



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

March 16, 2017 Commission Hearing

Contents

<u>ENFORCEMENT DIVISION</u>	2
<u>LEGAL DIVISION</u>	3
<u>EXTERNAL AFFAIRS AND EDUCATION DIVISION</u>	13

I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of February 3, 2017 through March 2, 2017, the Enforcement Division received 41 complaints, opened 9 for investigation, and rejected 7. The Enforcement Division received 50 non-filer referrals during this time and rejected 3.

Also during this time, the Enforcement Division closed a total of 100 cases including:

- 17 warning letters,
- 7 no action letters,
- 27 as a result of the adoption of stipulations and defaults at February Commission meeting, and
- 49 committees were administratively terminated.

The Division had 1,036 cases in various stages of resolution at the time of the February Monthly Report and currently has approximately 996 cases in various stages of resolution, including the 37 cases before the Commission as listed in the March 2017 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, 193 have been resolved with fines and 147 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 67 have been resolved with fines and 208 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

Howard Jarvis Taxpayers Association v. Edmund Brown, et al.

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds for the purpose of financing campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Act because it does not “further the purposes of the Act,” an express requirement in the Act for legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. It filed an Answer in response to the lawsuit on January 27, 2017.

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 Section 87100 of the Act (the “Act”)¹ and imposed a \$5,000 fine on July 7, 2015.

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.

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 FPPC in conjunction with the Attorney General's office prepared an opposition to this motion which was filed on January 25, 2017. A hearing on the fee motion is scheduled for March 16, 2017 in Riverside County.

B. Outreach and Training

- Political Reform Consultants Ivy Branaman and Cynthia Jones each conducted a roundtable workshop to state agency staff who administer conflict of interest code amendments. There was active participation among attendees regarding topics including which positions should be designated in a code and what level of disclosure to assign to those positions. Webinars on the same topic are scheduled for the coming months.
- On February 23, 2017, Senior Attorneys Jack Woodside, Zachery Norton, and Assistant General Counsel John W. Wallace met with Hastings Law students to discuss the regulatory process at the Commission. The students were part of Professor Michael Salerno's (Clinical Professor of Law, Director of the UC Hastings Legislation Clinic) Legislation Clinic program.

C. Advice

In February 2017, 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 1,118 email and telephone requests for advice.
- ***Advice Letters:*** The Legal Division received 19 advice letter requests and issued 16 advice letters.
- ***Section 1090 Letters:*** Legal Division received four new advice letter requests concerning Section 1090 and issued three. This year to date we have received 11 requests regarding Section 1090.

D. Advice Letter Summaries

Conflict of Interest

Jesse W. Barton**A-17-002**

The Act's conflict of interest provisions do not prohibit Director Kopf from voting on the Yosemite Junction project where his consulting company has neither performed any planning or consulting work on the project nor received any compensation for the project and there are no facts suggesting it will contribute in any way to a change in the value of his business. In addition, Section 1090 is inapplicable because the governmental decision at issue does not involve a contract.

Marcus Contardo, M.D., M.P.H.**I-17-008**

Should requestor become a member of the board of directors for the Tri-City Healthcare District, he will be subject to both the conflict of interest provisions under the Act and Section 1090. He would thus be prohibited from making, participating in making any governmental decisions in which he has a financial interest. In addition, Section 1090 would prohibit him from making contracts in which he is financially interested.

Robert W. Schultz**A-17-009**

All three Council Members own real property within 500 feet of two properties owned by persons who are appealing the assessment of monetary penalties for violating a Town Ordinance prohibiting demolition of historic structures. The renovations have already been completed. Since the only decision at issue concerns the two penalties that were assessed on the property owners, it is not reasonably foreseeable that the Council Members' real property values will be in any manner affected by decisions.

Michael C. Ghizzoni**A-17-013**

A county supervisor was advised that her staff can discuss and participate in meetings related to a Wildfire Protection Plan with appropriate County departments so long as the staff does not otherwise have financial interests involved in the decisions and the supervisor is walled off from the discussions and meetings.

