, are parent companies or subsidiaries covered under section 18438.3(a)?)

c) Employees' Contributions

The application form requests information on the contributions of the employees of applicants and agents. This request may be overbroad in that it requires information concerning contributions that are not regulated by the statute or the regulations. Does the FPPC interpret the statute to require that if an employee signs the application form, he or she must disclose his or her contributions, because a "party" includes the "person" who files the application? (Section 84308(a)(1).)

A different question arises with respect to employees who do not sign the application. The statute does not expressly regulate the contributions of individuals who are employed by an organization which is an applicant. We would like your advice as to whether the FPPC construes the word "person" as used in section 84308 to include employees of an applicant.

Similarly, what is the status of contributions by employees of a firm or company which is acting as an agent? If such employees are not acting on behalf of a party or participant within the scope of their employment, would their contributions nevertheless subject a commissioner to disclosure and/or disqualification?

d) Family Contributions

The application form requests that applicants disclose contributions by family members of applicants, agents and employees. Family

contributions are not expressly regulated by the statute or regulations. Does the FPPC impute a constructive interest in contributions by family members, including spouses, to a party, participant or agent under section 84308?

e) Any Person With a Financial Interest in the Project

The application form requests that the applicant or his or her agent disclose whether any person with a financial interest in the project has made a contribution. We believe that request may be overly broad because the only persons with a financial interest who are regulated are participants. The statute provides that a person is a participant only if he or she actively communicates with a commissioner or staff, and has a financial interest in the decision. We are requesting your advice about whether the form should be revised to refer to an interest in the decision, rather than the project; to reference the criteria for determining financial interest set forth in Government Code section 87100 et seq. and implementing regulations; and to limit the persons covered to "participants," rather than "any person." (It should be noted that an applicant or his or her agent may have no idea about the contributions or financial interests of participants. Participants are not parties, pursuant to section 84308(a)(2).)

f) Return of Contributions

We believe that the application form should be revised to request information on whether the contribution, if received, was returned, and the date of such return, if applicable. Does the FPPC concur with this change?

13. Speakers' Slips

As currently written, the Commission's speakers' slips require that the speaker identify the commissioners or alternates to whom he or she has made campaign contributions of \$250 or more within the past year. (Attachment "C") What is the FPPC's position on revision of the wording of this request to elicit the following additional information:

- a) whether the speaker is acting as an agent for a party or participant, the amount of contributions made by the speaker, the amount made by the speaker's firm or organization, as well as the amount of contributions made by his or her client (to allow aggregation),
- b) whether a speaker who is not an applicant or an agent for an applicant, should be required to indicate if he or she or his or her client has a "financial interest" in the decision as specified in Government Code section 87100 et seq.
- c) whether or not the contribution, if received, was returned by the official to the speaker, and the date of such return, if applicable,

Diane Griffiths  
February 4, 1988  
Page 7

- d) whether the contributor has disclosed to the official at any time that he or she would be a party, participant or agent in a proceeding before the Commission, and the date of disclosure, if applicable, and
- e) whether the contributor has disclosed to the official that he or she would have a financial interest in the decision, within the meaning of Government Code section 87100 et seq., and the date of such disclosure, if applicable?

The questions we have noted are intended to be exhaustive, but may not raise all possible questions relevant to interpreting section 84308. In the event that you have suggestions that would aid the Commission in complying with the statute that are not explicitly raised in your response to the issues noted above, please do not hesitate to provide those comments

Thank you in advance for your assistance.

Sincerely,



Ralph Faust, Jr.  
Chief Counsel

Enclosures

RF:DD:jsm

State of California



# Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance  
(916) 322-3662

• • Administration  
322-3660

• • Executive/Legal  
322-3901

• • Enforcement  
322-4441

• • Statements of Economic Interest  
322-6444

February 25, 1985

Gail Hutton  
City Attorney  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Re: Your Memo on Abstention  
Our No. A-85-043

Dear Mr. Hutton:

This office is in receipt of your memorandum to your councilmembers regarding abstention due to disqualification pursuant to the Political Reform Act. While our advice remains as stated in the Densmore letter (No. A-84-247), your advice to your clients as to the statement which will satisfy the requirements of regulation 2 Cal. Adm. Code Section 18700(b) (5) is a satisfactory solution. That statement, to be made on the public record, is as follows:

I disqualify myself on this item per the requirements of the Political Reform Act.

