



# California Fair Political Practices Commission

March 7, 1994

Honorable W. J. Pendleton  
City Councilmember  
City of Bellflower  
16600 Civic Center Drive  
Bellflower, CA 90706-5494

Re: Your Request for Informal Assistance  
Our File No. I-94-044

Dear Councilmember Pendleton:

This is in response to your letter requesting advice regarding your responsibilities pursuant to Government Code Section 84308 of the Political Reform Act (the "Act").<sup>1</sup> Since your advice request does not refer to a specific governmental decision, we are treating your request as one for informal assistance.<sup>2</sup>

## QUESTIONS

1. If you receive contributions from a person, does the Act restrict your participation in city council decisions affecting the contributor?

2. If you receive contributions from a person, does the Act restrict your participation, as a member of the city's redevelopment agency, in decisions affecting the contributor?

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<sup>1</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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

3. If you receive contributions from a person, does the Act restrict your participation, as a member of other governmental bodies on which you might serve, in decisions affecting the contributor?

#### CONCLUSIONS

1. You may participate in decisions of the city council affecting contributors, absent some economic interest under Section 87103.

2. Similarly, you may participate in decisions of the city's redevelopment agency affecting contributors, so long as the redevelopment agency consists, in its entirety, of the city council.

3. Section 84308 prohibits you from participating in proceedings of other governmental bodies as an appointed member of the other body if the proceeding involves a license, permit, or other entitlement for use and if you received a contribution of more than \$250 from a party or participant within the preceding 12 months.

#### DISCUSSION

The Act includes two provisions that require disqualification.

#### Section 87100

Section 87100<sup>3</sup> prohibits public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision which will foreseeably and materially affect the official, a member of his or her immediate family, or any economic interest.<sup>4</sup>

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<sup>3</sup> See, Sections 87102.5 and 87102.8 for conflict of interest rules applicable to Members of the Legislature and state officials.

<sup>4</sup> Economic interests include business entities in which the official has an investment worth \$1,000 or more, or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(a) and (d)); real property in which the official has an interest worth \$1,000 or more (Section 87103(d)); and sources of \$250 or more in income and donors of gifts aggregating \$250 or more received by or promised to the public official within the past 12 months. (Section 87103(c) and (e).)

However, sources of contributions are not economic interests for purposes of the conflict-of-interest provisions of the Act as set forth in Section 87100 and Section 87103. (Section 82030(b)(1); Eymil Advice Letter, No. A-86-025.)

### Section 84308

In 1983, Section 84308 was added to the Act. The purpose for the provision was to ensure that appointed members of boards or commissions would not be biased by large campaign contributors or potential contributors who might appear before them in a proceeding involving a license, permit or entitlement for use. Section 84308 imposes two requirements:

1. Disqualification

Section 84308(c) provides:

Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

Thus, if an officer has in fact accepted a contribution of more than \$250 during the last 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. (Section 84308(c).)

## 2. Contribution Limitation

In addition, Section 84308(b) provides:

No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred 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 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 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.

Emphasis added.

Thus, no officer of an agency shall accept, solicit, or direct a contribution of more than \$250, from any party,<sup>5</sup> or his or her agent, or from any participant,<sup>6</sup> 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. (Section 84308(b).)

## 3. Scope of Section 84308

Section 84308 applies to all governmental agencies, other than the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly

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<sup>5</sup> "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).)

<sup>6</sup> "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).)

elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. (Section 84308(a)(3).) Thus, when acting as a city councilmember, you would not have an obligation to disqualify yourself where a contributor appears before you.

In addition, Regulation 18438.1 provides that the exemption in Section 84308(a)(3) also applies where:

(1) They are acting as members of the governing body of the agency, and the body is acting in its entirety as itself or as the ex officio governing body of any other agency. This applies to a city council or board of supervisors which designates itself as the redevelopment agency for the city or county; or

(2) They are acting as members of any committee or subgroup of the governing body of the agency which is composed solely of members of the governing body of the agency.

Thus, the exception would also apply where the city council acts as the redevelopment agency for the city. (Kinney Advice Letter, No. A-87-274.) However, the exception would not apply where you are appointed to serve on any other body. (Wick Advice Letter, No. I-87-116.)

#### Other Contribution Limits

Please note, the Act contains other provisions limiting contributions. In June of 1988, Proposition 73 was adopted by the voters of California as amendments to the Political Reform Act (the "Act"). Proposition 73 provided that contributions to candidates for elective office must comply with fiscal year contribution limitations set forth in Sections 85301 and 85303. Further, Section 85302 set fiscal year limits on contributions to committees and political parties where the funds were to be used to make contributions to candidates. Proposition 73 also enacted a contribution limitation on special elections which was based on a per election scheme.<sup>7</sup>

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<sup>7</sup> For example, Section 85305(c)(1) permits an individual to contribute \$1,000 to a candidate for a special election. Thus, multiple contributions made to the candidate for the special election must be aggregated to insure that no more than \$1,000 is received by the candidate for the special election from a single contributor. Conversely, the fiscal year limits set forth in Sections 85301-85303 permitted repeated contributions for the same election in each new fiscal year.

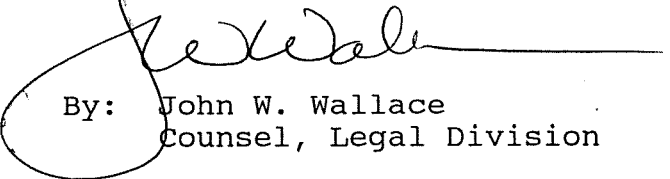
On September 25, 1990, in Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission,<sup>8</sup> the United States District Court invalidated portions of the Act added by Proposition 73, including all the contribution limitations in the Act based on fiscal years (Sections 85301, 85302, and 85303) and the transfer ban of Section 85304 as used to support the fiscal year contribution limitations.

However, the district court did not invalidate the special election and special runoff election contribution limitations, or the transfer ban of Proposition 73 with respect to those limitations.<sup>9</sup>

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>10</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

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<sup>8</sup> Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission (9th Cir. 1992) 955 F.2d 1312, cert. denied, \_\_\_ U.S. \_\_\_, 112 S.Ct. 3056.

<sup>9</sup> Section 85304 also continues to prohibit candidates for state or local office from transferring campaign funds to any candidate who is subject to any valid contribution limitations, including those limitations established by local jurisdictions.

<sup>10</sup> 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.