



Ava Community Energy

California's New Campaign Contribution Regulations: What Local Governments Need to Know

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Ava Community Energy



Government Code Section 84308 (Levine Act of 1982)

- Anti-corruption law intended to curb pay-to-play schemes
- The new law “**closes the loophole**” that previously allowed directly elected officials, and not appointed officials, to take action on matters that affected contributors when the elected received donations for a political campaign

Legislative Changes



Former Government Code Section 84308 (applies to contributions made and proceedings participated in prior to Jan. 1, 2023)

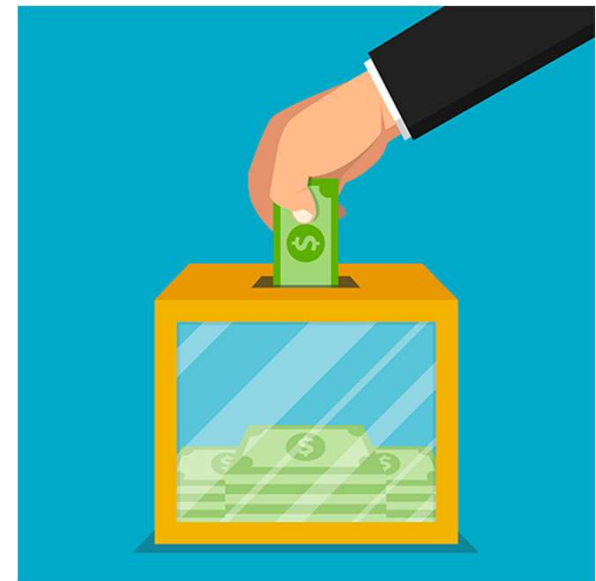
- Only impacted appointed, non-elected local or state agency officers
- Fundraising ban for post-proceeding contributions over \$250 was limited to 3 months after the final decision

Amended Government Code Section 84308 (new prohibitions and requirements are effective as of Jan. 1, 2023)

- Broadened fundraising prohibitions and recusal requirements to include local elected officers
- Fundraising ban for post-proceeding contributions over \$250 was extended to 12 months after the final decision

1. Disclosure and Recusal Requirements

- An officer cannot **make, participate in making, or attempt to use their official position to influence the decision** if they **“willfully or knowingly”** received a contribution from the **party, participant, or agent** with a **financial interest**
- An officer who received contributions of more than \$250 from a party, “participant” (who the officer knows has a financial interest), or their agent in the 12 months prior to rendering a decision must:
 - (1) **disclose the fact on the record and**
 - (2) **recuse**



What is the “willful and knowing” receipt of a disqualifying contribution?



- Actual knowledge
- Aware of facts establishing other reasons to know of contribution (someone has informed officer, party or participant previously made 2 or more \$250+ contributions, personal solicitation, personal acceptance)
- Party to a proceeding before the agency involving the license, permit, or use entitlement discloses the contribution made on behalf of himself *or his agent* within the preceding 12 months as required pursuant to Government Code 84308(e)
- **Not actual knowledge:** Contribution reporting alone

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IB5 add comma after participant
Irina Berman, 11/9/2023

2. Fundraising Ban

- An officer cannot “accept, solicit, or direct” a contribution over \$250 from any party, participant, or their agent (if the officer “knows or has reason to know” that the participant has a financial interest), **while a proceeding involving a license, permit, or other use entitlement is pending and for 12 months following the final decision**



What types of proceedings are covered?

License, permit, or other entitlement for use proceedings

- “All business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts, and all franchises”
- Exceptions: Competitively bid, labor, and personal employment contracts
- Examples for Ava Board members: Professional services agreements, energy supplier contracts, non-competitively IB6d programmatic agreements

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IB6 competitive ?
Irina Berman, 11/9/2023

When is a proceeding “pending”?

A proceeding has commenced and is pending for a local officer when:

- The decision is before officer’s consideration as an item on a public meeting agenda; or
- The officer knows, or has reason to know, the proceeding is before the agency’s jurisdiction for its decision and it is reasonably foreseeable that decision will come before the officer



Who is a “participant” with a financial interest in a proceeding?

- A “participant” lobbies, testifies in person, or otherwise communicates with an officer or employee of the agency for the purpose of influencing the decision-making and has a financial interest in a decision
- If an officer is aware that the individual has a financial interest in a decision, the officer is required to disclose contributions of more than \$250 in the past 12 months and recuse themselves

Financial Interest

- The officer must have actual knowledge of the “participant’s” financial interest or the “participant” reveals facts during the proceeding that make that person’s financial interest apparent (giving the officer a “reason to know” about the financial interest):
 - Property interest within 500 feet of real property at issue in the proceeding
 - Economic interest in a business entity that may see a significant increase or decrease in customers as a result of the proceeding
 - A business relationship with the applicant that may result in additional services provided to the applicant
 - Not an economic interest in the general vicinity of a business entity or real property at issue in the proceeding

Can officers cure violations?

