



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

December 15, 2016 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of October 6, 2016 through December 1, 2016, the Enforcement Division received 342 complaints, opened 121 for investigation, and rejected 104. The Enforcement Division received 246 non-filer referrals during this time and rejected 6.

Also during this time, the Enforcement Division closed a total of 237 cases including:

- 62 warning letters,
- 2 advisory letters,
- 35 no action letters,
- 53 as a result of the adoption of stipulations and defaults at the October and November Commission meetings, and
- 85 committees were administratively terminated.

The Division had 946 cases in various stages of resolution at the time of the October Monthly Report and currently has approximately 1,018 cases in various stages of resolution, including the 37 cases before the Commission as listed in the December 2016 agenda.

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, 189 have been resolved with fines and 177 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 55 have been resolved with fines and 253 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. Following an administrative hearing in front of an Administrative Law Judge (ALJ), Mr. Burgess challenged that decision to the Commission. After oral argument before the Commission on March 19, 2015 and a thorough review of the record, the Commission rejected the ALJ's decision and decided the case based on the record, oral argument, and the parties' supplemental briefing on the "governmental decision" element of the case. 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. The Court further ordered the Commission to file a Return to the Writ on or before November 7, 2016. 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. The Commission has therefore dismissed the administrative proceedings against Petitioner Burgess and timely filed a Return to the Writ. On November 14, 2016, Burgess filed a Motion for Attorney's Fees. The Commission's Opposition to this Motion is due on or before December 8, 2016. The FPPC is working with the Attorney General's office on this motion and they are in discussions with Petitioner and the Court to get an extension for filing the Opposition.

B. Outreach and Training

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.

- Senior Commission Counsel Emelyn Rodriguez participated in two sessions of the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics' lobbyist ethics training course on November 17, 2016. The training is required for all registered lobbyists. Approximately 300 lobbyists and placement agents attended the sessions.
- On November 21, 2016, Senior Commission Counsel Sukhi K. Brar of the Legal Division and Deborah Hanephin of the External Affairs and Education Division conducted a training on the Act's Gift rules for approximately 60 attorneys at the California Department of Corrections and Rehabilitation headquarters in Sacramento, California. The presentation covered the gift limits, exceptions, restrictions and reporting requirements.
- On November 30, 2016, Senior Commission Counsel Sukhi K. Brar made a presentation at the City of Oakland Public Ethics Commission's Special Meeting on City Ticket Distribution Policy and Process. The presentation consisted of an overview of the Act's role in the city's event ticket distribution policy.

C. Advice

In November 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 684 email and telephone requests for advice.
- ***Advice Letters:*** The Legal Division received 13 advice letter requests and issued eight advice letters.
- ***Section 1090 Letters:*** Legal Division received nine new advice letter requests concerning Section 1090 and issued six. This year to date we have received 63 requests regarding Section 1090.

D. Advice Letter Summaries

Campaign

Carmine S. Forcina

A-16-232

A member of the Board of Trustees of a school district may donate unspent funds from his last campaign to a public school in the District so long as the proceeds will not have a material financial effect on the Board member, his immediate family, his campaign treasurer, or any person with authority to approve the expenditure of campaign funds held by his committee. The donation bears a reasonable relation to a governmental purpose.

Conflict of Interest

Melinda C. H. Stewart**A-16-169**

A City Attorney requestor was advised that her daughter's receipt of a scholarship from Comcast did not create a conflict of interest that would prohibit her from participating in governmental decisions that involve the amendment of a lease between the city and Comcast and an ordinance regulating cable television operations. The City Attorney was advised that she may participate in both decisions because her daughter's receipt of a scholarship from Comcast was received after her daughter's participation in a bona fide competition and the income was to her daughter not the City Attorney requestor.

Sue Rae Irelan**A-16-200**

A public official has a conflict of interest in decisions that will foreseeably and materially affect the business of the official's spouse and sources of income to the business. However, since the spouse's business is contracting with an applicant/source of income on a separate project, unrelated to the one that the official is working on, it is not foreseeable that the spouse's business will be foreseeably financially affected. Moreover, the decisions in question will have a minimal financial effect on the applicant/source of income. Regulation 18702(b) provides that "the financial effect of a government decision is not material if it is nominal, inconsequential, or insignificant" and is disregarded.

