

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
Opinion requested by)
League of California Cities,)
On Behalf of El Cajon City)
Councilmember Gary P. Kendrick)
_____)

No. O-22-002
December 22, 2022

BY THE COMMISSION: The League of California Cities (“CalCities”), on behalf of El Cajon City Councilmember Gary P. Kendrick, has requested an opinion of the Fair Political Practices Commission (“Commission”) on the following:

QUESTIONS

Under Government Code section 84308¹, as amended by Senate Bill 1439 (2022), may a local elected official be prohibited from taking part in a proceeding involving a license, permit, or other entitlement for use based on contributions received before SB1439 took effect (January 1, 2023)? May a local elected official be prohibited from receiving a contribution based on the official’s participation in a license, permit, or other entitlement for use proceeding that took place before SB 1439 took effect?

CONCLUSION

No. Based on the statutory language and legislative history, there is no indication the Legislature intended SB 1439’s “lookback” periods to apply to contributions received and proceedings participated in prior to Section 84308’s amended provisions taking effect. Absent express language otherwise, we find that a local elected official is not prohibited from taking part in a proceeding involving a license, permit, or other entitlement for use based on contributions received before January 1, 2023. Similarly, a local elected official is not prohibited from receiving a contribution based on the official’s participation in a license, permit, or other entitlement for use proceeding so long as the official’s participation occurred before January 1, 2023.

BACKGROUND

Currently, Section 84308 of the Political Reform Act prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party, participant, or agent thereof while a proceeding involving a license, permit, or other entitlement

¹ All statutory references are to the California Government Code unless otherwise indicated.

for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the official knows or has reason to know that the participant has a financial interest, as further specified in the Act. An official is also prohibited from taking part in such a decision if they have received a contribution exceeding \$250 within the preceding 12 months. Additionally, the term “agency,” as used in Section 84308, does not currently include local governmental agencies whose members are directly elected by voters.

On January 1, 2023, SB 1439 goes into effect, amending Section 84308 in two key ways. First, the bill extends the period in which such a contribution is prohibited after a final decision is rendered from three months to 12 months. Second, the application of Section 84308 will extend to local government agencies whose members are directly elected by voters (e.g., city council members).

After SB 1439 passed, the FPPC received several requests for clarification on how Section 84308, as amended, will apply on January 1, 2023. CalCities formalized some of those questions with a request for an FPPC Opinion on behalf of El Cajon City Councilmember Gary P. Kendrick. At the November 2022 Commission meeting, after discussing the statutory language, legislative history, and case law supporting different interpretations of Section 84308, the Commission directed Legal Division staff to prepare an Opinion concluding that SB 1439’s amendments to Section 84308 do not apply to contributions received or proceedings participated in by local elected officials prior to January 1, 2023, when SB 1439’s amendments take effect.

ANALYSIS

Under Section 83111, “[t]he Commission has primary responsibility for the impartial, effective administration and implementation” of the Act. When the Commission interprets a statute, it follows the same canons of statutory construction employed by the courts. *Britton et al. v. Dallas Airmotive, Inc. et al.* (2007) 153 Cal.App.4th 127, 131-132 explains:

Our primary objective in interpreting a statute is to determine and give effect to the underlying legislative intent. We begin by examining the statutory language, giving the words their usual, ordinary meanings and giving each word and phrase significance. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions ... relating to the same subject matter must be harmonized to the extent possible. An interpretation that renders related provisions nugatory must be avoided; each sentence must be read not in isolation but in the light of the statutory scheme; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. If the terms of the statute

are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.

(Internal citations and quotation marks omitted.)

In examining the amended statutory language, no provision expressly states the statute is intended to apply to local elected officials based on conduct that occurred prior to the amendments taking effect. Although the statute includes language pertaining to the 12-month period prior to and following a license, permit, or other entitlement for use proceeding, the context of this language must be considered in determining the Legislature's intent. For the reasons discussed below, we interpret Section 84308's amended provisions to apply to contributions received and proceedings participated in by local elected officials after, and not before, January 1, 2023.

A. The Legislature Was Presumably Aware the Commission Had Previously Interpreted Section 84308 to Apply Only to the Period After the Statute's Effective Date.

In 1982, the Legislature passed the Levine Act, adding Section 84308 to the Act. Though Section 84308 applied to a narrower range of public officials, it similarly prohibited an official from taking part in certain proceedings where the official had received a contribution exceeding \$250 from a party or participant within the 12 months prior to the proceeding. The statute took effect on January 1, 1983. The Commission's historical files indicate that, just as in the wake of SB 1439, the Commission received several questions regarding how Section 84308 would apply. Subsequently, the Commission adopted Regulation 18438, which read, "[t]he prohibitions and requirements of Government Code Section 84308 do not apply to contributions made or received prior to January 1, 1983."