Dwight L. Moore**A-17-016**

The Councilmember would have a conflict of interest that prohibits him from participating in the decision to build a sewage system in the downtown area where he owns several commercial properties and businesses.

Laurence S. Wiener**A-17-018**

Generally, if councilmembers own properties in a region of the city that may be subject to a new ordinance, the councilmembers would have a conflict of interest in decisions related to the ordinance. However, the conclusion could be different once an actual plan is created and the terms can be considered.

Laurence S. Wiener**A-17-018a**

Councilmembers who own property in the Hillside zone of the city may participate in a procedural decision concerning how soon the planning commission should complete a proposed Hillside Ordinance so long as the decision will not affect the content of the proposed ordinance. This decision would be merely procedural and would not have a foreseeable financial effect on either councilmember or their property.

Gary S. Winuk**A-17-024**

A San Diego Port Commissioner has source-of-income interests in the San Diego County Taxpayers Association and its political committee. The Commissioner does not have an interest in a contributor to the political committee because campaign contributions are not “gifts” or “income.” The Commissioner is not subject to Section 84308 because there is no indication the Commissioner “accepted, solicited, or directed a contribution.” Finally, the Commissioner does not have an interest in a member of the Board of the Association because the member did not control the nonprofit’s decisionmaking.

Josh Wilson**A-17-034**

A city council member has a conflict of interest in a decision on a median improvement project because the decision would have a reasonably foreseeable material financial effect on a source of income to the councilmember.

Andrae Gonzalez**A-17-035**

A councilmember may not participate in the city council’s consideration of a proposed property based improvement district in a region of the city that includes his nonprofit employer’s property. All the property owners will need to pay an annual assessment, including his employer. However, a public official is not attempting to use his or her official position to influence a governmental decision if the official communicates with the general public or the press. Moreover, if nonprofits are excluded from the assessment, the councilmember may be able to participate in subsequent decisions.

David M. Snow**A-16-268**

A City of Beverly Hills planning commissioner may take part in decisions regarding a condominium building project in close proximity to office space which the commissioner leases and subleases because those decisions would not have a material financial effect on the Commissioner’s interests. Any increased residential density or commercial activity in the immediate area resulting from the project would not have a material effect on the commissioner’s interests in his or his tenants’ respective businesses.

Mary L. McMaster**A-16-270**

A water district board member was advised that she may not participate in a decision before the water district board that would allow irrigation of areas planted entirely with low water use lawns or turf grasses because there is a reasonably foreseeable material financial effect upon her interest in her business. The business specializes in sustainable landscape design. She was also advised she had a conflict of interest in participating in a decision before the water district board to declare a Stage 4 Water Shortage Emergency for the same reason.

Conflict of Interest Code

Janet Coleson**A-16-241**

The Fairfax Open Space Committee of the Town of Fairfax has provided substantial advice concerning open space matters over the years that has consistently been accepted, without significant amendment or modification. Thus, it possesses decisionmaking authority and the Act requires the members to file annual statements of economic interests.

Revolving Door

Zachary D. Wechsler**I-17-038**

Informal assistance letter discussing one-year ban and permanent ban provisions of the Act as applied to a former Managing Deputy Commissioner of the Bureau of Real Estate.

Section 1090

John Mulligan**A-17-023**

Section 1090 does not prohibit the City of Sanger from entering into a new contract for engineering services with the corporate consultant that currently provides those services because the consultant “took absolutely no part” in the City’s decisions regarding the new contract’s request-for-qualifications process. The City is a grantee under the federal Community Development Block Grant program and has ongoing projects subject to the new and existing contracts.

Josh Wilson**A-16-269**

A city council member does not have a conflict of interest in a decision on a to enter into a sponsorship agreement between the City and a business that is a source of income, because he would not be making or participation in making a decision under the Act. Further, Section 1090 does not apply since the sponsorship agreement is not under the authority of the City Council and is approved by an independent official under the direction and control of the City Manager.

Lobbying

Nicolas Heidorn**A-17-022**

An in-house lobbyist may present a plaque or award worth less than \$250 to a legislator that the lobbyist and its lobbyist employer are registered to lobby. The payment for the award is not a gift or a reportable activity expense.

