

Memorandum

To: SACOG Board of Directors
From: Michael J. Maurer, General Counsel
Date: February 16, 2023
Re: Conflicts of Interest in Campaign Donors

Executive Summary

- Directors must recuse from participating in the award of a contract to any vendor who made a campaign contribution to the Director within the past 12 months.
- Directors are prohibited from soliciting or accepting a campaign contribution from any SACOG vendor who is in the process of applying for a contract and then for 12 months following the award of the contract.
- The rules applicable to SACOG may differ from the rules applicable to your county or city; in particular, campaign contributions from 2022 may be subject to the recusal rule.
- Directors should review all SACOG agendas for potential conflicts of interest and should be aware of entities and vendors who may be prohibited from giving campaign contributions.

Director Responsibilities Under the Levine Act

Last year, the Legislature enacted SB 1439, making a number of changes to the “Levine Act,” which is a part of the Political Reform Act. The Levine Act previously only applied to local governing boards composed of appointed officials, such as SACOG’s board of directors, but effective Jan. 1, 2023, SB 1439 extended the Levine Act’s coverage to elected governing boards, such as a county board of supervisors and a city council.

The Levine Act imposes two key duties on Directors. First, it prohibits accepting, soliciting or directing a campaign contribution of \$250 if the donor is participating in a proceeding involving a license, permit or other entitlement for use, including a contract award, that is pending before the SACOG Board. Under SB 1439, this prohibition continues for 12 months following the

proceeding. (It was previously three months.) Second, the Levine Act requires Directors to recuse from any proceeding involving a license, permit or other entitlement for use, including a contract award, if the member has received a campaign contribution from a person/entity involved in the proceeding within the previous 12 months.

In sum, under the Levine Act SACOG directors have the following responsibilities:

- *Disclose.* Before participating in any decision in a proceeding involving a contract award, a Director who received a contribution over \$250 in the preceding 12 months from a party or any participant in the proceeding must disclose that fact on the record.
- *Recuse.* If the Director knows or has reason to know that a campaign donor has a financial interest in the decision to award a contract, the Director must not make – or participate in making – the decision.
 - *Or Return.* If the Director returns the contribution within 30 days from the time the Director knows or should have known about the contribution *and* relevant proceeding, the officer may participate in the decision. (Meaning, if you did not know someone was going to be a SACOG vendor when you accepted the contribution, you can return it once you find out rather than recusing.)
- *Refuse.* While the proceeding is pending for 12 months after a final decision is rendered, a Director must not accept, solicit or direct a contribution of more than \$250 from the vendor.
 - *Or Return.* If an officer accepts, solicits or directs a contribution of more than \$250 during the 12 months after the date a final decision is rendered in the proceeding, the officer may cure the violation by returning the contribution, or the portion of the contribution that exceeds \$250, within 14 days of accepting, soliciting or directing the contribution, whichever comes latest. This opportunity to cure is only available if the officer did not knowingly and willfully accept, solicit or direct the prohibited contribution and the officer or officer's controlled committee keeps a record of curing the violation.

Contributions Made Before SB 1439 Took Effect

SB 1439 took effect on January 1, 2023, and its passage created a problem that was not addressed in the language of the bill. It extended the Levine Act to elected positions *during an election year*. Many candidates therefore accepted campaign contributions before the bill took effect and without knowing that acceptance of the contributions might require them to recuse from future actions. In light of this, the FPPC issued an opinion that campaign contributions received in 2022 would not be subject to the new rule for *elected* boards. The FPPC is in the process of adopting regulations to this effect. Your county counsel or city attorney may therefore advise that you do not have to consider contributions received in 2022.

However, the FPPC's opinion did not address whether the new rules apply to *appointed* boards. As an appointed board, SACOG has always been subject to the Levine Act. The FPPC has not yet clarified whether the extended 12-month lookback period applies to contributions received in 2022. Unless the FPPC issues an advice letter, an opinion or other formal guidance, SACOG Directors should assume that they will have to recuse from any contract award if the vendor made a campaign contribution in the past 12 months, even if the contribution was made in 2022 before SB 1439 took effect.

Conclusion

At SACOG, the Levine Act will likely only arise in the context of contract awards. Directors should be cautious to check SACOG agendas in advance to see if any proposed contract awards involve campaign donors. If so, Directors should recuse immediately when the agenda is called. Additionally, Directors should keep track of vendors who are awarded SACOG contracts in order to ensure that Directors do not solicit or accept contributions from these vendors within the 12-month restriction period.