Heather Lenhardt**A-16-224**

The Planning Commissioner is the paid Executive Director of a nonprofit. An applicant before the planning commission has made donations to the nonprofit. The Planning Commissioner does not have a conflict of interest in the decision because under Regulation 18702.3(a)(3), the nonprofit will not be foreseeable and materially affected by the decision.

Katharine L. Elliott**A-16-231**

A county supervisor rents property to an individual who has applied for, and was granted, a permit to grow 99 marijuana plants on the rental property. The Board of Supervisors is now reviewing ordinances regarding other areas of commercial medical marijuana regulation besides cultivation such as dispensaries, distribution, licensing, processing, testing, and manufacturing. Because these decisions would affect the tenant's business by impacting the profitability of the business, the financial effect is foreseeable and material and the supervisor has a conflict of interest.

Gifts**Sophie Harrison****A-16-235**

The payments for the travel, lodging and subsistence in connection with a trip for Silicon Valley mayors to participate in the "2016 China Economic and Trade Exchanges Trip" are reportable gifts and may subject the recipient officials to a conflict of interest in decisions affecting the donors. However, the payments are not subject to the gift limits because they will be provided in connection with a legislative or governmental purpose by a 501(c)(3) organization. Any other payments will be (1) reportable as gifts, (2) subject to gift limits, and (3) may subject the recipient officials to a conflict of interest in decisions affecting the donors.

Lobbying

Tom Cachette**A-16-167**

The requestor was advised that if work on a research report was undertaken for one or more of his clients for the purpose of engaging in direct communication, and he engaged in direct communication, the preparation work put into the reports would qualify towards lobbying activity. Once the payments for the work reached the \$2,000 threshold in a calendar month he would qualify as a lobbyist even if no single client has paid \$2,000. Additionally, the requestor was advised that if he had direct communication with a qualifying official and received payment of \$2,000 or more in a calendar month, there is a rebuttable presumption affecting the burden of producing evidence that all compensation from that client during that calendar month is for direct communication. This presumption can be rebutted by evidence that may include testimony, records, bills, and receipts establishing the payments made to you and the goods and services provided.

SEI**Alison Barratt-Green****A-16-206**

The Act requires the Nevada County Historical Landmarks Commission to adopt a conflict-of-interest code (or be included within the County's Code) and the Commission members to file statements of economic interests (SEIs) pursuant to the code because the Commission members are public officials engaged in decisionmaking under the Act. Additionally, the Commission members must comply with the Act's conflict-of-interest provisions. Over the past 23 years, the significant majority of the Commission's recommendations to the County Board of Supervisors were approved without significant modification and over the past several years, the Board has approved the Commission's recommendations through its consent calendar.

Section 1090**Mark J. Hattam****A-16-204**

Under the remote interest exception in Section 1091(b)(17), a water authority is not prohibited under Section 1090 from amending its existing contract or executing a new contract with a law firm so long as (1) the director, whose spouse recently joined the firm as a partner, discloses his interest in the firm to the public agency, (2) the interest is noted in the agency's official records, and (3) the director abstains from any participation in the making or approval of the contract.

James R. Williams**A-16-208**

The Act does not prohibit a county supervisor from taking part in decisions relating to contracts with the Santa Clara Valley Open Space Authority (SCVOSA) where her spouse is employed. The spouse's compensation is not "income" because the SCVOSA is a local government agency, and there is no personal financial effect because the decisions will not affect the spouse's compensation from the SCVOSA. Section 1090 does not prohibit the contract because the supervisor's interest is a "noninterest" under Section 1091.5(a)(6).

Claudia G. Silva**A-16-212**

A commissioner of the Housing Authority may take part in the Housing Authority's decision to select a developer for a project even though her nonprofit employer provides grants to some of the bidding developers. Under Section 1090, the commissioner does not have a financial interest in the contract with the developer. Under the Act, it is not reasonably foreseeable that the decision will have a material financial effect on her financial interest in her nonprofit employers.

Roxanne Diaz**A-16-214**

The Act prohibits the Mayor from taking part in decisions relating to a city franchise agreement for waste management services because those decisions would have a reasonably foreseeable material financial effect on the Mayor's interest in a waste-services vendor that is a named party in one of the bids. Section 1090 also prohibits the City from entering into the agreement because of the Mayor's interest in that vendor. If the Mayor resigns from working for the vendor in connection with the franchise agreement, the Mayor would still be disqualified under the Act, but Section 1090 would no longer apply to the agreement.