As noted in your memorandum, we are in the process of considering revisions to regulation 18700. Your comments will be placed in our rulemaking file and will be taken into consideration as we proceed with deliberations on the modifications to the regulation.

Sincerely,

Robert E. Leidigh  
Counsel  
Legal Division

REL:plh

ATTACHMENT A

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX A

DECLARATION OF CAMPAIGN CONTRIBUTIONS

Government Code Section 84308 prohibits any Commissioner voting on a project if he or she has received campaign contributions in excess of \$250 within the past year from project proponents or opponents, their agents, employees or family, or any person with a financial interest in the project.

In the event of such contributions, a Commissioner must disqualify him or herself from voting on the project; failure to do so may lead to revocation of the permit.

Each applicant must declare below whether any such contributions have been made to any of the Commissioners or Alternates listed on the reverse.

CHECK ONE

\_\_\_\_\_ The applicants, their agents, employees, family and any person with a financial interest in the project HAVE NOT CONTRIBUTED over \$250 to any Commissioner(s) or Alternates within the past year.

\_\_\_\_\_ The applicants, their agents, employees, and/or family, and/or any person having a financial interest in the project HAVE CONTRIBUTED OVER \$250 to the Commissioner(s) or Alternates listed below within the past year.

Commissioner \_\_\_\_\_

Commissioner \_\_\_\_\_

Commissioner \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant or Authorized Agent

\_\_\_\_\_  
Date

Please print your name \_\_\_\_\_

# Request to Speak on Permit Items

Application/  
Appeal No: \_\_\_\_\_

Date: \_\_\_\_\_

Name \_\_\_\_\_

Representing \_\_\_\_\_  
(self or name of group)

Address: \_\_\_\_\_

### CHECK ALL APPROPRIATE BOXES

- |  |  |
|--|--|
| <input type="checkbox"/> In favor of project   | <input type="checkbox"/> I am/represent applicant              |
| <input type="checkbox"/> Opposed to project  | <input type="checkbox"/> I am/represent appellant              |
| <input type="checkbox"/> Concerned about project but no firm position                            | <input type="checkbox"/> I have handouts for the Commissioners |
| <input type="checkbox"/> I will show slides (Please give slides to the staff before the hearing) |  |

### DECLARATION OF CAMPAIGN CONTRIBUTIONS (Please complete)

Within the past year, I have made campaign contributions of \$250 or more to the following Commissioners or Alternates:

\_\_\_\_\_  
(Names of Commissioners or "none")

(See other side for time limits).

# Request for Notice of Future Hearings

Application/  
Appeal No: \_\_\_\_\_

Date: \_\_\_\_\_

Fill out this section only if you are interested in being notified of any upcoming Commission business concerning this subject.

Name \_\_\_\_\_

Address Street \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

Telephone: area code ( ) \_\_\_\_\_

# Time Limits

The combined time per side for testimony on any item is as shown below. You may need to coordinate your statement with other speakers to stay within the time limits. All statements should be brief, non-repetitive, and related to coastal issues. Written comments of any length may be submitted to the staff.

3 minutes	Administrative and Consent Items
15 minutes	New Hearings and Voting
5 minutes	Continued Hearing and Voting
10 minutes	Public Hearings
3 minutes	Substantial Issue Determination

All others - determined by the Chair, approximately 5 minutes per side.

**CALIFORNIA COASTAL COMMISSION**

631 HOWARD STREET, 4TH FLOOR  
SAN FRANCISCO, CA 94105  
(415) 543-8555

88-066  
F P P C

FEB 5 9 25 AM '88



February 4, 1988

Diane Griffiths, General Counsel  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804

Dear Ms. Griffiths:

I am writing on behalf of the California Coastal Commission ("Commission") to request assistance from the Fair Political Practices Commission ("FPPC") on the Commission's implementation of Government Code section 84308. We would like your advice on how to interpret the statute and applicable regulations, as well as your specific comments on proposed changes to our application form and speakers' slips.

