



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne

**From:** Hyla P. Wagner, General Counsel

**Subject:** Legal Division's Monthly Report

**Date:** May 6, 2015

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### **A. OUTREACH AND TRAINING**

On April 9, 2015, 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.

On April 15, Commission Counsel Emelyn Rodriguez participated in an Ethics Roundtable Discussion organized by Orange County Supervisor Todd Spitzer and presented an overview of the Commission (including the agency's background, history, structure, and jurisdiction) and a summary of campaign and conflicts of interest laws that the Commission interprets and enforces. Other panelists and attendees included representatives from the Orange County Counsel's Office, the District Attorney's Office, representatives of the Los Angeles Ethics Commission, and officials from Orange and Los Angeles Counties, and the Legislature.

### **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")<sup>1</sup> unless a violation is proved in a subsequent proceeding.*

**None to report.**

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<sup>1</sup> 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.

### C. MISCELLANEOUS MATTERS

**In the Matter of Frank J. Burgess; OAH No. 2014060674; FPPC No. 12/516:** At the March 2015 Commission meeting, the Commission considered and rejected a decision of an Administrative Law Judge regarding Respondent Frank J. Burgess and determined to decide the case themselves upon the record. As of the date of this report two briefs have been filed, the Enforcement Division's Opening Brief and the Respondent's Responsive Brief. The Enforcement Division's Reply Brief is due May 14, 2015. The Commission will consider the matter on the record and submitted briefs in closed session at the June 18, 2015 Commission meeting.

### D. LEGAL ADVICE TOTALS

- ***Email Requests for Advice:*** In April 2015, Legal Division attorneys responded to more than 94 email and telephone requests for legal advice.
- ***Advice Letters:*** In April 2015, the Legal Division received 23 advice letter requests and issued 26 advice letters.
- ***Section 1090 Letters:*** During the same period, the Legal Division received seven advice letter requests concerning Section 1090 and issued four advice letters. This year to date we have received 16 requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

### E. ADVICE LETTER SUMMARIES

#### Behested Payment

**Samuel Schuchat**

**A-15-070**

Since a behest for funds from the State Coastal Conservancy by an elected official is made for the benefit of private nonprofit entities (rather than public entities), the elected official will have a "behested payment" reporting obligation when he or she provides a letter to the State Coastal Conservancy expressing support for a grant of funds to be made by the Conservancy to a nonprofit 501(c)(3) organization to carry out a specific project.

#### Conflict of Interest

**Krishan Chopra**

**A-15-025**

A mayor who owns a business that may be impacted by a public transit project may not participate in governmental decisions to recommend project options to a regional transportation authority, which makes the final determination.

**Gregory J. Rubens, Esq.**

**A-15-034**

A city attorney is prohibited from advising the city council on decisions relating to a bond measure where one of the stated purposes of the bonds is to purchase and develop vacant

property as a park and his residence is located within 500 feet of the park property. Decisions to purchase and develop the property will have a reasonably foreseeable material financial effect on his property. Because decisions regarding the bonds and decisions regarding purchase and development of the park property are inextricably interrelated, he also has a conflict of interest on decisions regarding the bonds.

**Ms. Stacey Fulhorst** **A-15-035**

A city employee's participation in an effort to identify operational efficiencies under a managed competition program does not constitute a prohibited conflict of interest under the Act, because it is not reasonably foreseeable that the city employee's participation in this effort would have a material financial effect on the employee's personal finances.

**Todd O. Litfin** **A-15-042**

A city council member is prohibited from participating in decisions relating to the development of 500 acres of vacant land with 450 single-family residences abutting a 14,000-acre state park where his home is located 2,500 feet from one project and 1,300 feet from the other. The traffic and noise from additional vehicles that will use the same road used by the council member to access the city's main east-west thoroughfare will result in a substantial change in the character, and influence the value, of his property.

**Greg O'Connor** **A-15-046**

The reasonably foreseeable effect on a planning commissioner's real property is material when the decision could increase the amount of traffic through his neighborhood by approximately 50 percent. Additionally, contacting other planning commissioners or staff regarding the decision could be considered an attempt to influence the decision and is prohibited.

**Bill Kampe** **A-15-047**

The mayor's spouse sells greeting cards to the operator of the gift store at the Monterey Bay Aquarium (as well as 30 other venues). The operator makes ordering decisions (within general guidelines set by the Aquarium). Sales to the operator have earned the mayor's spouse slightly more than \$2,000 per year. The mayor may participate in the City's consideration of an admission tax since it would be applied on the Monterey Bay Aquarium and not on his spouse's business or on her source of income.

**Daniel J. McHugh** **A-15-048**

The Mayor and a Councilmember may not participate in discussions, deliberations, and actions by the City Council in (1) approving and implementing the ten-year cemetery plan, (2) approving contracts for the physical improvements proposed for the cemetery, and (3) approving contracts relating to staffing of the cemetery because they hold ownership certificates to plots at the cemetery which are considered "interests in real property" under the Act.

**Jannie L. Quinn** **A-15-049**

A city council member may participate in decisions regarding a proposed development project that will change two city-owned surface parking lots to a multi-story hotel where the project site is located 1,640 feet from his residence. With little or no effect on traffic, parking, noise or

intensity of use, such decisions will not have a reasonably foreseeable material financial effect on his property.

**John R. Vacek** **A-15-058**

The Act prohibits a city council member who sells flood insurance to property owners within the city from participating in decisions that would limit the amount of flood-insured properties in the jurisdiction.

