



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

November 17, 2016 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of October 6, 2016 through November 3, 2016, the Enforcement Division received over three times the usual number of complaints. We received over 100 *each* of sworn complaints, non-sworn complaints and referrals for non-filers, all of which does not include the pre-election efforts where Enforcement Division staff worked with filing officers from around the state to obtain pre-election disclosure and compliance.

Our goal was to review these complaints as quickly as possible to either reject the ones without merit or open for investigation and possible penalty the ones with violations and potential violations of the Political Reform Act. We also proactively reviewed committee names, mass mailers and advertisements for all statewide ballot measures and a substantial number of local ballot measures. As a result of these efforts, over 25% of the complaints received have been rejected and over 35% have been opened as cases. Additionally, the agenda presented to the Commission at this month's meeting includes 15 proposed settlements involving filings and disclosures impacting the November 8, 2016 General Election.

Also during this time, the Division closed a total of 127 cases including:

- 20 warning letters,
- 2 advisory letters,
- 18 no action letters,
- 19 as a result of the adoption of stipulations and defaults at the September Commission meeting, and
- 68 committees were administratively terminated.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 187 have been resolved with fines and 186 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 54 have been resolved with fines and 267 are currently being worked. As for the remaining referrals, they were rejected, the committees were terminated locally without notice to Secretary of State, the committees were administratively terminated or are slated for administrative termination, or the committee received no violation or warning letters.

II. LEGAL DIVISION

STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JACK WOODSIDE, SENIOR COMMISSION COUNSEL

A. Pending Litigation

Frank J. Burgess v. Fair Political Practices Commission.

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission's decision and order in *In re Frank J. Burgess*, Case No. 12/516. The Commission found that Mr. Burgess violated Government Code Section 87100 of the Political Reform Act (the Act)¹ and imposed a \$5,000 fine on July 7, 2015. Mr. Burgess challenged that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On September 15, 2016, the Court issued its Judgment granting the Petition on due process grounds. After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the Judgment stand and to vacate and set aside its Decision and Order in the underlying matter pursuant to the Court's order. Accordingly, the Commission has dismissed the administrative proceedings against Petitioner Burgess and timely filed a Return to the Writ.

B. Outreach and Training

- Senior Commission Counsel Sukhi Brar and Manager Trish Mayer met with staff at the City of Sacramento to answer questions regarding the city's updated ticket policy and administration of Form 802 under Regulation 18944.1.
- Early in the month, Political Reform Consultant Ivy Branaman conducted a webinar for local government agency staff who administer conflict of interest code amendments. A final webinar on this topic was conducted late in October by Political Reform Consultants Cynthia Jones and Cynthia Fisher. There was active participation among attendees during both webinars regarding topics including which positions should be designated in a code and what level of disclosure to assign to those positions. A link to a recorded webinar is now posted on our website for on-going training on this topic.

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 this source.

C. Advice

In October 2016, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and Attorneys collectively responded to more than 1,345 email and telephone requests for advice.
- **Advice Letters:** The Legal Division received seven advice letter requests and issued 17 advice letters.
- **Section 1090 Letters:** Legal Division received 13 new advice letter requests concerning Section 1090 and issued 3. This year to date we have received 54 requests regarding Section 1090.

D. Advice Letter Summaries

Behested Payment

John J. Duran, Esq.

A-16-203

After a city councilmember discussed a specific nonprofit program with an individual, the individual made a \$10,000 to the nonprofit. This payment was made at the behest of the councilmember and must be reported as behested payment on Commission Form 803. The Form 803 must be filed with the councilmember's city within 30 days of the date the payment was made.

Campaign

Savith Iyengar

A-16-171

When a contribution is made electronically, the entire amount authorized by the contributor, including any amount charged by the vendor or collecting agent, is the amount of the contribution. When is a contribution made through an electronic payment service like PayPal or Square Cash, the contribution is "received" on the date the vendor or collection agent like PayPal or Square Cash obtains possession or has control of the debit/credit account information. If an electronic contribution is declined by a committee (where a payee elects to reject an unclaimed payment because the amounts exceeded the local contribution limit), it need not be reported if it is rejected prior to the closing date of the campaign statement on which the contribution would otherwise be reported.

Steve Piercy

A-16-174

A campaign committee that uses payment card processors for contributions made via the Internet satisfies the Act's requirement to maintain records of a contributor's credit card number if the committee retains only the last four digits of the number, where industry standards and laws that protect against credit card fraud restrict disclosing, using and storing full credit card numbers.

Jim Koerber**A-16-190**

A district attorney's association PAC is not prohibited from making an independent expenditure for a candidate, who is a former board member of the PAC and who has provided routine membership donations to the PAC through dues, as long as the expenditures are not coordinated, arranged, or made at the direction of the candidate, his committee or their agents.

Max D. Kanin**A-16-191**

A candidate may establish an Act Blue or Democracy Engine account to raise contributions for the candidate's legal defense fund for legal fees arising out of the 2014 election campaign. Under the Act, however, the legal defense fund committee may not pay fundraising costs -- here the fees charged by Act Blue or Democracy Engine -- to process the online contributions. The candidate's campaign committee may pay those costs.