1. Disclosure

Section 84308 provides that, in specified circumstances, an officer is required to disclose the fact of a contribution "[p]rior to rendering any decision". A question has been raised concerning whether an officer who is prohibited from participating under section 84308 is required to disclose the fact of the contribution on the record of the proceeding.

Because the statute provides that a commissioner who is disqualified does not render a decision, it may be inferred that he or she is not required to disclose the contribution. Although the regulations which implement that provision do not address that question, the FPPC has adopted regulations which implement other statutory provisions which require both disclosure and disqualification when the official has a financial interest which would disqualify him or her. (California Administrative Code, Title 2, sections 18700(b)(5), 18730(b)(9).) A campaign contribution is not a "financial interest" as specified in the statutory provisions implemented by those regulations (Govt. Code sections 87100, 87300-87302), thus we interpret that the regulations do not require disclosure in the event of disqualification for a campaign contribution. We would like your advice on whether the FPPC concurs with that interpretation.

2. Means of Disclosure

In the event that disclosure is required under section 84308, what statement is appropriate? I have enclosed a copy of an advice letter from Robert E. Leidigh, FPPC, which construes the disclosure requirement set forth

in section 18700(b)(5). (Attachment "A") Is the statement required therein satisfactory for purposes of compliance with Government Code section 84308? The statement is:

"I disqualify myself on this item per the requirements of the Political Reform Act."

3. Return of a Contribution

If a commissioner returns a contribution which would otherwise require his or her disqualification pursuant to section 84308(c), is that commissioner subject to the disclosure requirement set forth therein, prior to participating in the decision?

4. Contribution From a Majority Shareholder

Section 84308(d) provides that "[w]hen a closed corporation is a party to, or a participant in, a proceeding..., the majority shareholder is subject to the disclosure and prohibition requirements..." specified in section 84308. We interpret this provision to mean that if an officer has received a contribution from a majority shareholder in a closed corporation, the officer must disclose the contribution or disqualify himself or herself, despite the fact that the corporation is actually the party or participant. Is that interpretation consistent with that of the FPPC?

5. Contribution From an Investor

Although the statute addresses contributions from majority shareholders in closed corporations, it does not expressly regulate an officer's actions on a matter in which any other form of business entity is a party or participant, when the officer has received a contribution from an investor in that entity. Does the FPPC interpret the statute to require disclosure and/or disqualification for a contribution from a majority owner of or investor in any other type of entity? Is disclosure and/or disqualification required when a contributor holds less than a majority ownership or investment interest in either a closed corporation or any other type of business? Are there any circumstances in which an investor's interest in a business or other entity would be such as to make him or her the "subject" of the proceeding, under section 84308(a)(1)?

6. Communication With Officers Other Than Recipient of Contribution

The statute and the regulations do not indicate whether a commissioner who received a contribution is required to disclose and/or disqualify himself or herself if the contributor communicates only with other commissioners or employees, and never communicates with the recipient.

Although section 84308 provides in part that a participant is a person who lobbies the officers or employees of an agency, the regulations which implement that section indicate that a person who communicates with any officer or employee is a "participant" under the FPPC's regulations, if that communication is intended to influence the decision in the proceeding.

(Cal.Admin. Code, Title 2, section 18438.4(a)) Thus, under the regulations, it may be inferred that the communication need not occur with the commissioner who received the campaign contribution, and it need not occur at the Commission hearing on the matter. As you may know, the Commission is a part-time body composed of twelve voting and three non-voting members. If this regulation is construed to mean that a commissioner is charged with constructive knowledge of any communication between his or her contributors and other officers or staff, it will pose obvious difficulties for a commissioner who may be located hundreds of miles away from other commissioners and the staff except during Commission meetings. We therefore interpret that the regulation requires actual knowledge, when it is read together with the statute. Does the FPPC concur with that interpretation?

