



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 25, 2024

Ryan O'Connor
Education Program Manager
San Diego Ethics Commission
451 A Street, Suite 1410
San Diego, CA 92101

Re: Your Request for Informal Assistance
Our File No. I-24-035

Dear Mr. O'Connor

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 your request as one for informal assistance.²

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, when a client qualifies as a party or participant in an entitlement for use proceeding and has a lobbyist agent, are contributions by the lobbyist’s lobbying firm aggregated with contributions by the client?
2. Under Section 84308, are contributions made by a lobbying firm employee who is not a lobbyist aggregated with contributions made by the client?

CONCLUSIONS

1. Yes, under Regulation 18438.3, when a lobbyist is acting as an agent of a party or participant and is acting as an employee of a consulting firm or similar entity or corporation, both the lobbyist and the firm are “agents.” Because a lobbying firm will qualify as either a consulting firm or a similar entity or corporation, it qualifies as an agent and aggregates its contributions with the client’s contributions.

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. Whether a lobbying firm employee's contributions must be aggregated with contributions by the client will depend on whether the employee qualifies as an agent or meets the criteria established in Regulation 18438.5 and Section 82015.5, discussed further below.

FACTS AS PRESENTED BY REQUESTER

An employee of a local lobbying firm reached out to the San Diego Ethics Commission inquiring whether an employee of a lobbying firm who is not a lobbyist may have their contributions aggregated with contributions by a client for purposes of Section 84308. Accordingly, you have sought advice on the same question on behalf of the San Diego Ethics Commission and have also inquired whether contributions by the lobbying firm itself must be aggregated with contributions by a client who qualifies as a party or participant for purposes of Section 84308.

ANALYSIS

The Act's "pay to play" restrictions, contained in Section 84308, aim to ensure that officers of government agencies are not 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 is aimed not only at actual corruption or bias but also at the appearance of corruption or bias that may occur if a public officer were to solicit or accept contributions from a party or financially interested participant while a proceeding is pending before the public officer's agency or has recently concluded.

Section 84308 places several restrictions on officials involved in entitlement for use proceedings and on parties and their agents involved in those proceedings. Under Section 84308(e)(1), parties must disclose contributions over \$250 made within the preceding 12 months by them or their agents. Section 84308(e)(2) prohibits parties and their agents from contributing more than \$250 to any officer of the agency during the proceeding and for 12 months following the date the agency renders a final decision in the proceeding.

Contributions by a Lobbying Firm

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).) Regulation 18438.3(b) provides that "[i]f an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are 'agents.'"

Under the Act, "lobbying firm" means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

- (1) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist.

- (2) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislative or administrative action.

(Section 82038.5(a).)

Generally, a lobbying firm will also qualify as a “consulting firm,” as the term is commonly understood. A lobbying firm’s lobbying activities do not occur in a vacuum; instead, a lobbying firm consults with its clients and provides expertise and strategies to achieve client goals.

If a lobbying firm’s services or structure could not be accurately characterized as a “consulting firm,” a lobbying firm would still qualify as a “similar entity or corporation.” Like law, architectural, engineering, and consulting firms, a lobbying firm may involve a partnership or association of individuals or a single individual. Still, the firm *as an entity* is entitled to compensation for the representation of a client. It would defeat Section 84308’s goal of combatting even the appearance of pay-to-play or *quid pro quo* practices if a firm could contribute more than \$250, which would be prohibited if made by the particular firm employee acting as the client’s agent. The same is true of a lobbying firm. If a lobbying firm could contribute more than \$250 to a public official, despite the same contribution being prohibited for the specific lobbyist acting as the firm client’s agent, Section 84308’s restrictions could easily be avoided based on a technicality.

Accordingly, we advise that a lobbying firm is generally a “consulting firm” and, alternatively, a “similar entity or corporation,” as the phrase is used in Regulation 18438.3(b). Thus, a lobbying firm is subject to the same contribution limits as the particular firm lobbyist acting as the firm client’s agent in the entitlement for use proceeding, and, all contributions from the client, the individual lobbyist representing the client, and the firm will be aggregated for purposes of Section 84308.

Contributions by a Lobbying Firm Employee

You have also inquired about the circumstances in which a contribution by a lobbying firm employee—specifically a non-lobbyist—would be required to be aggregated with contributions by the firm client. Whether Section 84308 requires aggregation of a contribution by a firm employee will depend on whether (1) the employee meets the definition of “agent;” or (2) the employee is required to be aggregated under Regulation 18438.5.

As noted above, 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).) An employee of a lobbying firm does not need to be a lobbyist to qualify as an “agent” for purposes of Section 84308. However, the employee must meet the above definition. An employee of a lobbying firm who is not paid to represent the client or who does not communicate with the governmental agency *for the purpose of influencing the pending proceeding* does not

qualify as an agent. (See also Staff Memo to Commission Regarding Proposed Adoption of Section 84308 Regulations Implementing SB 1439, June 5, 2023, p. 9 [explaining that non-persuasive communications, such as a law firm assistant forwarding a communication by an attorney, do not qualify an individual as an agent].)

Under Regulation 18438.5(a), to determine whether a contribution of more than \$250 has been made by a party or participant during a 12-month period, contributions made by the party or participant—in this case, the lobbying firm client—are aggregated with contributions by the party or participant’s agent(s)—in this case, the lobbying firm employees who meet the definition of “agent,” as well as the lobbying firm itself. (See Regulation 18438.5(a)(1)-(2).) These contributions are also aggregated with “[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.” (Section 18438.5(a)(3).) Section 82015.5, in turn, reads:

- 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.

Contributions by a lobbying firm employee would be aggregated with contributions by the firm (i.e., an agent) and its client (i.e., the party or participant in the proceeding) if the employee met the above standards. For example, if the employee directed or controlled the firm’s contributions, the employee’s contributions would be aggregated. In contrast, if the employee held a rank-and-file position and did not own the firm or direct and control its contributions, the employee’s contributions would not be aggregated.


The information in this informal assistance letter is a general explanation of the definition of “agent” and contribution aggregation requirements under Section 84308. If a specific lobbying firm or lobbying firm employee has questions on whether they qualify as an “agent” or must have their contributions aggregated for Section 84308 purposes, they should seek additional advice.

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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