E. Miscellaneous Decisions

None to report.

F. Upcoming Regulations

April 20, 2017

None Scheduled

May 18, 2017

- **Conflicts of Interest Regulations.** 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

- California Joint Powers Insurance Authority
- Cooperative Personnel Services
- Friant Water Authority
- Marysville Joint Unified School District
- North Marin Water District
- Stockton East Water District
- Truckee Donner Recreation and Park District
- Yolo County Public Agency Risk Management Insurance Authority

Exemptions and Extensions

Exemption

- None

Extension

- None

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.*

In the Matter of John Lindner and Franklin-Mckinley For Our Kids - Yes on Measure J 2010, FPPC No. 16/286. On February 15, 2017, after a hearing, a probable cause was found to believe that the named Respondents committed ten violations of the Act, as follows:

COUNT 1: On December 30, 2011, Lindner transferred \$1,300 into his personal bank account from the Committee bank account, which conferred a substantial personal benefit for purposes not reasonably related to a political, legislative or governmental purpose, in violation of Section 89512.5.

- COUNT 2: In January 2012, Lindner transferred \$2,100 in 4 separate transfers into his personal bank account from the Committee bank account and made approximately \$750 in expenditures from the Committee bank account, which conferred a substantial personal benefit for purposes not reasonably related to a political, legislative or governmental purpose, in violation of Section 89512.5.
- COUNT 3: In February 2012, Lindner transferred \$1,000 into his personal bank account from the Committee bank account, which conferred a substantial personal benefit for purposes not reasonably related to a political, legislative or governmental purpose, in violation of Section 89512.5.
- COUNT 4: In March 2012, Lindner transferred \$1,000 into his personal bank account from the Committee bank account and made four cash withdrawals of \$100 or more, totaling \$1,000, which conferred a substantial personal benefit for purposes not reasonably related to a political, legislative or governmental purpose, in violation of Section 89512.5.
- COUNT 5: In April 2012, Lindner transferred \$850 in two separate transfers into his personal bank account from the Committee bank account and made two cash withdrawals of over \$100 or more, totaling \$603, which conferred a substantial personal benefit for purposes not reasonably related to a political, legislative or governmental purpose, in violation of Section 89512.5.
- COUNT 6: In May 2012, Lindner transferred \$145 into his personal bank account from the Committee bank account and paid a personal American Express credit card statement in the amount of \$553 from the Committee bank account, which conferred a substantial personal benefit for purposes not reasonably related to a political, legislative or governmental purpose, in violation of Section 89512.5.
- COUNT 7: On August 23, 2013, cash in the amount of \$400 was deposited into the Committee bank account, and then an official bank check of \$395 was withdrawn, in violation of Section 84300.
- COUNT 8: On September 3, 2013, cash in the amount of \$1,320 was deposited into the Committee bank account, and then an official bank check of \$1,320 was withdrawn, in violation of Section 84300.
- COUNT 9: On February 28, 2014, cash in the amount of \$660 was deposited into the Committee bank account, and then an official bank check of \$650 was withdrawn, in violation of Section 84300.
- COUNT 10: Lindner and the Committee failed to disclose required information regarding 15 expenditures of \$100 or more from December 30, 2011, through February 28, 2014, in violation of Section 84211(i).

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

In the Matter of Andrew Klompus, Case No. 16/014. On February 8, 2017, probable cause was found to believe Respondent committed the following violation of the Act:

COUNT 1: Klompus failed to timely file an Annual SEI for the year of 2011 in violation of Sections 87300 and 87302.

COUNT 2: Klompus failed to timely file an Annual SEI for the year of 2012 in violation of Sections 87300 and 87302.

COUNT 3: Klompus failed to timely file an Annual SEI for the year of 2013 in violation of Sections 87300 and 87302.

COUNT 4: Klompus failed to timely file an Annual SEI for the year of 2014 in violation of Sections 87300 and 87302.

COUNT 5: Klompus failed to timely file a Leaving Office SEI within thirty days of leaving office on June 24, 2015 in violation of Sections 87300 and 87302.

