



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 11, 2024

Tony Lopresti
County Counsel
County of Santa Clara
County Government Center
70 West Hedding Street
East Wing, 9th Floor
San José, California 95110-1770

Re: Your Request for Informal Assistance
Our File No. I-23-177

Dear Mr. Lopresti:

This letter responds to your request for advice regarding Section 84308 (“the Levine Act”) of the Political Reform Act (the “Act”).¹ Because your request for advice is general in nature, we are treating it as a request for informal assistance.²

Please note that we are only providing advice under Section 84308 of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or any local contribution limits.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. Under Section 84308, may members of the County of Santa Clara Board of Supervisors accept contributions greater than \$250 from a non-profit organization during the 12 months following the date a final decision was rendered in an entitlement for use proceeding involving the awarding of a \$1,000 “sponsorship” to the organization from the County?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

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).)

2. Under the same circumstances, may County Supervisors accept contributions greater than \$250 from the non-profit's compensated executive director?
3. Under the same circumstances, may County Supervisors accept contributions greater than \$250 from the executive director's spouse?
4. Under the same circumstances, may County Supervisors accept contributions greater than \$250 from the non-profit's employee?
5. Under the same circumstances, may County Supervisors accept contributions greater than \$250 from non-compensated members of the non-profit's board of directors?

CONCLUSION

1. No, because the non-profit was a party in the entitlement for use proceeding, the non-profit may not make, and the County Supervisors may not accept, contributions greater than \$250 during the 12 months following the final decision in the entitlement for use proceeding.
2. The answer will depend on whether the executive director's contributions are required to be aggregated with contributions by the non-profit under Section 82015.5 or based on his status as an "agent," both of which are discussed in detail below.
3. Yes, assuming the executive director's spouse's only connection to the proceeding is through their marriage (e.g., the spouse did not also qualify as an agent of the non-profit), the spouse may make, and the County Supervisors may accept, contributions greater than \$250, as they are not aggregated with those made by the non-profit.
4. The answer will depend on whether the employee qualifies as an "agent," in which case the employee's contributions would be aggregated with those made by the non-profit. An employee could alternatively qualify as a "participant," in which case the employee would be subject to a separate (i.e., not aggregated) \$250 contribution limit. Both scenarios are discussed in detail below.
5. Yes, because non-compensated non-profit officers' contributions are not aggregated under Section 82015.5 and non-compensated officers do not qualify as agents, their contributions are not aggregated with the party's contributions and therefore are not limited to \$250.

FACTS AS PRESENTED BY REQUESTER

On August 15, 2023, the County of Santa Clara Board of Supervisors unanimously approved a County sponsorship in the amount of \$1,000 to KCAT TV, a local nonprofit public television station operated by Los Gatos Public Media. Additionally, County of Santa Clara Board of Supervisors Policy 3.68 requires that any sponsorship made using County funds must be accompanied by a contractual agreement between the County and the sponsored organization.

ANALYSIS

1. Contributions From the Non-Profit Within 12 Months of Sponsorship

Your first question is whether a County Supervisor or their committee may accept from KCAT TV (as an entity) a contribution greater than \$250, made within the 12 months following the Board of Supervisors' sponsorship action.

Section 84308(b) states:

While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party's agent, or from any participant or a participant's agent 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.

Section 84308(a)(5) defines the phrase "license, permit, or other entitlement for use" to mean "all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises." Additionally, Section 84308(a)(1) defines "party" to mean "any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use." Based on the facts presented, the County has provided a sponsorship to the local nonprofit television station requiring a contractual agreement with the County. Under these circumstances, the sponsorship agreement is an "entitlement for use" for purposes of Section 84308 and the KCAT TV qualifies as a "party" in the proceeding. Therefore, the County Supervisors are prohibited from accepting a contribution greater than \$250 within the 12 months following the date a final decision is rendered in the proceeding. If no additional governmental decisions are made after entering the contract, the date the contract is entered is "the date a final decision is rendered."

2. Contributions From the Non-Profit's Executive Director Within 12 Months of Sponsorship

Your second question is whether a County Supervisor may accept from the compensated executive director of the nonprofit a contribution greater than \$250, made within the 12 months following the Board of Supervisors' sponsorship action.

