Legal Brief

New Campaign Finance Law Creates Potential Pitfalls for Local Officials

by Craig Steele,[1] Richards, Watson & Gershon

California's Political Reform Act[2] ("PRA") is the main conflict of interest law that governs the activities of local public officials. Throughout the history of the PRA, campaign contributions to elected officials have never created a conflict of interest requiring action by the recipient, until now[3]. SB 1439, effective January 1, 2023, will require new vigilance by elected and appointed officials about the identity and interests of campaign contributors.

This article is not legal advice on the full text and specific application of SB 1439 but is intended to be a broad overview for local elected officials and staff, with concepts to consider and discuss with your counsel.

Following SB 1439, if an elected or appointed official of a local agency[4] willfully or knowingly receives a campaign contribution of more than $250 from a party or participant with a financial interest[5] (or their agent) in a proceeding before the agency within the preceding 12 months, the officer must disclose the contribution on the record of the proceeding before the decision is made and recuse themselves from the decision. Further, elected and appointed officials now cannot solicit, accept, or direct a campaign contribution[6] of more than $250 from the party, participant with a financial interest, or their agents, while the proceeding is pending and for 12 months after it concludes.

The term "proceeding" includes many types of local government licenses, permits, or entitlements for use, and all contracts, except competitively bid, labor, and personal employment contracts[7]. The time frames imposed by Government Code Section 84308 kick-in when the agency begins consideration of one of these governmental proceedings and lasts while the decision is pending.

It is understandable that an official must avoid conflicts of interest associated with a party who is a campaign contributor of more than $250 in the 12 months prior to a governmental decision. Similarly, the ban on soliciting campaign contributions of over $250 from the party to a governmental decision for 12 months after the decision is relatively straightforward. But SB 1439's new concept, that campaign contributions of more than $250 from participants with a financial interest in a proceeding also can create a conflict of interest for the recipient, will be a much more difficult provision to comply with.

A participant is defined as a person who lobbies, testifies in person, or otherwise communicates with an officer or employee of the agency for the purpose of influencing the decision-making, but is not a party to the decision. The officer must have actual knowledge of the participant's financial interest, or the participant must reveal facts

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during the proceeding that make that person's financial interest apparent. The participant's financial interest might include a real property interest within 500 feet of the real property at issue; an economic interest in a business that could see an increase or decrease in customers; or a business relationship with the party that could increase the services provided to the party[8].

This new participant-based conflict of interest could create significant problems for local elected officials who accept campaign contributions over $250. In the case of a "participant," two facts are important to know to avoid violating Government Code Section 84308:

1. If a "participant" contributed over $250 to the official in the 12 months prior to a decision, and
2. If the "participant" has a financial interest in the governmental decision.

If the official knows those two things about a participant, they must disclose the contribution and immediately recuse themselves from the decision. This requirement is obviously perilous for local officials, not to mention fertile ground for those who want to force the recusal of a decision-maker in a matter. Those who watch these issues in your community may compare the identities of parties and participants to campaign disclosure reports and use arguable violations of Government Code Section 84308 for strategic or political advantage.

A helpful protection provided in SB 1439 is the official's ability to cure potential violations or inadvertent violations by returning contributions within a short time. Local officials and counsel should be aware of these provisions and the deadlines.

As noted, SB 1439 requires extra attention to avoid violations. And it may well be in your agency's interest to help officials comply with this new law. The following are some basic recommendations to help compliance:

1. Campaign committees must carefully monitor contribution amounts, and officials should consider self-limiting contributions to $250 or less for purposes of both the fundraising ban and the recusal requirement.
2. Committees should also ensure that multiple small donations from a repeat donor do not amount to over $250 within a 12-month period.
3. Public agency staff should consider whether it is practical to compile lists of donors of more than $250 for each official to help with compliance[9].

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[2] Government Code §§ 81000, et seq.

[3] Much of the law that is discussed in this article already applied to appointed local officials.

[4] See the definition in Government Code Section 82003

[5] Assuming the official knows, or has reason to know, of the participant's financial interest. Government Code Section 84308(b).

[6] Note that the term "contribution" includes contributions to federal, state, and local campaigns. Government Code Section 84308(a)(6).

[7] Government Code Section 84308(a)(5)

[8] Please consult the FPPC's regulations for a more detailed description.

[9] This assistance by the agency is not a legal requirement.