John Headding**A-16-219**

Under Section 1090's "rule of necessity," the Morro Bay Fire Department may purchase controlled substances needed to maintain its Advanced Life Support Program from a city councilmember's pharmacy where, after a diligent search, the fire department found no other pharmacies that would sell the drugs in amounts small enough to comply with the program's legal requirements.

Christian Bettenhausen and Keith F. Collins**A-16-229**

Section 1090 and the Act do not prohibit the Councilmember from entering into the partnership and seeking a marijuana cultivation permit. While Section 1090 would not apply to the regulatory decision as to whether to issue a permit to the councilmember or his partnership, Section 87100 would prohibit him from making, participating in making, or influencing any permit decisions.

E. Conflict of Interest Codes

None to report.

F. Upcoming Regulations**February 16, 2017**

- **Controlled Committee.** A committee controlled by a candidate or state measure proponent is defined in Section 82016. Staff proposes to codify legal advice regarding what constitutes having significant influence over a committee to make the committee a controlled committee under that section.

March 16, 2017

- **Conflicts of Interest Regulations, Select Revisions:** Having advised on the new conflict of interest rules for over a year, staff will present a review and refinement of select provisions of the conflict of interest regulations enacted in 2014 and 2015.

G. Conflict of Interest Codes

Adoptions and Amendments

Multi-County Agency Conflict of Interest Codes

- Central California Tristeza Eradication Agency
- Colton Joint Unified School District
- Lassen Community College District
- North Delta Water Agency
- Petaluma Schools
- Red Bluff Joint Union High School District
- Western Municipal Water District

Exemptions and Extensions

Exemption

- None

Extension

- None

State Agency Conflict of Interest Codes

- Fish and Game Commission
- Fish and Wildlife Department
- Sacramento-San Joaquin Delta Conservancy
- Status of Women and Girls Commission

H. 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.

In the Matter of I-Chinese American Political Action Committee and Victor Gau, FPPC Nos. 15/661 and 16/379. On November 17, 2016, probable cause was found to believe that the named Respondents committed seven violations of the Act, as follows:

COUNT 1: The Committee and Mr. Gau failed to pay the 2013 annual fee by the February 15, 2013 due date 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 Mr. Gau failed to pay the 2014 annual fee by the January 15, 2014 due date 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 Mr. Gau failed to pay the 2015 annual fee by the January 15, 2015 due date 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 4: The Committee and Mr. Gau failed to pay the 2016 annual fee by the January 15, 2016 due date 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: The Committee and Mr. Gau failed to timely file the semi-annual statement due February 2, 2015, in violation of Section 84200.
- COUNT 6: The Committee and Mr. Gau failed to timely file the semi-annual statement due February 1, 2016, in violation of Section 84200.
- COUNT 7: The Committee and Mr. Gau failed to timely file the semi-annual statement due July 31, 2016, in violation of Section 84200.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: TARA STOCK, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to almost 600 requests for advice via phone in November. Thus far in 2016, the Division has answered almost 9,100 requests for phone advice.

Forms, Manuals, and Other Materials

Division staff is currently working to update and post the following materials:

- 2016/2017 Form 700 and Related Documents
- 2017/2018 Charts for Updated State Contribution and Voluntary Expenditure Ceiling Limits
- 2017 Fact Sheets for Limitations and Restrictions on Gifts, Honoraria, Travel and Loans
- 2017 Political Reform Act, Index, and Appendices

Workshops

Political Reform Consultant Deborah Hanephin and Senior Commission Counsel Sukhi Brar presented a workshop on gifts, honoraria, and travel payments at the monthly All Attorneys Meeting for the California Department of Corrections and Rehabilitation.

Division staff is gearing up for upcoming workshops to be held for state and local Form 700 filing officers, local candidates and treasurers, and campaign filing officers.

Filing Schedules

Division staff created and posted the filing schedules for the November 7, 2017 local elections. Filing schedules for local elections being held on March 7, 2017, June 6, 2017, and November 7, 2017 are now available on the website. Staff continues to create filing schedules upon request from local jurisdictions holding special elections on other dates in 2017. In addition, staff is creating odd-year filing schedules for state committees.