As discussed above, County Supervisors are prohibited from accepting contributions greater than \$250 from KCAT TV for 12 months after the date a final decision is rendered in the proceeding, given that KCAT TV was a party in the proceeding. Regulation 18438.5 establishes that in determining whether a contribution of more than \$250 has been made by a party during a 12-month period, contributions made by the party are aggregated with, among other things, "[a]ll contributions made by an individual, other than an uncompensated officer of a nonprofit organization, or entity required to be aggregated with the party or participant and any agent of the party or participant under Section 82015.5." (Regulation 18438.5(a)(1), (3).) Section 82015.5, in turn, provides:

- (a) To determine when contributions are aggregated under this title, "entity" means any person other than an individual, and "majority owned" means ownership of more than 50 percent.
- (b) If an individual directs or controls an entity's contributions, the entity's contributions shall be aggregated with contributions made by both of the following:
 - (1) That individual.
 - (2) Any other entity whose contributions that individual directs or controls.

- (c) If two or more entities make contributions that are directed or controlled by a majority of the same persons, the contributions of those entities shall be aggregated.
- (d) Contributions made by entities that are majority owned by a person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their contribution-making decisions.

Here, the KCAT TV executive director is a *compensated* non-profit officer, so the aggregation standards under Section 82015.5 would apply. Accordingly, if the KCAT TV executive director directs or controls KCAT TV's contributions, the executive director's personal contributions are aggregated with those made by KCAT TV as an entity and, therefore, the County Supervisors would be prohibited from accepting a contribution greater than \$250, in the aggregate, from both KCAT TV and the executive director. For example, in such a scenario KCAT TV and its executive director could each permissibly contribute \$125 for a total of \$250, or KCAT TV could contribute \$200 and the executive director could contribute up to \$50. To be clear, KCAT TV and the executive director could not permissibly *each* contribute \$250.

Additionally, even if the executive director did not fall within the scope of Section 82015.5, his contributions may still be required to be aggregated with those of KCAT TV's if he qualifies as an "agent." Regulation 18438.5 similarly requires that contributions made by a party's agent be aggregated with contributions by the party during the shorter period of: (a) the previous 12-month period; or (b) the period beginning on the date the party or participant first hired the agent as either a paid employee, contractor, or consultant. (Regulation 18438.5(a)(2).) Under Regulation 18438.3:

A person is the "agent" of a party to, or a participant in, a pending proceeding involving a license, permit or other entitlement for use only if the person represents that party or participant for compensation and appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding.

(Regulation 18438.3(a).) Accordingly, if KCAT TV's executive director was compensated for his communication with the County for the purpose of influencing the proceeding (e.g., signing KCAT TV's sponsorship application or appearing before the County Board of Supervisors regarding the sponsorship), then the executive director would qualify as an agent and his contributions would similarly have to be aggregated with KCAT TV's contributions and would be subject to the same limits discussed above with respect to aggregation under Section 82015.5. To the extent there are any future questions regarding the aggregation of the executive director's contributions with the nonprofit entity or the qualification of the executive director as an agent, you may wish to seek additional guidance providing the factual circumstances known to the County regarding the executive director's involvement in the proceeding.

3. Contributions From the Executive Director's Spouse Within 12 Months of Sponsorship

Your third question is whether a County Supervisor may accept from the spouse of the KCAT TV executive a contribution greater than \$250, made within the 12 months following the Board of Supervisors' sponsorship action.

Generally, contributions made by a spouse of a party in an entitlement for use proceeding would be considered separate and not aggregated with contributions made by the party for purposes of Section 84308. In some cases, where the subject of the proceeding is a business or real property co-owned by the spouse, the spouse would be considered a party to the proceeding even if the spouse did not personally initiate the proceeding. (See *Kammerer* Advice Letter, No. I-89-632.) Here, however, the executive director's spouse would not qualify as a party or party's agent (assuming the spouse was not personally compensated by the non-profit for communication with the County for the purpose of influencing the proceeding). Accordingly, the spouse would not be subject to Section 84308's \$250 contribution limit, nor would the County Supervisors be prohibited from accepting a contribution greater than \$250 from the spouse.

