



FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: John W. Wallace, Assistant General Counsel

Subject: Legal Division's Monthly Report

Date: March 4, 2015

A. OUTREACH AND TRAINING

Senior Commission Counsel Heather M. Rowan participated in the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics' lobbyist ethics training course, required for all registered lobbyists in California. The presentation was on February 26, 2015.

B. PROBABLE CAUSE DECISIONS

Please note, a 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 Political Reform Act (the "Act")¹ unless a violation is proved in a subsequent proceeding.

In the Matter of Russell Betts, 12/289: After a hearing on January 13, 2015, probable cause was found to believe Respondent committed the following violations of the Act:

- Respondent Russell Betts, in or about March 2011, as a member of the City of Desert Hot Springs City Council, used or attempted to use his official position to influence governmental decisions regarding the installation of a barricade, in which he had a financial interest because he owned real property within 500 feet of the property

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

which was the subject of the governmental decision, in violation of Government Code Section 87100.

- Respondent Russell Betts, on or about September 18, 2011, as a member of the City of Desert Hot Springs City Council, used or attempted to use his official position to influence a governmental decision regarding a development agreement to develop an upscale restaurant in city owned property in downtown Desert Hot Springs, in which he had a financial interest because he held a leasehold interest in real property within 500 feet of the property which was the subject of the governmental decision, in violation of Government Code Section 87100.

C. LEGAL ADVICE TOTALS

- ***Email Requests for Advice:*** In February 2015, Legal Division attorneys responded to more than 127 email and telephone requests for legal advice.
- ***Advice Letters:*** In February 2015, the Legal Division received 11 advice letter requests and issued 17 advice letters.
- ***Section 1090 Letters:*** During the same period, the Legal Division received two advice letter requests concerning Section 1090 and issued two advice letters. This year to date we have received four requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

D. ADVICE LETTER SUMMARIES

Campaign

Amber Maltbie

A-15-001

Where a candidate or elected official's campaign credit card has an airline mileage reward program, all of the points earned are personally earned by the traveler and are not reportable under the Act. But credit card cash rewards earned from campaign expenditures are not within the scope of Section 89513(a)(5) and must be deposited in the campaign bank account.

Honorable Richard D. Roth

A-15-019

An elected official is not "featured" on letterhead for purposes of behested payment reporting unless the letterhead's roster contains a majority of elected officials.

Frederick D. Woocher

A-15-004

Although the candidates' photographs are not being displayed on the Internet in a traditional slate mailer format, the four Los Angeles Community College District candidates are all making payments to a slate mailer organization for a position on a slate mailer and included Internet advertising. Under Section 84305.5 and Regulation 18435.5, the slate mailer identification and disclaimers need to be included in a frame or frames preceding or following the four frames containing the four candidates' photos and stating the Los Angeles Community College districts for which each is running.

Conflict of Interest

Jolie Houston

A-14-207

A councilmember with multiple interests in the downtown area may take part in decisions to (1) commission a parking study for the downtown area, (2) re-stripe existing parking plazas, (3) impose a zoning moratorium ordinance prohibiting new development until after the adoption of a specific plan, (4) require story poles as part of the design review application process for all commercial or office building, and (5) purchase a license plate reader and amend parking enforcements hours because the decisions will not have a reasonably foreseeable material effect on her interests. However, the councilmember may not take part in (1) decisions generally addressing the downtown specific plan or (2) a decision to appoint a committee to review recently constructed buildings in the context of the specific plan and to propose revisions to the plan.

Hal DeGraw

A-14-217

The city council is considering amending the city's rules regarding Bed and Breakfasts (B&Bs) to: (1) prevent new B&Bs from being established in the residential zones; and (2) protect existing B&Bs from being discontinued because of periods of inactivity. A city councilmember that resides near an operating B&B does not have a conflict of interest since the B&B will not be impacted by either decision. Moreover, a planning commissioner will not have a conflict of interest if he does not own residential property near any property subject to the ordinance and the use of his commercial property will not be affected by the ordinance. Finally, another planning commissioner has a conflict of interest in the decision based on the fact that his business competes with the B&Bs in the city.

Dominic T. Holzhaus

I-14-218

An official's investment in a former employer is a potentially disqualifying interest. However, income from the sale of the stock back to the employer for a single lump payment not exceeding the value of the stock as of the time the official assumed office is considered income accrued prior to assuming office. So long as there is no expectation of renewed employment and the official has not received other income from the firm since assuming office (such as dividends on the stock), the income from a former employer exception applies, and the official does not have a potentially disqualifying interest in the firm.

