



Political Law Update

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Recent Political Law Developments in California

In this client alert, we summarize recent political law developments in California.

FPPC Votes To Issue Commission Opinion on New Pay-to-Play Bill

At a meeting on November 17, 2022, the California Fair Political Practices Commission (FPPC or Commission) voted to issue an advisory opinion clarifying that S.B. 1439 (the Act), a recently enacted bill amending the state pay-to-play law, will not have recusal implications for contributions made before 2023.

We summarized the existing pay-to-play law and the changes made by the Act in our October 3, 2022, client alert “[California Expands Scope of Its State Pay-to-Play Law](#).” Notably, the Act amends the pay-to-play law to cover local elected positions. (Local appointed positions, by contrast, are already covered under the law.) The advisory opinion will clarify the impact of this amendment on the law’s existing recusal requirement, under which covered officials of a California state or local agency must disqualify themselves from an agency proceeding involving a noncompetitively bid contract, license, permit or other entitlement for use if in the prior 12 months they received contributions of more than \$250 in the aggregate from the company seeking the contract or entitlement or any of the company’s covered donors (*i.e.*, certain of its affiliates and its agents and employees dealing with the agency in question).

The Commission voted to issue an advisory opinion stating that contributions made prior to the law’s effective date of January 1, 2023, but within the 12-month look-back period do not trigger recusal for local officials from proceedings before the agency to which they were elected. The Commission ordered legal counsel to draft the opinion for it to consider at a special meeting on December 22, 2022, when it intends to formally adopt the opinion.

Also, at the Commission meeting, the Commission’s legal counsel stated that they intend to draft implementing regulations for the Act for the Commission’s consideration, which we will closely monitor.

FPPC Amends Rule Regarding Lobbyists Arranging Gifts

At its November meeting, the Commission also approved a clarifying amendment to its regulation regarding when a state lobbyist is deemed to be arranging for the making of gifts by another for purposes of the gift limit for lobbyists and lobbying firms. The amendment codifies long-standing Commission guidance.

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Under state law, subject to limited exemptions, a lobbyist or lobbying firm may not make, arrange for the making of, or act as an agent or intermediary in the making of a gift of more than \$10 per calendar month to a state official or candidate. FPPC Regulation § 18624 defines when a lobbyist is deemed to be “arranging for the making of” a gift by another to cover six specific acts, each of which involves communication by a lobbyist with the recipient of the gift. These acts include a lobbyist delivering a gift to the recipient and inviting an intended recipient to an event where a gift will be provided. The FPPC amended the regulation to clarify that a lobbyist does not “arrange for the making of” a gift if the lobbyist merely makes recommendations or provides information to the lobbyist’s employer, including information obtained from a third party for that purpose, concerning gifts to a public official.

State Lobby Law Amended To Cover Lobbying Decisions and Approvals for Certain Health Care Company Transactions

On September 22, 2022, California Gov. Gavin Newsom signed into law A.B. 1783 (the Act), which narrowly amends the definition of lobbying under the state lobby law to cover attempting to influence a decision or approval for certain health care company transactions subject to the approval of either the director of the

state Department of Managed Health Care (DMHC) or the state insurance commissioner. The Act takes effect January 1, 2023.

Under existing law, lobbying covers attempting to influence legislative action and administrative action. Administrative action, except as it relates to placement agent activity, is limited to action by a state agency involving rules, regulations, rate-making proceedings and quasi-legislative proceedings. Under state lobbying regulations, quasi-legislative proceedings do not include proceedings to determine the rights or duties of a person under existing laws or policies.

The Act broadens the definition of “administrative action” to cover a decision or approval for (i) proposed mergers, consolidations and acquisitions of health care service plans that are subject to the approval of the director of the DMHC and (ii) purchases, exchanges, mergers and acquisitions of domestic insurers that are subject to the approval of the state insurance commissioner. Thus, individuals who attempt to influence such transactions and who meet the de minimis registration thresholds under the state lobby law, absent an exemption, will be required to register and report as lobbyists and will be subject to contingency fee, gift and contribution restrictions applicable to state lobbyists.

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