Noveed Safipour**A-16-193**

The Peninsula Democratic Coalition is a political club with an active general purpose committee that is registered with the Secretary of State and files periodic disclosure reports. The Peninsula Young Democrats is a semi-independent political club affiliated with the Coalition that receives all its funding from, and shares a bank account and website with, the Coalition. The Act requires the Coalition to disclose any expenditure made by the Young Democrats because the Young Democrats is a component of the Coalition for purposes of the Act.

Conflict of Interest**Josh Fryday****A-16-087**

A city councilmember may participate in decisions regarding how to dispose of three city owned parcels for future development despite owning property near the parcels because development would not change the character of the councilmember's property or otherwise affect the property's market value. The councilmember may also take part in decisions to grant certain entitlements on another parcel located 1,500 feet from his property, including a change to zoning that would reduce the total number of units and would reduce the number of units designated as affordable housing. The decisions will not have a reasonably foreseeable material financial effect on his property.

Dwight L. Moore**A-16-175**

Three public officials (Mayor and two councilmembers) have an interest in commercial properties within the proposed sewer assessment district and thus have disqualifying conflicts of interest under the Act in decisions related to the proposed district. However, the public generally exception applies to allow Mayor Jones and Councilmember Lotter to participate in the decisions. But since Councilmember Bolin owns several commercial real properties and the cumulative effect to his interests will be disproportionate, the public generally exception does not apply to allow him to participate in the subject decisions.

Keith F. Collins**A-16-195**

The Mayor may make, participate in making, or influence decisions regarding the historic landmark designation of properties within 500 feet of property he leases because the decisions will not have a foreseeable and material financial effect on his lease of property or on his law practice which operates from the property.

Keith F. Collins**A-16-196**

Councilmember Warner may make, participate in making, and influence decisions regarding the historic landmark designation of buildings near a dental office on property she and her spouse rent. The month-to-month rental is not an interest in real property. Moreover, the decisions in question will not financially affect her spouse's business.

Keith F. Collins**A-16-197**

Because the historic landmark decisions will not affect the value of the councilmember's business and will not affect the value of his property, Councilmember Henderson may make, participate in making, or influence the decisions regarding the historic landmark designations.

Kenneth Rozell**A-16-198**

The Act prohibits a City of Oxnard Planning Commissioner from taking part in governmental decisions relating to short-term rentals of residential properties because those decisions would have a reasonably foreseeable material financial effect on her real property interest in her residence distinguishable from the public generally. Because vacation rentals may increase noise and create issues with parking, traffic, and trash within a neighborhood, and because the Commissioner's residence is located within 500 feet of one or more vacation rentals, the decisions would have a reasonably foreseeable measureable impact on her residence. The Commissioner may not invoke the "public generally" exception because she did not establish that the decisions would affect a significant segment of the public.

Mary Beth Barber**A-16-201**

A state employee serving on a nonprofit board, without compensation, will not have a conflict of interest in decisions that will financially affect the nonprofit. Moreover, if the nonprofit is certified as a 501(c)(3) charitable organization, reimbursement for travel expenses and per diem payments would not be considered income.

Rhoann Ponseti**A-16-205**

The Act does not prohibit a Town of Windsor Public Art Advisory Committee member from taking part in the governmental decision to recommend one of three alternative design options to the Town Council for the renovation of the Windsor Town Green community park water fountain. While the member owns a residence within 350 feet of the fountain, the decision on the decision of the fountain would not have a reasonably foreseeable material financial effect on the member's real property.

Vicki Nichols**A-16-209**

Under the facts provided, the Commissioner would not have a conflict of interest either under Section 87100 or Section 84308. Since the Commissioner does not have a financial interest that could be affected by the decision, she would not have a conflict of interest under Section 87100.

With respect to Section 84308, campaign contributions only give rise to a conflict of interest for a Planning Commissioner if the Commissioner has received a contribution of more than \$250 within the preceding 12 months from a party or from any participant. Both because of the size of the contribution in question (\$250) and the fact that it was received more than 12 months ago, Section 84308 does not apply.

Craig S. Woodward**A-16-216**

Having the profession of a real estate agent does not, in itself, create a conflict of interest. Moreover, under the facts provided, the planning commission's consideration of an appeal of a city staff decision to approve the use of specific property as a vacation rental will not have a foreseeable and material effect on any of the commissioner's financial interests. Therefore, the commissioner does not have a conflict of interest prohibiting him from making, participating in making, or influencing the appeal.

Revolving Door**Steve Kinsey****A-16-183**

The Act's conflict of interest and revolving door provisions did not prohibit Supervisor Kinsey from participating in decisions involving the City of San Rafael, his prospective employer; or after leaving public office, prohibit him from appearing before or communicating with his former agency. For purposes of Section 87100, the Supervisor's only financial interest at issue is a possible personal financial effect arising from a future decision. No actual decision is pending before any of the public boards he serves on. Additionally, the Act's revolving door bans are not applicable to his future employment with the City of San Rafael, as the Act's exceptions for post-government employment with another government agency are applicable.

