



California Fair Political Practices Commission

August 10, 1994

James Markman
Markman, Arczynski, Hanson, and King
Number One Civic Center Circle
P.O. Box 1059
Brea, CA 92622-1059

Re: Your Request for Informal Assistance
Our File No. I-94-223

Dear Mr. Markman:

This is in response to your letter requesting advice on behalf of the Brea Redevelopment Agency regarding Government Code Section 84308 of the Political Reform Act (the "Act").¹ Since your advice request does not name a specific official on whose behalf you are requesting this advice, we are treating your request as one for informal assistance.²

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

Does Section 84308 apply to city councilmembers who also serve as members of the City of Brea Redevelopment Agency where one city councilmember has declined to serve on the Redevelopment Agency and a public member has been appointed in his place?

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 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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

CONCLUSION

Section 84308 applies to city councilmembers who also serve as members of the City of Brea Redevelopment Agency unless the board is made up of the city council in its entirety without any other members.

FACTS

Pursuant to Health and Safety Code Section 33200, the Brea City Council established itself as the city's redevelopment agency (the RDA). Approximately one year ago, one city councilmember declined to serve on the RDA while retaining his position as a city councilmember. Pursuant to Health and Safety Code Section 33200(a), a public member was appointed to fill his term on the RDA. You have asked whether the members of the RDA will be subject to Section 84308 in future decisions of the RDA.³

ANALYSIS

Contributions and Conflicts of Interest

In 1983, Section 84308 was added to the Act in order to ensure that appointed members of boards or commissions would not be 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 applies to all appointed officers of any state agency or local government agency, with the exception of the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, and constitutional officers and imposes two requirements on officers subject to the section. First, no officer may accept, solicit,⁴ or direct a contribution of more than \$250, from any party,⁵ 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. (Section 84308(b).)

³ As noted above, the Commission will not advise regarding past conduct. Thus, this analysis should not be construed to comment on any prior decisions of the RDA.

⁴ 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.

⁵ "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).)

Furthermore, if an officer has received⁶ 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. (Section 84308(c).)

You have asked whether Section 84308 applies to members of the City of Brea Redevelopment Agency which is composed of the city council pursuant to Health and Safety Code Section 33200. You stated that one of the councilmembers has left the RDA but retained his city council office. A public member has been appointed to the RDA to replace the councilmember.⁷

Section 84308(a)(3) defines "agencies" subject to Section 84308 to exclude: "the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency." Regulation 18438.1(a) further provides:

(a) The officers of an agency exempted by Government Code Section 84308(a)(3) are exempted only when:

(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.

⁶ Regulation 18438.6(a) provides that for purposes of Section 84308, a person "accepts" or "receives" a contribution only if the contribution is for that person's own candidacy or own controlled committee.

⁷ Pursuant to Health and Safety Code Section 33200, where a city councilmember does not wish to serve on the RDA, the city council must appoint a replacement who is an elector of the city to serve the term of the replaced member.

The Brea City Council established itself as the RDA pursuant to Health and Safety Code Section 33200, rather than establishing an appointive body as authorized under Health and Safety Code Section 33110. Thus, pursuant to Regulation 18438.1(a)(1), the members of the city council are acting as members of the governing body of the RDA. (Clark Advice Letter, No. A-83-043; Reed Advice Letter, No. A-83-070; Pendleton Advice Letter, No. I-94-044.) However, because one city councilmember is unable to act on the RDA, a public member has been appointed to serve with the remaining councilmembers. Consequently, the RDA is no longer composed solely of members of the city council and Section 84308 would apply.

Exceptions

Please note, however, that Section 84308(c) provides that an official may participate in the proceeding if he or she returns the contribution (or amount of the contribution in excess of \$250) within 30 days from the time he or she knows, or should have known, both of the following:

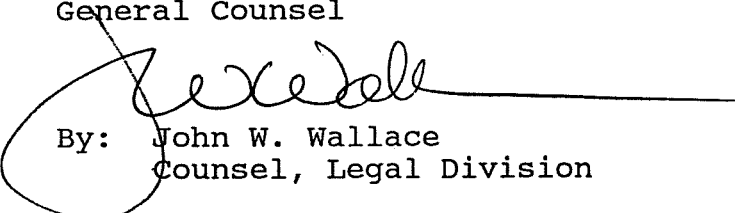
1. About the receipt of the contribution; and,
2. About the proceeding involving a license, permit, or other entitlement for use. (See, Regulation 18438.7.)

In addition, Section 87101 and Regulation 18701 (copy enclosed) provide a limited exception if the official's participation is legally required. This exception has been applied to disqualifications based on Section 84308 under some circumstances. (Gilbert Advice Letter, No. I-93-217.) However, we do not have facts pertaining to any specific decisions of the RDA to determine whether this exception might apply. You should contact us for further advice if you believe the exception might apply to a future decision.

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

Sincerely,

Steven G. Churchwell
General Counsel


By: John W. Wallace
Counsel, Legal Division

ENCLOSURE