



California Fair Political Practices Commission

March 11, 1992

Mr. Jimmie Yee
Planning Commissioner
City of Sacramento
2500 Venture Oaks Way, Ste. 200
Sacramento, CA 95833

Re: Your Request for Advice
Our File No. A-92-095

Dear Mr. Yee:

De:

This is in response to your letter requesting advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

If you resign from your current position as a city planning commissioner, are you still subject to the restrictions of Government Code Section 84308 following your resignation?

CONCLUSION

Once you resign from the board, the restrictions set forth in Section 84308 do not apply because you no longer are an official. However, a caveat does exist. Where the solicitation of a contribution occurred during the pendency of an application for a license, permit or entitlement for use, a violation would have occurred at the time of the solicitation, even if the contribution was received after your resignation.

FACTS

You are currently a member of the City of Sacramento Planning Commission. You were appointed to that position by the Mayor of Sacramento and were approved by the City Council.

¹ 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 Sections 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

You plan to resign your official position as a Planning Commissioner and run in the upcoming election for a seat on the Sacramento City Council.

ANALYSIS

In the Bagatelos Advice Letter (I-89-696) and the Fishburn Advice Letter (A-91-514), the Commission addressed similar questions to those you have posed.

Section 84308 was added to the Act in 1983 in order to ensure that appointed members of boards and commissions would not be biased by large campaign contributors or potential contributors before them in a proceeding involving a license, permit or entitlement for use.

Government Code Section 84308(b) specifically provides:

No officer of an agency shall accept, solicit,² or direct a contribution of more than two hundred fifty dollars (\$250) from any party,³ or his or her agent, or from any participant,⁴ 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 if the officer knows or has reason to know that the participant has a financial interest....

Under Section 84308(a)(4), "officer" means any elected or appointed officer of an agency. Section 84308 only applies to elected or appointed officers of an agency. Your current position as a Sacramento City Planning Commissioner makes you an official under this definition. However, once you resign from your

² This prohibition applies regardless of whether the officer accepts, solicits or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

³ "Party" means 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).)

⁴ "Participant" means 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. 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).)

position as an appointed member of the Sacramento City Planning Commission, the restrictions set forth in Section 84308 are no longer applicable.

Finally, as you correctly point out in your letter, while you are a member of the planning commission, you may not solicit, accept or direct contributions in excess of \$250 from parties or participants who have matters pending before the Commission. In addition, if a contribution is solicited during the pendency of an application for a license, permit or entitlement for use, a violation would have occurred at the time of the solicitation even if the contribution was received after your resignation.⁵

I have taken the liberty of enclosing a Commission brochure entitled "A Guide to Government Code Section 84308 of the Political Reform Act of 1974" for your reference. If you have any further questions, feel free to contact me at (916) 322-5901.⁶

Sincerely,

Scott Hallabrin

Scott Hallabrin
Acting General Counsel

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Enclosures

Prepared by Chris Micheli, Legal Intern

⁵ Under Regulation 18438.6(c), an officer "solicits" a contribution if he or she knows or has reason to know that the person being solicited for a contribution is a party or agent of a party, or is a participant or agent of a participant and either personally requests a contribution or the agent of the officer, with the officer or candidate's knowledge, requests a contribution.

⁶ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.