For purposes of interpreting amended Section 84308, the Legislature was presumably aware of the Commission's prior interpretation. Accordingly, if the Legislature had intended Section 84308's amended provisions to apply differently, it presumably would have included express statutory language to that effect. (See *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243, 252 ("The Legislature is presumed to be aware of long-standing administrative practice If the Legislature . . . makes no substantial modifications to the act, there is a strong indication that the administrative practice was consistent with the legislative intent."); see also *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1017-1018 ("[A] presumption that the Legislature is aware of an administrative construction of a statute should be applied if the agency's interpretation of the statutory provisions is of such longstanding duration that the Legislature may be presumed to know of it."))

B. Applying Amended Section 84308 Based on Contributions Received in 2022 Would Not Give Some Officials the Opportunity to Return the Contributions in Order to Participate in a Proceeding as Contemplated by the Statute.

As provided currently in Section 84308(c) and incorporated in amended Section 84308(d)(1):

If an officer receives a contribution which would otherwise require disqualification under this section, and returns the contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, the officer shall be permitted to participate in the proceeding.

The above language provides a public official a period in which a contribution may be returned so the official is not inherently prohibited from taking part in a proceeding based on a contribution they received. Because an official who accepts a contribution may not anticipate it will disqualify them from a subsequent proceeding, the statute expressly provides the opportunity to return the contribution. However, this return period is limited to 30 days after having knowledge of the contribution and proceeding.

If applied to contributions received and proceedings initiated in 2022, SB 1439 would create a scenario in which some officials may not have the opportunity to return a contribution in order to take part in a proceeding. Specifically, a local elected official would be unable to return a contribution received in 2022 and take part in the subsequent proceeding if more than 30 days have passed since acquiring knowledge of the receipt of the contribution and the initiation of the proceeding. Given the statute expressly provides officials with an opportunity to return a contribution, it appears the Legislature was not attempting to supplant this provision in adopting amended Section 84308. (See *Jackpot Harvesting Co., Inc. v. Superior Court* (2018) 26 Cal.App.5th 125, 141 (stating where statutory language is unclear, courts “select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences”).)

C. Applying Amended Section 84308 Based on Contributions Received in 2022 May Complicate Governance by Disqualifying Officials from Decisions Without the Opportunity to Return the Contributions.

Applying Section 84308 to local elected officials based on contributions received in 2022 may significantly complicate officials' ability to effectively govern their respective jurisdictions. For example, without having been able to reasonably anticipate that SB 1439 would potentially apply, some officials would not have had the opportunity to plan accordingly. For instance, an official may have already spent a contribution without knowledge that the contribution may lead

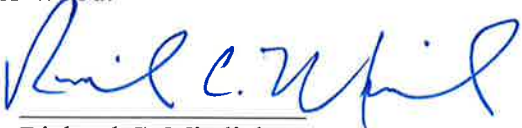
to disqualification from a subsequent decision. Consequently, the official may be unable to return the contribution in order to participate in a proceeding.

Applying amended Section 84308 to contributions that occurred in 2022 may also impact agencies' ability to make governmental decisions throughout the 2023 calendar year due to the potential that numerous officials would be disqualified from taking part in a proceeding because the officials did not have the opportunity to return contributions from a party to, or participant in, the proceeding. Further, officials would be required to review whether each participant in each new or ongoing proceeding contributed to the official in the prior 12 months or revealed facts in written or oral support or opposition before the official's agency that made the participant's financial interest apparent (see Regulation 18438.7(a)(2))—a task that may prove impractical, particularly with respect to proceedings occurring shortly after January 1, 2023. By applying Section 84308's amended provisions only to contributions and participation occurring *after* January 1, 2023, it will better enable officials to establish systems for tracking and flagging contributions for potential disqualification under Section 84308 going forward.

CONCLUSION

Based on the above considerations, there is no clear indication that the Legislature intended SB 1439's "lookback" periods to apply to contributions received and proceedings participated in prior to Section 84308's amended provisions taking effect. In amending Section 84308, the Legislature was presumably aware the Commission had previously interpreted Section 84308's provisions to apply *after* the effective date of the statute. Additionally, applying Section 84308's amended provisions to contributions received and participation by local elected officials that occurred in 2022 would create a gap in the statutory framework, leaving some officials unable to return contributions in order to participate in proceedings as the Legislature intended. Finally, such an interpretation would also create logistical issues based on officials' inability to have anticipated the statutory amendments, potentially delaying or otherwise complicating important governmental decisions. With these factors in mind, and absent express language otherwise, we find that a local elected official is not prohibited from taking part in a proceeding involving a license, permit, or other entitlement for use based on contributions received before January 1, 2023. Similarly, a local elected official is not prohibited from receiving a contribution based on the official's participation in a license, permit, or other entitlement for use proceeding so long as the official's participation occurred before January 1, 2023.

Approved by the Commission on December 22, 2022. Concurring: Chair Miadich, Commissioners Baker, Gómez, and Wilson. Absent: Commissioner Wood.



Richard C. Miadich
Chair