#### 7. Knowledge of Agency Relationship

It is unclear whether an official must have either actual or constructive knowledge of an agency relationship in order to require disclosure or disqualification. The FPPC's regulations provide that an agent of a party or participant is a person who represents that person in connection with the proceeding. (Cal.Admin. Code, Title 2, section 18430.3(a).) If the agent is a member of a "law, architectural, engineering or consulting firm or a similar entity or corporation," both the firm and the individual are agents in the proceeding.

A person would clearly be an agent of a party or participant if he or she testifies or provides written comments which are identified to be made on behalf of that party or participant. If the person does not disclose the fact he or she is acting as an agent or does not disclose his or her affiliation with the firm, entity or corporation, it is unclear when a commissioner who has received the contribution would be charged with knowledge of that representation or affiliation. We interpret the regulation to require actual knowledge. Does the FPPC agree?

#### 8. Willful or Knowing Receipt

One of the criteria for disqualification is that the officer willfully or knowingly received the contribution. Willful or knowing receipt is not identified to be a requirement for disclosure. Neither the statute nor the regulations clarify what is meant by willful or knowing receipt. How does the FPPC interpret this provision?

#### 9. Knowledge of a Participant's Financial Interest Required For Disclosure

The statute does not require that knowledge of a participant's financial interest is required for disclosure. This creates an anomaly in that it would not be possible for a commissioner to disclose that he or she had received a contribution from a participant if he or she had no knowledge about whether or not the contributor met all the statutory criteria for a participant. (Those criteria of course include a financial interest in the decision.) We would like your advice about how the FPPC reconciles these requirements. Is the standard of knowledge applicable to disclosure different than that which would lead to disqualification? Or is the knowledge which would mandate disclosure

construed to occur at a different time than that which would require disqualification?

10. Knowledge of the Proceeding

The statute provides that a commissioner who would otherwise be required to disqualify himself or herself may avoid disqualification by returning a contribution within 30 days from the time he or she knows or should have known about the contribution and the proceeding. (Government Code section 84308(c).) The regulations differ somewhat from the statute in that they specify the circumstances in which an official knows that a proceeding is pending before the agency, whereas the statute does not refer to a pending proceeding. (Cal.Admin Code, Title 2, section 18438.7(b).)

We would like your advice about whether the thirty day time period for return of a contribution would ever be construed to commence prior to the time that a matter is actually pending before the Commission. This question is relevant because the Commission may occasionally be on notice that a project which is currently pending before local government will likely be submitted to the Commission's jurisdiction.

11. Commissioner Compilation of Contributor Data

We note that Government Code section 84104 imposes a duty upon "each candidate, treasurer and elected officer to maintain such detailed accounts, records, bills and receipts that are necessary ... to comply with provisions of [the] chapter," which includes section 84308. We would like your advice on the types of questions that should be posed and the types of records that should be maintained by officials to ensure compliance with the statute.

12. Application Form

Section 83408(d) provides that a party has the duty to disclose on the record whether he or she or his or her agent has made a contribution within the preceding twelve months to any officer. The Commission has implemented that requirement by requesting information on the application form which includes but is not limited to, that information. We would like your advice on possible changes to the form.

The application form distributed by the Commission requests information about contributions to commissioners. (Attachment "B") As currently drafted, the form requests that the applicant disclose whether "applicants, agents, employees, and/or family and/or any person having a financial interest in the project" have contributed over \$250 in the "past year" to a commissioner or alternate.

a) Aggregation

We would like your advice on the circumstances in which it is appropriate to aggregate contributions. Aggregation is expressly required only with respect to contributions made by a party or participant and his or her agent. (Cal.Admin. Code, Title 2, section 18438.3(b).) The

regulations do not provide that contributions of various agents must be aggregated, although they do provide that when an individual representing a party or participant is also acting as an employee of a firm or organization, both the individual and the firm are considered to be agents. (Id., (a).)

Can you advise us whether the application form should be revised to clarify which contributions should be aggregated?

b) Contributions by Firms, Organizations, Companies, etc.

