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6/14/23

VIA E-MAIL

Chair Richard C. Miadich
Commissioner Catherine Baker
Commissioner E. Dotson Wilson
Commissioner Abby Wood
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, California 95811

Sent Via Email: CommAsst@fppc.ca.gov

**Re: Comment Letter on Proposed Amended Levine Act
Regulations Introduced on June 8, 2023**

Dear Chair Miadich and Commissioners Baker, Wilson, and Wood:

The County of Los Angeles ("County") Office of the County Counsel thanks the Fair Political Practices Commission ("Commission") for its work in amending regulations pertaining to Government Code section 84308 ("Section 84308") and for considering the County's feedback on the proposed regulations. We respectfully request the Commission consider the comments below for the Commission's June 15, 2023 meeting.

Regulation 18438.1, Officers and Agencies Under Section 84308

We thank the Commission for clarifying the applicability of Section 84308 to County department heads. We believe that the amended Regulation 18438.1 now resolves the ambiguity that exists in the current regulations.

Regulation 18438.2, Proceedings Under Section 84308

We appreciate the addition of definitions for "competitively bid," "personal employment," and "labor contracts;" however, we urge the Commission

to also include a definition of "entitlement for use" in this regulation. The types of decisions that may come before a county board of supervisors is vast. Some of these decisions do not appear to raise pay-to-play concerns, such as contracts that do not involve the payment or exchange of funds, and contracts or other entitlements between public agencies. Some other types of decisions may directly impact both identifiable individuals or entities and the broader public. We believe that regulatory guidance on what constitutes an entitlement for use will assist local officers to comply with Section 84308.

Regulation 18438.3, Agents Under Section 84308

The express requirement for a representative to receive compensation to be considered an "agent" poses significant practical concerns for local officers. Other than inquiring with the agent, party, or participant, and relying on those voluntary disclosures, an officer has no other reasonable means to determine whether an agent receives compensation in exchange for appearing before or communicating with an agency about a proceeding. Apart from the logistical difficulties in obtaining this information, this will likely lead to inadvertent violations of Section 84308. For example, an officer may violate this section if they are affirmatively, but incorrectly informed, that an agent was not compensated. Alternatively, an officer may violate this section if they were unable to ascertain that an agent was compensated despite efforts to do so.

Regulation 18438.5, Aggregated Contributions Under Section 84308

Similar to the requirement that an agent be compensated, this proposed regulation excludes contributions from uncompensated board members of a non-profit organization from being aggregated. Practically, it will be difficult for an officer to determine which members of a non-profit board receive compensation. This regulation may arguably place upon the officer a duty to ascertain compensation of non-profit board members, adding to the significant burden Section 84308 already places upon local elected and appointed officials determine who are parties, participants, and agents.

Regarding the aggregation of contributions from entities, Regulation 18438.5 places another significant burden on local officers and their staff to ascertain information that is difficult, if not impossible, to acquire. For example, the proposed regulation now requires contributions made by an agent during the shorter of the previous 12-month period or the period beginning on the date the party or participant first hired the agent. A local officer most likely would have no knowledge of the date an agent was hired, and will likely

aggregate all contributions made from an agent in the previous 12-month period in an abundance of caution.

Regulation 18438.7, Prohibitions and Disqualifications Under Section 84308

We ask that the Commission adopt Option 1 for subdivision (b)(2) of this regulation. We ask that the Commission decline to adopt Option 2, and decline to adopt both Option 1 and Option 2.

Under the Ralph M. Brown Act, agendas for regular meetings must be posted a minimum of 72 hours in advance of the meeting.¹ For other types of meetings, such as special or emergency meetings, notice may be 24 hours or less.² Given varying time requirements for posting agendas, the heavy volume of business conducted at most County meetings, and the sheer amount of contributions that officers in larger jurisdictions may receive, a blanket rule based on the presumption that local officers have sufficient time to search for contributions from parties identified in an agenda fails to adequately reflect the practical impact on local government agencies.

Regulation 18438.8, Disclosure Under Section 84308 and Regulation 18705, Legally Required Participation

We thank the Commission for amending these regulations to explicitly permit an employee of an agency to make the required disclosures, and to permit disclosures to be made orally or in writing. We believe that these amendments will greatly assist local officers and their agencies with properly making these disclosures and allows jurisdictions an appropriate amount of flexibility.

¹ Gov. Code section 54954.2.

² Gov. Code sections 54956, 54956.5.

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Conclusion

Thank you for considering our comments. Please do not hesitate to contact me at ssylvester@counsel.lacounty.gov if you or your staff would like to discuss our comment, or if you have any questions.

Very truly yours,

DAWYN R. HARRISON
County Counsel

A handwritten signature in black ink, appearing to read "Shante Sylvester", is written over a light gray rectangular background.

By

SHANTE SYLVESTER
Senior Deputy County Counsel
Board Liaison Division

SS:jm