In the Matter of Kanwarjit Batth, FPPC No. 15/125. On February 14, 2017, probable cause was found to believe that the named Respondent committed five violations of the Act, as follows:

COUNT 1: Kanwarjit Batth, a former Commissioner with the Fresno County Planning Commission, failed to file a 2011 Annual SEI by April 2, 2012, in violation of Government Code Section 87203.

COUNT 2: Kanwarjit Batth, a former Commissioner with the Fresno County Planning Commission, failed to file a 2012 Annual SEI by April 1, 2013, in violation of Government Code Section 87203.

COUNT 3: Kanwarjit Batth, a former Commissioner with the Fresno County Planning Commission, failed to file a 2013 SEI by April 1, 2014, in violation of Government Code Section 87203.

COUNT 4: Kanwarjit Batth, a former Commissioner with the Fresno County Planning Commission, failed to file a 2014 Annual SEI by April 1, 2015, in violation of Government Code Section 87203.

COUNT 5: Kanwarjit Batth, a former Commissioner with the Fresno County Planning Commission, failed to file a Leaving Office SEI by December 18, 2015, in violation of Government Code Section 87203.

In the Matter of Committee to Elect Debbi Rex and Deborah “Debbi” Rex, Case No. 16/328.

On February 22, 2017, probable cause was found to believe Respondents committed the following violation of the Act:

- COUNT 1: The Committee and Rex failed to timely file the semi-annual campaign statement due January 31, 2013, in violation of Section 84200.
- COUNT 2: The Committee and Rex failed to timely file the semi-annual campaign statement due July 31, 2013, in violation of Section 84200.
- COUNT 3: The Committee and Rex failed to timely file the semi-annual campaign statement due January 31, 2014, in violation of Section 84200.
- COUNT 4: The Committee and Rex failed to timely file the semi-annual campaign statement due July 31, 2014, in violation of Section 84200.
- COUNT 5: The Committee and Rex failed to timely file the pre-election campaign statement due October 6, 2014, in violation of Section 84200.7(b).
- COUNT 6: The Committee and Rex failed to timely file the pre-election campaign statement due October 23, 2014, in violation of Section 84200.7(b).
- COUNT 7: The Committee and Rex failed to timely file the semi-annual campaign statement due February 2, 2015, in violation of Section 84200.
- COUNT 8: The Committee and Rex failed to timely file the semi-annual campaign statement due July 31, 2015, in violation of Section 84200.
- COUNT 9: The Committee and Rex failed to timely file the semi-annual campaign statement due February 2, 2015, in violation of Section 84200.
- COUNT 10: The Committee and Rex failed to timely file the semi-annual campaign statement due August 1, 2016, in violation of Section 84200.
- COUNT 11: The Committee and Rex 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 12: The Committee and Rex 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 13: The Committee and Rex 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 14: The Committee and Rex 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).

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: TARA STOCK, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 757 requests for advice via phone in February.

Forms, Manuals, and Other Materials

Division staff updated the Political Reform Act to reflect legislative changes and updates to regulatory citations. The 2017 Political Reform Act, Appendices, and Index are now available on the website.

Workshops, Webinars, and Other Presentations

Political Reform Consultants made the following presentations:

- Deborah Hanephin, workshop on gifts, honoraria, and travel payments for CalPERS staff
- Glen Bailey and John Kim
 - workshop for state agency Form 700 filing officers
 - workshop for local agency Form 700 filing officers
 - webinar for state agency Form 700 filing officers
 - webinar for local agency Form 700 filing officers

At the request of Assembly Speaker Rendon's Office, Jay Wierenga, Communications Director, represented the Commission at a Civic Engagement Workshop. About 60 residents attended the workshop, which included brief presentations and a question and answer period. Jay presented an overview of the Commission, its role in government, and described how people can get involved in the Commission's mission. Other speakers included Assembly Speaker Rendon and Elva Gomez, Community and Voter Outreach Representative from the Los Angeles County Registrar and County Clerk's Office. Attendees included representatives from the office of State Controller Betty Yee and Congresswoman Lucille Roybal-Allard.

Filing Schedules

Staff created five filing schedules for local jurisdictions holding special elections in 2017.