Can you advise us whether the form should be revised to request information on contributions by an agent's firm, organization or company, pursuant to section 18438.3(a) of Title 2 of the California Administrative Code? Additionally, should it be revised to indicate that an applicant which is an organization, firm or company, etc. should disclose relevant contributions made by the organization? This question is based upon reading section 84308(a)(1) together with section 82047. The former defines "party" to mean a "person who files an application for, or is the subject of a proceeding ...." The latter provision indicates that the word "person" includes in part such entities as corporations, firms, partnerships, and business trusts. Does the FPPC have any recommendations about the questions necessary to elicit that information? (For example, are parent companies or subsidiaries covered under section 18438.3(a)?)

c) Employees' Contributions

The application form requests information on the contributions of the employees of applicants and agents. This request may be overbroad in that it requires information concerning contributions that are not regulated by the statute or the regulations. Does the FPPC interpret the statute to require that if an employee signs the application form, he or she must disclose his or her contributions, because a "party" includes the "person" who files the application? (Section 84308(a)(1).)

A different question arises with respect to employees who do not sign the application. The statute does not expressly regulate the contributions of individuals who are employed by an organization which is an applicant. We would like your advice as to whether the FPPC construes the word "person" as used in section 84308 to include employees of an applicant.

Similarly, what is the status of contributions by employees of a firm or company which is acting as an agent? If such employees are not acting on behalf of a party or participant within the scope of their employment, would their contributions nevertheless subject a commissioner to disclosure and/or disqualification?

d) Family Contributions

The application form requests that applicants disclose contributions by family members of applicants, agents and employees. Family

contributions are not expressly regulated by the statute or regulations. Does the FPPC impute a constructive interest in contributions by family members, including spouses, to a party, participant or agent under section 84308?

e) Any Person With a Financial Interest in the Project

The application form requests that the applicant or his or her agent disclose whether any person with a financial interest in the project has made a contribution. We believe that request may be overly broad because the only persons with a financial interest who are regulated are participants. The statute provides that a person is a participant only if he or she actively communicates with a commissioner or staff, and has a financial interest in the decision. We are requesting your advice about whether the form should be revised to refer to an interest in the decision, rather than the project; to reference the criteria for determining financial interest set forth in Government Code section 87100 et seq. and implementing regulations; and to limit the persons covered to "participants," rather than "any person." (It should be noted that an applicant or his or her agent may have no idea about the contributions or financial interests of participants. Participants are not parties, pursuant to section 84308(a)(2).)

f) Return of Contributions

We believe that the application form should be revised to request information on whether the contribution, if received, was returned, and the date of such return, if applicable. Does the FPPC concur with this change?

13. Speakers' Slips

As currently written, the Commission's speakers' slips require that the speaker identify the commissioners or alternates to whom he or she has made campaign contributions of \$250 or more within the past year. (Attachment "C") What is the FPPC's position on revision of the wording of this request to elicit the following additional information:

- a) whether the speaker is acting as an agent for a party or participant, the amount of contributions made by the speaker, the amount made by the speaker's firm or organization, as well as the amount of contributions made by his or her client (to allow aggregation),
- b) whether a speaker who is not an applicant or an agent for an applicant, should be required to indicate if he or she or his or her client has a "financial interest" in the decision as specified in Government Code section 87100 et seq.
- c) whether or not the contribution, if received, was returned by the official to the speaker, and the date of such return, if applicable,


Diane Griffiths  
February 4, 1988  
Page 7

- d) whether the contributor has disclosed to the official at any time that he or she would be a party, participant or agent in a proceeding before the Commission, and the date of disclosure, if applicable, and
- e) whether the contributor has disclosed to the official that he or she would have a financial interest in the decision, within the meaning of Government Code section 87100 et seq., and the date of such disclosure, if applicable?

The questions we have noted are intended to be exhaustive, but may not raise all possible questions relevant to interpreting section 84308. In the event that you have suggestions that would aid the Commission in complying with the statute that are not explicitly raised in your response to the issues noted above, please do not hesitate to provide those comments

Thank you in advance for your assistance.