4. Contributions From the Non-Profit's Employees Made Within 12 Months

Your fourth question is whether a County Supervisor may accept from a KCAT TV employee a contribution greater than \$250, made within the 12 months following the Board of Supervisors' sponsorship action.

The answer to this question will depend on the employee's relationship to the entitlement for use proceeding. As discussed above, contributions made by a party's agent are required to be aggregated with contributions made by the party itself for purposes of calculating the \$250 limit. As such, if an employee qualified as an "agent" based on having been compensated to communicate with the County for the purpose of influencing the proceeding, the employee's contributions would be aggregated with those made by KCAT TV and subject to the \$250 limit. We emphasize that in determining whether an individual qualifies as an agent, their communication with the County must be for the purpose of influencing the proceeding. Accordingly, an individual who interacts with the County in a solely administrative or ministerial capacity (e.g., an administrative assistant forwarding documents or other communications drafted by an officer or another employee of KCAT TV) or in a manner entirely unrelated to the sponsorship proceeding, would not qualify as an agent for purposes of Section 84308.

Alternatively, if the employee did not qualify as an "agent" for purposes of Section 84308, the only other manner in which contribution limits would apply under Section 84308 would be if the employee qualified as a "participant" in the proceeding. Under Section 84308(b), "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, as described in Article 1 (commencing with Section 87100) of Chapter 7."

In the present scenario, in order to qualify as a "participant," rather than as an "agent," a KCAT TV employee would have had to take part in the proceeding in an *uncompensated* capacity. In other words, the employee's participation in the proceeding would have had to have occurred in their personal capacity and outside the scope of their duties as an employee. For example, if communicating with the County regarding the sponsorship fell outside the scope of duties for an employee who worked at KCAT TV, but the employee submitted a public comment in support of the sponsorship application outside of their work capacity, the employee could qualify as a "participant" because the employee source of income—KCAT TV—is the subject of the proceeding. (See Regulation 18702.3(a)(1) [an individual's source of income would experience a material financial effect from a governmental decision if the source of income is the subject of the

governmental decision].) If an employee qualified as a “participant” in the proceeding, the employee would be subject to a \$250 contribution limit *separate from* KCAT TV’s \$250 contribution limit—that is, a participant’s contributions are not aggregated with a party’s contributions.

Outside of the scenario where an employee qualifies as an agent and the less common scenario where a non-agent employee acts in their personal capacity in such a way that would qualify them as a “participant,” contributions made by a KCAT TV employee would fall outside the scope of Section 84308. To the extent there are any future questions regarding the qualification of any particular employee as an agent or participant in the proceeding, you may wish to seek additional guidance providing the identity of the employee and the factual circumstances known to the County regarding the employee and the employee’s involvement in the proceeding.

5. Contributions From the Non-Profit’s Non-Compensated Directors Made Within 12 Months

Your final question is whether a County Supervisor may accept a contribution greater than \$250 from a non-compensated member of KCAT TV’s board of directors, made within the 12 months following the Board of Supervisors’ sponsorship action.

As discussed above, in determining whether a party has contributed more than \$250 in a 12-month period, the contributions of individuals and entities specified in Section 82015.5 are generally aggregated with contributions made by the party directly. (Regulation 18438.5(a)(3).) However, this does *not* apply to contributions made by a non-compensated officer of a non-profit, such as the uncompensated officers of KCAT TV. Similarly, contributions made by a party’s agent are also aggregated with contributions made by the party. (Regulation 18438.5(a)(2).) However, by definition, to qualify as an “agent,” one must be compensated for their representation. (Regulation 18438.3(a).) You have specifically inquired about County Supervisors’ ability to accept contributions greater than \$250 from non-compensated members of KCAT TV’s board of directors. Given that these board directors would not be included with those aggregated under Section 82015.5 and would not be considered “agents,” their contributions are not aggregated with contributions made by KCAT TV and, therefore, the board directors are not subject to the \$250 contribution limit.³ Therefore, they may make, and the County Supervisors may accept, contributions greater than \$250 during the 12 months following the date a final decision is rendered in the sponsorship proceeding.

³ We also note that because the board directors are not compensated, they generally could not qualify as “participants” in the same way that a KCAT TV employee could, as any financial interest in the proceeding could not be based on the financial effect the proceeding would have on KCAT TV as a source of income.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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