**Molly S. Stump and Albert S. Yang** **A-15-053, A-15-060, A-15-066**

Advice on three separate matters before the city council and city staff: (1) an Annual Growth Limit or “Cap” on New Office and Research and Development Space, (2) a Retail Preservation Plan, and (3) an Appeal of 429 University Avenue Mixed Use Project.

**SEI**

**Julie McCarthy** **A-15-036**

This letter provided follow-up advice regarding the *McCarthy* Advice Letter, No. A-14-193. That letter concluded that the requestor had a 50-percent interest in her spouse’s settlement payment, and that if her community property share was \$500 or more, she would need to report the source of the income on her Form 700. In this follow up letter we advised that based on the specific disclosure categories under which she had to report, she was not required to report the source of the settlement payment on her Form 700.

**Revolving Door**

**Nicolas Heidorn** **I-15-016**

The one-year ban prohibits former state employee from making any appearance or communication before his former agency, and a state interagency council to which he provided services as a loaned employee, in regards to an application for funding for one-year after leaving the state. However, the ban does not prohibit the official from assisting a city with an application so long as he is not identified in submitting the application and does not otherwise make an appearance or communication before his former agency or the interagency council.

**Sean L. Spear** **A-15-017**

The Act’s post-employment provisions do not prohibit the executive director of the California Debt Limit Allocation Committee from working for a private consulting firm that has clients with matters before the Committee, the Treasurer’s office, or any other board, commissions, and agencies chaired by the State Treasurer. However, under the Act’s one year ban, the official will be prohibited from being paid by the firm to make an appearance or communication for the purpose of influencing decisions regarding the official’s clients before the Committee, the Treasurer’s office, or any board, commission, or agency whose budget, personnel, and other operations are subject to the control of the Treasurer’s office.

**Ron W. Beals** **A-15-040**

The permanent ban does not apply to a Caltrans proposal to lease changeable message signs to private parties when the feasibility studies, meetings, and reporting occurred more than four years ago and did not name particular actors or contracts. If the plan is rejuvenated, the project would not be considered the “same proceeding” for purposes of the permanent ban.

**Mike Hill, M.S.**

**A-15-051**

Mr. Hill was employed as an Environmental Scientist by the California Department of Fish and Wildlife until April 22, 2011. In July 30, 2004, he prepared a damage assessment describing the damage that had been done to the Salinas River and adjacent habitat that was used in the prosecution of a suspect. In March 2015, the individual that was prosecuted in the 2004 case sought Mr. Hill’s services in a similar but separate violation involving the same Fish and Game Code Sections. The permanent ban in Section 87400 et seq. does not apply because the 2014 complaint involves separate conduct, albeit by the same individual, and constitutes a new proceeding.

**Steven M. Danowitz**

**A-15-054**

Mr. Joseph was employed at the Franchise Tax Board (“FTB”) through March 13, 2015. As part of Mr. Joseph’s responsibilities at his private employer, he may be called upon to advise, counsel, consult, or otherwise assist in representing parties that file an Alternative Apportionment Methodology (AAM) petition with the FTB. AAM petitions, if granted, allow multistate taxpayers to depart from the standard apportionment formula used for determining a taxpayer’s California source taxable income for a specified tax period (sometimes covering multiple tax years).

We advised that: (1) a taxpayer’s AAM petition is a “judicial, quasi-judicial, or other proceeding” as contemplated by Section 87400; (2) the appeal of an AAM denial would involve identical parties, and identical factual and legal issues and therefore is the same proceeding as the underlying AAM determination; and (3) that Mr. Joseph is permanently banned from participated in any proceeding regarding an AAM petition in which he participated as a state administrative official (and all of the tax years included in the AAM proceeding), but he may work on new AAM petitions for future tax years, even if filed by the same taxpayer.

**Carol Harman**

**A-15-064**

The Act does not prohibit a member of the Budget Review Committee for the City of Poway to be employed by another entity such as a private business, firm, or nonprofit. However, the member may not make, participate in making or influence a governmental decision that would affect her economic interests, including her private employer. Influencing includes contacting or appearing before, or otherwise attempting to influence, any member, officer, employee, or consultant of the city on behalf of her employer.

**Section 1090**

**Kevin Ennis**

**A-15-006**

Employees of a company that consults with a city to develop an energy supply contract are subject to Section 1090 but are not consultants under the Act. Under Section 1090, because the

terms of the contract are fixed and were negotiated before any further contracts that were subject to Section 1090 were executed, the employees do not have a financial interest in the contracts.

**Veronica Williams**

**A-15-029**

Requestor is a school board trustee for the Carlsbad Unified School District (“CUSD”). She seeks to enter into a contract with MiraCosta College for research and analysis services in her private capacity as a business owner. The CUSD Board of Trustees has no authority over and provides no input for contracts MiraCosta enters. Requestor will therefore not be making a contract in her official capacity as a CUSD trustee and is not prohibited by Section 1090 from entering into such a contract.

**Hans Van Ligten**

**A-15-038**

Councilmember owns a condominium that sits adjacent to and has views of a fairway on a golf course. The golf course has sued the City over its deterioration due to the City’s significant extraction of water from an aquifer used to water the golf course. The Councilmember has a financial interest in any future settlement agreement between the City and the golf course, but this interest is remote under Section 1091(b)(15). Section 1090 does not therefore prohibit the City and the golf course from entering into a settlement agreement.

**Jeffrey A. Walter**

**A-15-050**

Section 1090 prohibits the Novato City Council from approving a contract as between the City and a consulting firm where a councilmember’s spouse is employed by the firm. The City Manager, however, has independent legal authority, in limited situations, to enter contracts on behalf of the City without involvement from the City Council. In such situations, Section 1090 would not prevent the City Manager from entering into a contract with the firm.