Sincerely,

  
Ralph Faust, Jr.  
Chief Counsel

Enclosures

RF:DD:jsm

State of California



# Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest  
(916) 322-5662                      322-5660                      322-5901                      322-6441                      322-6444

February 25, 1985

Gail Hutton  
City Attorney  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Re: Your Memo on Abstention  
Our No. A-85-043

Dear Mr. Hutton:

This office is in receipt of your memorandum to your councilmembers regarding abstention due to disqualification pursuant to the Political Reform Act. While our advice remains as stated in the Densmore letter (No. A-84-247), your advice to your clients as to the statement which will satisfy the requirements of regulation 2 Cal. Adm. Code Section 18700(b) (5) is a satisfactory solution. That statement, to be made on the public record, is as follows:

I disqualify myself on this item per the requirements of the Political Reform Act.

As noted in your memorandum, we are in the process of considering revisions to regulation 18700. Your comments will be placed in our rulemaking file and will be taken into consideration as we proceed with deliberations on the modifications to the regulation.

Sincerely,

Robert E. Leidigh  
Counsel  
Legal Division

REL:plh

ATTACHMENT A

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX A

DECLARATION OF CAMPAIGN CONTRIBUTIONS

Government Code Section 84308 prohibits any Commissioner voting on a project if he or she has received campaign contributions in excess of \$250 within the past year from project proponents or opponents, their agents, employees or family, or any person with a financial interest in the project.

In the event of such contributions, a Commissioner must disqualify him or herself from voting on the project; failure to do so may lead to revocation of the permit.

Each applicant must declare below whether any such contributions have been made to any of the Commissioners or Alternates listed on the reverse.

CHECK ONE

\_\_\_\_\_ The applicants, their agents, employees, family and any person with a financial interest in the project HAVE NOT CONTRIBUTED over \$250 to any Commissioner(s) or Alternates within the past year.

\_\_\_\_\_ The applicants, their agents, employees, and/or family, and/or any person having a financial interest in the project HAVE CONTRIBUTED OVER \$250 to the Commissioner(s) or Alternates listed below within the past year.

Commissioner \_\_\_\_\_

Commissioner \_\_\_\_\_

Commissioner \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant or Authorized Agent

\_\_\_\_\_  
Date

Please print your name \_\_\_\_\_

# Request to Speak

on

# Permit Items

Application/  
Appeal No: \_\_\_\_\_

Date: \_\_\_\_\_

Name \_\_\_\_\_

Representing \_\_\_\_\_  
(self or name of group)

Address: \_\_\_\_\_

### CHECK ALL APPROPRIATE BOXES

- In favor of project
- Opposed to project
- Concerned about project but no firm position
- I will show slides (Please give slides to the staff before the hearing)
- I am/represent applicant
- I am/represent appellant
- I have handouts for the Commissioners

### DECLARATION OF CAMPAIGN CONTRIBUTIONS (Please complete)

Within the past year, I have made campaign contributions of \$250 or more to the following Commissioners or Alternates:

\_\_\_\_\_  
(Names of Commissioners or "none")

(See other side for time limits).

## Request for Notice of Future Hearings

Application/  
Appeal No: \_\_\_\_\_

Date: \_\_\_\_\_

Fill out this section only if you are interested in being notified of any upcoming Commission business concerning this subject.

Name \_\_\_\_\_

Address Street \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

Telephone: area code ( ) \_\_\_\_\_

# Time Limits

The combined time per side for testimony on any item is as shown below. You may need to coordinate your statement with other speakers to stay within the time limits. All statements should be brief, non-repetitive, and related to coastal issues. Written comments of any length may be submitted to the staff.

3 minutes Administrative and Consent Items  
15 minutes New Hearings and Voting  
5 minutes Continued Hearing and Voting  
10 minutes Public Hearings  
3 minutes Substantial Issue Determination

All others - determined by the Chair, approximately 5 minutes per side.



# California Fair Political Practices Commission

February 8, 1988

Ralph Faust, Jr.  
California Coastal Commission  
631 Howard Street, 4th Floor  
San Francisco, CA 94105

Re: 88-066

Dear Mr. Faust:

Your letter requesting advice under the Political Reform Act was received on February 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh