



**2022-2023
CAL CITIES OFFICERS**

April 26, 2023

President

VIA ELECTRONIC MAIL

Ali Sajjad Taj
Council Member,
Artesia

Ms. Heather Thomas
Deputy Attorney General, Opinion Unit
California Department of Justice, Office of the Attorney General
Heather.Thomas@doj.ca.gov

Re: Opinion No. 23-101

First Vice President

Daniel Parra
Mayor,
Fowler

Dear Ms. Thomas:

I write on behalf of the League of California Cities¹ (Cal Cities) in response to your solicitation of views regarding whether the disclosure and recusal provisions of SB 1439 apply to political contributions made before January 1, 2023. Cal Cities urges the Attorney General either to decline to opine on the question or to answer the question in the negative, consistent with the opinion issued by the Fair Political Practices Commission (FPPC).

Second Vice President

Lisa Middleton
Council Member,
Palm Springs

DISCUSSION

1. The Attorney General should decline the opinion request.

The Attorney General should decline the opinion request because it presents legal questions that are pending in litigation and because it involves questions arising under the Political Reform Act of 1974 (California Government Code §§ 81000-91015) concerning conflicts of interest that should be, and have been, addressed by the FPPC.

Immediate Past President

Cindy Silva
Mayor,
Walnut Creek

Executive Director

and CEO

Carolyn M. Coleman

¹ The League of California Cities (Cal Cities) is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities. The LAC reviewed the Attorney General's request for views on Opinion No. 23-101 and identified the legal issues that it presents as being of concern to cities state-wide.



As explained in the Attorney General’s [Guidelines Regarding Attorney General Opinions Under Government Code Section 12519](#):

Over the decades, Attorneys General have identified...circumstances where prudential considerations may counsel against issuing an opinion under section 12519. For example, the Attorney General will generally decline a request to issue an opinion under section 12519 if it implicates one or more of the following circumstances:

....

3. Litigation. The Attorney General declines opinion requests presenting legal questions that are pending in a judicial or administrative proceeding in which the Attorney General is participating. In such cases, the legal briefs filed by the Attorney General present the Attorney General’s views on the legal questions at issue. At times, the Attorney General may also abstain from issuing an opinion on a legal question pending in other judicial proceedings in which a court is expected to issue a decision resolving that question in the near future.
4. Conflicts of Interest under the Political Reform Act. Questions arising under the Political Reform Act of 1974 (California Government Code §§ 81000-91015) concerning conflicts of interest should be ordinarily directed to the Fair Political Practices Commission [(FPPC)], which administers the Act. A public official may rely on the Commission opinion as a defense in enforcement actions regarding the requirements of the Political Reform Act.

On February 22, 2023, [eight business groups and two local officials sued the FPPC](#), arguing that SB 1439 is unconstitutional under the California and U.S. constitutions. The plaintiffs assert the law violates the California Constitution because SB 1439 does not further the purpose of the Political Reform Act and, therefore, cannot be achieved by legislative action. As to the U.S. Constitution, the plaintiffs argue SB 1439 unconstitutionally limits free speech in violation of the First Amendment by effectively prohibiting campaign contributions. The complaint explains SB 1439 fails to satisfy the requirement that limits on campaign contributions “must be closely drawn and focus exclusively on the prevention of or appearance of quid pro quo corruption and not the prevention of the appearance of contributions to ‘obtain influence over or access to elected officials.’” While the complaint for declarative and injunctive relief does not directly raise the question of whether the disclosure and recusal provisions of SB 1439 apply to



political contributions made before January 1, 2023, it is likely the question will be raised during the litigation.

On December 22, 2022, the FPPC issued [Opinion No. O-22-002](#) squarely answering the question presented by the request for opinion. The FPPC concluded:

Based on the statutory language and legislative history, there is no indication the Legislature intended SB 1439’s “lookback” periods to apply to contributions received and proceedings participated in prior to Section 84308’s amended provisions taking effect. Absent express language otherwise, we find that a local elected official is not prohibited from taking part in a proceeding involving a license, permit, or other entitlement for use based on contributions received before January 1, 2023. Similarly, a local elected official is not prohibited from receiving a contribution based on the official’s participation in a license, permit, or other entitlement for use proceeding so long as the official’s participation occurred before January 1, 2023.

Because the request for opinion asks the Attorney General to opine on an issue that is both the subject of pending litigation and an opinion issued by the FPPC, the Attorney General should decline the request.

2. If the Attorney General issues an opinion, the opinion should conclude the disclosure and recusal provisions of SB 1439 do not apply to political contributions made before January 1, 2023, consistent with the opinion issued by the Fair Political Practices Commission.

If the Attorney General chooses to opine on the questions raised in the request for opinion, Cal Cities urges the Attorney General to issue an opinion consistent with Opinion O-22-002 for the reasons articulated therein, which we will not repeat here. Several practical considerations weigh in favor of doing so. First, any enforcement action brought now against an official who relied on Opinion O-22-002 will raise issues of due process. Second, SB 1439 applies to a wide range of local agencies with varying resources, and concluding that SB 1439 applies prospectively will allow those agencies and their officials to achieve the statutory objectives of SB 1439 without unfairness or undue cost or complexity.



3. Cal Cities urges the Attorney General to reject the request for opinion’s implication that SB 1439 created a grace period to return contributions by January 31, 2023.

Finally, Cal Cities would like to highlight that the request for opinion mischaracterizes SB 1439 by stating: “For contributions received prior to Jan. 1, 2023 that involve a pending matter, officers would be allowed to return them within 30 days after Jan. 1, which is when the law will define those contributions as potentially posing a conflict.” SB 1439 did not include a grace period for 30 days after Jan. 1; rather, SB 1439 says an official can return a contribution “within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding.”

CONCLUSION

Thank you for the opportunity to comment on the questions presented. Please do not hesitate to contact me with any questions, or to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Leary", is written over the typed name.

Alison Leary
Senior Deputy General Counsel
League of California Cities