Brian Pierik

A-15-003

A city council member may not participate in decisions regarding the imposition of annual assessments on lodging businesses to fund tourism promotions or the approval of the funding for the promotions where he owns a lodging business. The decisions will have a reasonably foreseeable material financial effect on his business

Sarah Carrillo

A-15-005

A county supervisor may participate in a decision concerning application of a Dollar General store proposed to do business 1,000-1,500 feet from the farmer's market where his spouse operates a small cottage food business two days each week. There are no facts to conclude that it is reasonably foreseeable that the presence of a Dollar General store will change the value of his spouse's business.

Johanna N. Canlas

A-15-010

A city councilmember does not have a conflict of interest under the Act if he does not have any interests enumerated in Section 87103.

Tamyra Rice

A-15-013

An Assistant County Counsel nominates private attorneys to defend indigent defendants. She also approves appointees' claims for ancillary services. She is prohibited from making decisions to nominate, or approve the claims of, an attorney that has paid her husband \$1,000 of consulting fees within 12 months of the decision since the attorney is a source of income.

Thomas D. Jex

A-15-015

The City of Wildomar is proposing to develop two parcels of land into a large community park. A councilmember's residence is within 500 feet of the planned park. The councilmember has a disqualifying conflict of interest under the Act because it is reasonably foreseeable that the decision will have a material financial effect on the value of his real property.

Dawn Haggerty

A-15-018 and A-15-018a

A councilmember is a member of a Public Safety Ad Hoc Committee established by the city council charged with investigating switching law enforcement services from the County Sheriff to a City Police Department. In her capacity as a member of this committee, the Councilmember is not a public official subject to the Act's conflict of interest provisions because the Committee does not have decisionmaking authority as that term is defined under the Act. In addition, the "public generally" exception will apply to permit her to communicate the findings of the Committee to the city council.

Anthony P. Condotti

A-15-022

A local official in a small jurisdiction was advised that he could vote on a skate board park located 320 feet from his house because he met all of the conditions under the public generally exception for small jurisdictions in Regulation 18707.10.

Scott Donahue

A-15-024

A city council member that is a member of a limited-equity cooperative can vote on a large development located 237 feet from the unit in which he resides. He does not have an interest in real property as defined in the Act, but has an interest in the shares of the nonprofit corporation that owns the land and building. Since under the bylaws of the corporation, he cannot sell his shares to anyone but the corporation and the sales price is fixed by a formula, any increase or decrease in the value of the corporation's property will have no financial effect on him.

SUPERSEDES: This Advice Letter *Donahue* No. A-15-024 SUPERSEDES the two *Yang* advice letters Nos. A-95-070 and A-95-070(a) that state otherwise.

Revolving Door

Steve Toyama

A-15-020

Former state official employed with California Department of Motor Vehicles is generally not prohibited from working on (1) projects and contracts with other California agencies, or (2) working with the DMV of other states. However, if the work with these other agencies

involves a prohibited appearance before the California DMV or “switching sides,” the conduct would be prohibited. The one-year ban applies when an official permanently leaves any particular office or employment subject to the ban. An official has permanently left an office or employment on the date on which the official is no longer authorized to perform the duties of the office or employment and stops performing those duties, even if the official is still receiving compensation for accrued leave credits.

Joe Panora

A-15-023

Requestor retired from the California Department of Corrections and Rehabilitation (CDRC) on December 30, 2014. He has since opened his own business and requests advice to supplement advice he received in *Panora* Advice Letter, No. I-15-002. He asks whether he may appear before or communicate with the Prison Industry Authority (PIA) or the California Correctional Health Care Services (CCHCS) on behalf of other information technology companies to secure government contracts. Since the requestor was not employed by PIA or CCHCS and the “budget, personnel, and other operations” of these agencies are not subject to the control of CDCR, the one-year ban does not prohibit him from appearing before or communicating with the PIA or the CCHCS.

Section 1090

James D. Maynard

A-14-203

A City Councilmember will have a conflict of interest in a landscaping and maintenance contract between his employer and the City and must publicly identify his financial interest, disqualify himself from participating in the matter, and leave the room during any discussion of the matter. The City Council may, however, consider renewing the contract because the Councilmember has no financial interest in the contract under Section 1090.

Jesse W. Barton

I-15-007

Under the Act, a board member has a conflict of interest in the contracts between a client and his board. Section 1090 would make any such contracts void and unenforceable but for the non-interest exception that applies to water and similar districts and standard contracts in Section 1091.5(a)(14).

Section 84308

David P. Bonaccorsi

I-14-198

Section 84308 prohibits a Fremont Planning Commissioner from participating in consideration of applications submitted by a close corporation if (1) he has received contributions from individuals associated with the corporation in the 12 months prior to the decision, (2) the contributions are required to be aggregated, and (3) the aggregated contributions would exceed \$250. Generally, however, contributions will not be aggregated when persons associated with the corporation act completely independently of each other in making their contributions.