- Did the officer receive the contribution prior to knowing or having reason to know the proceeding involving the party commenced? → **Yes**
- Did the officer receive the contribution from a participant prior to knowing or having reason to know of the participant's financial interest in the matter? → **Yes**
- **Solution:** Return the excess portion of the contribution within 30 days from the time the officer knows or should have known about the contribution and proceeding, allowing the officer to participate, and do not solicit or accept a contribution for at least 12 months after the decision



Can officers cure a **post-proceeding** violation?

- Did the officer knowingly and willfully accept, solicit, or direct the contribution during the 12 months after the date of a final decision in a proceeding? → **No**
- If an officer unknowingly accepts, solicits, or directs a disqualifying contribution during the 12 months post-proceeding, the officer may cure violation by returning excess portion within 14 days of accepting, soliciting, or directing contribution (whichever is latest)
- Pre-Decision Violation: The period to cure the violation begins within 30 days after the officer learns about the contribution and the participant's financial interest in the proceeding
- Post-Decision Violation: Within 14 days of accepting the contribution only if the officer did not knowingly and willfully accept the prohibited contribution

Example 1

On **April 1, 2023**, CCA Board of Directors Member Arthur Arkin received a **\$500** campaign contribution from Charlotte Evans, the CEO of a solar energy company that responded to an RFO for development of solar panels the **next day**. Charlotte has personally donated to Board Member Arkin's campaign several times over the years in amounts over \$250. Board Member Arkin's campaign treasurer was given the most recent check at an in-person fundraising event. On **April 10, 2023**, the Board of Directors received a local online newsletter featuring an article about the solar energy company's new projects and application before the agency for the development of new solar panels. On **April 17, 2023**, the posted Board of Directors agenda for the **April 20, 2023** meeting shows an item to consider the company's application.

If Board Member Arkin participates in making the governmental decision in which Charlotte's company is a party, would that violate Government Code Section 84308?

How should Board Member Arkin proceed?

- Option 1: Disclose the contribution and recuse himself from the proceeding
- Option 2: Participate in the public proceeding prior to returning the contribution provided that the following conditions are met:
 - 1. Board Member Arkin has known about the public proceeding for **fewer than 30 days** (here, arguably 3 or 10 days)
 - 2. Board Member Arkin must disclose the disqualifying contribution on the record of the proceeding before taking part in any further discussion or decision
 - 3. Board Member Arkin must confirm that he will return the amount within 30 days from the time he knew or should have known about both the contribution and the proceeding
 - 4. Board Member Arkin must finally return the contribution or excess portion of the contribution **within 30 days of April 17, 2023 (assuming that is the date he knew or should have known about the proceeding and donation)**

Note: In an abundance of caution, Arkin should consider returning the contribution sooner since he may have had reason to know that the proceeding was before the agency's jurisdiction and it may have been reasonably foreseeable that the decision would come before the officer earlier on April 10 when the article was circulated, or even earlier since this repeat donor had previously applied before this agency.

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IB11 delete 'earlier'
Irina Berman, 11/10/2023

Example 2 - Participants

During the proceeding on the solar company's application, a public speaker discloses the following:

- Mr. Portman, a local shop owner, reminds Board Member Arkin that he has voted for him at every election, hosted a fundraiser at his home for the Board Member in February 2023, and personally donated \$1,000 to his campaign at that event. Mr. Portman speaks in favor of the solar company's application as he believes that his shop may see an increase in customers as a result of increased construction activity in the area.

How does this non-party disclosure affect Board Member Arkin under Government Code Section 84308?

Best Practices/ Recommendations

- Campaign committees should carefully monitor contributions and consider limiting contributions to \$250 or less annually for purposes of both the fundraising ban and the recusal requirement
- Committees should also ensure that multiple small donations from a repeat donor do not amount to over \$250 within a 12-month period
- Officials should consider whether it is practical to compile lists of donors above \$250
- Make sure to publicly disclose and return excess portion of prohibited contributions in a timely manner (consider whether your contributions have been “knowingly” received or whether you have sufficient information to establish knowledge of a participant’s financial interest)

Government Code Section 84308: (Summary)

- Disclosure & Recusal Requirement: Prior to participating in a decision, an officer who received a contribution of more than \$250 in the previous 12 months from a party, participant, or agent must disclose and recuse
- Fundraising Ban: While a proceeding is pending, and for 12 months after a final decision, an officer may not accept, solicit or direct a contribution of more than \$250 from a party, participant with a financial interest, or participant's agent
- Curing Provisions: Officers have the opportunity to cure some violations within a specified time frame. There are ways to lawfully participate
- Party's Disclosure Obligation: A party to a proceeding who made a contribution of more than \$250 to an officer in the previous 12 months must disclose that contribution on the record of the proceeding
- Parties, participants, and agents may not make contributions of more than \$250 to officers in the 12 months following the date of an agency decision



THANK YOU!

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