



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

May 8, 2012

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Dear Mr. Sutton:

This letter responds to your request for advice regarding the scope of the contractor contribution ban found in San Francisco Campaign and Governmental Conduct Code section 1.126(b) and Ethics Commission Regulation 1.126-2(c). You asked specifically whether the City's ban on contributions from City contractors applies in situations where a City elective officer is running for State office.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *See* S.F. Charter § C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. *See id.* Informal advice does not provide similar protection. *See id.* Because you are asking for general advice on the applicability of local law, the Commission is treating your request as a request for informal advice.

Background

The City's contractor contribution ban, San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 1.126, prohibits a person who seeks a City contract worth \$50,000 or more in a fiscal year from making political contributions to "an individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves or a state agency on whose board on which an appointee of that individual serves; a candidate for the office held by such individual; or a committee controlled by such individual or candidate." The ban on making contributions begins with the commencement of negotiations for the contract until the termination of negotiations or six months have elapsed from the date the contract is approved. *See* C&GC Code § 1.126(b).

Discussion

You asked whether the City's ban on contributions from City contractors applies to a supervisor or other City elective officer who runs for State office instead of a local office. As you point out, section 1.126 bars a contractor from making a contribution to, among others, "an individual holding City elective office," and "a committee controlled by such an

individual.” Ethics Commission Regulation 1.126-2 defines “a committee controlled by such individual” to include “either a committee formed to support or oppose a candidate for City elective office or committee formed to support or oppose a local ballot measure.” You claim that the “clear language of the regulation thereby limits the ‘a committee controlled by such an individual’ to “a committee supporting a City official’s election to another City office or a committee supporting or opposing a City ballot measure.” You thus seek confirmation that Regulation 1.126-2 “effectively excludes from the contractor ban committees supporting a City official’s election to state office and state ballot measure committees.”

As you note, the legislative history of section 1.126 does not specifically address whether the contribution ban applies to City elective officers seeking State office. However, Ethics staff has consistently advised that section 1.126 applies when the requisite factors exist, *i.e.*, *whenever* any individual City elective officer who must approve a City contract worth at least \$50,000 per year is seeking any elective office.

The reasons for this advice include the following. First, section 1.126(b)(1)(A) specifically prohibits a contractor from making a contribution to “an individual holding a City elective office if the contract must be approved by such individual.” Under the plain language of this subsection, *any* individual currently holding City elective office is subject to this restriction, and there is no further limitation that suggests this individual must be a candidate seeking a City elective office. Second, the purpose of section 1.126 is to prevent pay-to-play situations whereby in exchange for making a political contribution to an individual holding City elective office, the contractor wins his or her approval on a contract. In these circumstances, the anti-corruption interests served by section 1.126 apply with equal force to a donation to a City elective officer running for *any* elective office, either state or local.

In your letter, you rely on Regulation 1.126-2 to argue that the City's contractor contribution ban does not apply to individuals holding City elective office seeking election to State office. But, as you note, this regulation only interprets section 1.126(b)(1)(C) – not subsection (b)(1)(A). Nonetheless, Regulation 1.126-2 confuses the proper understanding of section 1.126(b)(1)(A) and unnecessarily suggests that the City's contractor contribution ban should be limited to City elective officers seeking local elective office. To clarify this issue, staff will recommend that the Commission approve a regulation to make clear that the contractor ban in section 1.126 applies to any candidate campaign committee controlled by a City elective officer who must approve the contract, whether it be for City, State or Federal elective office.

I hope that this information has been helpful to you. Please do not hesitate to let us know if you have further questions.

Sincerely,

John St. Croix, Executive Director

By: Mabel Ng
Deputy Executive Director