Section 1090**Kara K. Ueda****A-16-104**

A member of the Sacramento Housing and Redevelopment Commission was advised that Section 1090 prohibits him from participating in the Commission's recommendations on financing contracts with clients of his consulting business. Though the Commissioner has a conflict of interest in decisions involving clients of his firm, the Commission is not prohibited from making recommendations on financing to the relevant agencies so long as the Commissioner recuses himself.

Dylan Roy**A-16-157**

Under Section 1090, a hospital and a medical group may not contract with the county's Health and Human Services Agency if they employ a doctor who holds high-level supervisory, management and oversight roles at the agency. It is unlikely that the doctor would be able to sufficiently separate herself from the contracting process to say that she does not participate in making the contracts.

Nellie Ancel**A-16-173**

Where a real estate broker has not advised or influenced the public body prior to the contract under which it now seeks to provide technical expertise in facilitating the acquisition or sale of real property, Section 1090 is not applicable.

E. Conflict of Interest Codes**Adoptions and Amendments****Exemptions and Extensions***Multi-County Agency Conflict of Interest Codes**Exemption*

- | | |
|---|---|
| <ul style="list-style-type: none"> • Association of CA Water Agencies Joint Powers Insurance Authority • Big Independent Cities Excess Pool JPA • CA Fair Services Authority • CA Fairs Financing Authority • CA Mental Health Services Authority • Kingsburg Cemetery District • Los Rios Community College District • Nevada Irrigation District • Partnership Health Plan of California • Redwood Empire Schools Insurance Group • Sutter-Yuba Behavioral Health • Turlock Unified School District | <ul style="list-style-type: none"> • None <p><i>Extension</i></p> <ul style="list-style-type: none"> • None |
|---|---|

State Agency Conflict of Interest Codes

- Department of Fair Employment and Housing
- Lieutenant Governor's Office
- Department of Pesticide Regulation

F. 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 Act unless a violation is proven in a subsequent proceeding.*

The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.

1. In the Matter of Re-Elect Gary Mendez for Rio Hondo College Board 2011 and Gary Mendez, FPPC No. 15/218.

On September 29, 2016, probable cause was found to believe that the named Respondents committed five violations of the Act, as follows:

- COUNT 1: Mr. Mendez and the Committee failed to timely file the semi-annual statement due February 2, 2015, in violation of Section 84200.
- COUNT 2: Mr. Mendez and the Committee failed to timely file the semi-annual statement due February 1, 2016, in violation of Section 84200.
- COUNT 3: Mr. Mendez and the Committee failed to timely file the semi-annual statement due July 31, 2015, in violation of Section 84200.
- COUNT 4: Mr. Mendez and the Committee failed to pay the 2014 Annual Fee by the January 15, 2014 deadline and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).
- COUNT 5: Mr. Mendez and the Committee failed to pay the 2015 Annual Fee by the January 15, 2015 deadline and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

2. In the Matter of Friends of Anna Song for County Board of Education 2016 (the "Committee") and Anna Song, Case No. 15/1037.

On September 29, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

- COUNT 1: The Committee and Ms. Song failed to pay the 2013 Annual Fee by the February 15, 2013 deadline and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5 (c) and (d).
- COUNT 2: The Committee and Ms. Song failed to pay the 2014 Annual Fee by the January 15, 2014 deadline and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).
- COUNT 3: The Committee and Ms. Song failed to pay the 2015 Annual Fee by the January 15, 2015 deadline and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

3. In the Matter of Barzin Omid, Case No. 16/061.

On October 18, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

Mr. Omid, a Public at Large Member of the Antelope Valley Air Quality Management District Hearing Board, failed to:

- COUNT 1: Timely file an Assuming Office Statement of Economic Interests (“SEI”) with the Los Angeles County Board of Supervisors within 30 days of taking his position, in violation of Sections 87300 and 87302.
- COUNT 2: File a 2014 Annual SEI with the Los Angeles County Board of Supervisors by April 1, 2015, in violation of Section 87300.
- COUNT 3: File a 2015 Annual SEI with the Los Angeles County Board of Supervisors by April 1, 2016, in violation of Section 87300.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: TARA STOCK, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 1,023 requests for advice via phone in October.

Forms, Manuals, and Other Materials

Division staff updated and posted the Lobbying Disclosure Manual to include the following regulatory changes approved by the Commission in 2016:

- Requirements for more detailed disclosure when reporting “other payments to influence” legislative or administrative action.
- Clarification that the “ride-along exception” applies only to employees who are subject matter experts who attend meetings with a lobbyist to add substantive information on a particular issue.
- The new “rebuttable presumption” rule for contract lobbyists who receive \$2,000 or more in a calendar month.

Division staff also drafted updates to the following 2016/2017 documents, which will be presented for your approval at the November 17, 2016, Commission hearing:

- Form 700 – Statement of Economic Interests
- Form 700 Reference Pamphlet
- Form 700-A – Auditors, Claims Managers/Adjusters, and Other Eligible Filers
- Form 700-U – University Principal Investigators

Workshops and Webinars

Political Reform Consultant Glen Bailey recorded a YouTube video for campaign filing officers on their duties under the Act, which is now posted on the website.