

California Fair Political Practices Commission
MEMORANDUM

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda
From: John W. Wallace, Acting Executive Director
Zachery P. Morazzini, General Counsel
Re: Executive Director's Report and Legal Division Report
Date: July 30, 2012

1. FINDINGS OF PROBABLE CAUSE

Pursuant to Regulation 18361, sufficient evidence was found in the following case to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that the following respondent committed or caused a violation of the Political Reform Act.

Please note:

- *This finding of probable cause does not constitute a finding that a violation has actually occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding.*
- *The following case was decided based on the papers submitted since the respondent did not request a probable cause conference.*

Failure to File Campaign Statements: In the Matter of EDWIN JACINTO AND THE COMMITTEE TO ELECT EDWIN JACINTO, FPPC No. 12/197 (Two counts). As a candidate for the Lynwood City Council, Mr. Jacinto had a duty to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the campaign.

COUNT 1: Respondents Edwin Jacinto and the Committee to Elect Edwin Jacinto failed to file a second pre-election campaign statement by October 27, 2011 for the reporting period September 25, 2011 through October 22, 2011, in violation of Sections 84200.5(c) and 84200.8(b).

COUNT 2: Respondents Edwin Jacinto and the Committee to Elect Edwin Jacinto failed to file a semi-annual campaign statement by January 31, 2012 for the reporting period October 23, 2011 through December 31, 2011, in violation of Section 84200(a).

2. LEGAL DIVISION OUTREACH AND TRAINING

On July 16, 2012, the Legal Division held an Interested Persons Meeting to discuss proposed amendments to conflict of interest Regulation 18706. Regulation 18706 addresses the element of

reasonable foreseeability in Step 6 of the 8-step conflict-of-interest analysis. The meeting was well attended. Staff received valuable input from the California League of Cities, Public Utilities Commission, public citizens and others. The draft proposed regulation will be presented to the Commission at this meeting.

3. UPDATE ON ADVICE LETTERS

Between June 28 and July 31, 2012, the Legal Division received thirteen advice letter requests and issued eight advice letters.

Advice Letter Summaries from June 28 and July 31, 2012

Campaign

Hon. Mervyn M. Dymally, Ph.D.

A-12-111

An unsuccessful candidate to the California State Senate must return contributions to his general election to contributors. If a contributor does not accept his or her refund, the candidate must pay it to the state general fund. The candidate is not permitted to donate unclaimed refunds to 501(c)(3) nonprofit organizations.

Conflict of Interest

Eric J. Haupt

A-12-078

A city councilmember has a disqualifying conflict of interest and must recuse himself from decisions related to bidding on home repair contracts because the councilmember, an eligible contractor under the program, has an economic interest that would be affected in a reasonably foreseeable and material way.

William R. Smith

A-12-096

A city councilmember sought advice on whether he has a conflict of interest when the city council makes decisions to make purchases from a hardware store the councilmember sold to his sons in January of 2012. The councilmember has a disqualifying conflict of interest based on his interest in both the store and his sons as sources of income and cannot participate in decisions for 12 months following the final payment for the sale of the store.

Julia M. Lew

A-12-105

The contract City Attorney for the City of Lindsay is not prohibited under the Act from representing the city in transactional negotiations with the Tulare County Housing Authority where a partner at the city attorney's law firm is representing the authority. To the extent that participating in the negotiations is part of the implementation of the law firm's respective contracts with the City and the TCHA, for a price already specified in the contracts, there is no reasonably foreseeable material financial effect on the city attorney's, or her partner's, economic interests in the law firm resulting from the negotiations.

Patricia Cowett and Brian Hebert

A-12-106

Ownership of a condominium in a common interest development (CID) does not create a conflict of interest when the public official's agency makes decisions involving CIDs because the "public generally" exception applies. Here, at least 5,000 property owners in the state own a unit in a CID, and this is a sufficient number to meet the "significant segment" of the public prong. So long as agency decisions involving CIDs affect all CIDs the same manner, then the second prong of the exception is met as well.

Joe Guzzetta

A-12-109

The general manager of a government entity is not prohibited from participating in negotiations where he has no economic interest in either party to the negotiation.

Revolving Door

Jonathan Tapping

I-12-082

(1) Section 87407 may apply if a public official takes part in a decision related to the prospective employer after negotiating or arranging prospective employment. (2) A public official has a permanent lifetime ban from participating/assisting in a judicial or quasi-judicial proceeding involving the State of California if he previously participated in the proceeding as a state officer or employee. (3) The one-year ban prohibits a former public official from attending meetings involving his or her prior agency when they involve discussions about amending the terms of a contract with the agency. The former public official may still advise his new employer "behind the scenes" so long as he is not identified as the source of any information conveyed to the agency.

Raja Mitwasi

I-12-104

The one-year ban no longer applies to someone who has been retired from state service for more than a year, but the permanent ban on "switching sides" prevents a former state employee from working on a judicial or quasi-judicial proceeding that he or she worked on while employed by the state.

Thomas Foley

A-12-114

State employees designated in their agency's conflict of interest code are subject to the one-year ban and cannot appear before or communicate with their former agency for the purpose of influencing a specified decision. Public officials who have been offered a job following their retirement from state service must refrain from using their official position to influence a government decision directly related to the prospective employer.