



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Miadich and Commissioners Cardenas, Hatch and Hayward

**From:** Dave Bainbridge, General Counsel  
Brian Lau, Assistant General Counsel

**Subject:** Advice Letter Report and Commission Review

**Date:** November 8, 2019

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The following advice letters have been issued since the October Advice Letter Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. Full copies of FPPC Advice Letters, including those listed below, are available at: <http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

### **Conflict of Interest**

**Sue Sorensen** [A-19-121](#)

Mayor with interests in a commercial office building and commercial tenants will not have a conflict of interest in a decision to allow additional uses in a particular commercial zone because that decision will not have a reasonably foreseeable and material financial effect on the official's interests in the building located within a different commercial zone, and the official's long-term tenants are not of the type implicated by the zoning change.

**Susan K. Garea, Esq.** [I-19-157](#)

Officials who maintain District's water flow, which in emergency situations may require the use of a pump that could financially impact their private employer do not generally have a conflict of interest in following the District's directive in maintaining the flow as determined by the District, because neither official is making, participating in making, or using their official positions to influence a governmental decision. However, we caution that all decisions must be analyzed individually, and either official may be prohibited from taking part in any specific decision implicating the employer if the official is provided discretion in making the decision or exercises discretion outside of the District's directive.

**Jeff Herdman** [A-19-186](#)

City councilmember who owns properties within 500 feet of a main City thoroughfare may participate in governmental decisions regarding maintenance of trees on the thoroughfare because an exception to the materiality rules applies for a decision that "solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities."

**Richard Hoard**[I-19-196](#)

As a general matter, a planning commissioner who is an employee of a consulting engineering firm has a business and source of income interest in the firm due to his employment. The commissioner will have a disqualifying interest in any government decision before the planning commission involving a client of the firm where the decision meets the standards for a foreseeable and material financial effect on the business under Regulation 18702.1. Disqualification from participation will depend on factors such as the firm's involvement in the project, the likelihood the project will result in additional work for the firm, and the nature and size of the project.

**Nicole C. Wright**[A-19-199](#)

The Act prohibits a city councilmember from taking part in decisions relating to a proposed office development project located approximately 700 feet from the councilmember's single-family home because it is reasonably foreseeable that those decisions would have a material financial effect on the councilmember's real property interest in that home. The councilmember is disqualified from those decisions because they may change the character of the councilmember's home by substantially altering the surrounding area's intensity of use, traffic congestion, and parking demand.

**Shawn Hagerty**[A-19-200](#)

The Act's conflict of interest provisions do not prohibit a councilmember from taking part in decisions relating to a proposed mixed-use project where her employer, a municipal water district, owns property adjacent to the project. The councilmember does not have an interest in the water district as a source of income because salary, reimbursement for expenses, and per diem from a governmental agency are not considered income for purposes of the Act, or an interest in a business entity because government agencies are not organizations or enterprises operated for profit.

**Jamie Raymond**[A-19-202](#)

A councilmember could take part in decisions to approve entitlement requests that would increase the potential residential lots that could be developed on a parcel from 25 to 32, despite the councilmember's ownership of real property 500 to 1,000 feet away from the parcel, because the preliminary nature of the entitlement decisions would not have a reasonably foreseeable financial effect on the councilmember's property.

**Heather Minner**[A-19-205](#)

Mayor could take part in decisions related to the replacement and expansion of a City Hall and City Library, despite the project sites being located within 500 feet of his real property, because clear and convincing evidence indicated that neither project would have a measurable impact on his property.

**Gift Limits****Michele Bagneris**[A-19-189](#)

The value of the trip provided to a councilmember by a tour operator in exchange for the councilmember finding other participants who will pay for and join the tour will qualify as

reportable income from the tour operator and is not a prohibited gift because the councilmember will provide consideration of equal or greater value.

### **Lobbying**

#### **Kevan Insko**

#### **[A-19-119](#)**

If a nonprofit entity makes a grant to a second nonprofit entity to lobby on its behalf, lobbyists employed by the second nonprofit entity will become lobbying firms and must file reports accordingly. The first nonprofit entity will also become a lobbyist employer and must file reports accordingly.

### **Campaign**

#### **Greg Lyman**

#### **[I-19-163](#)**

The name of a committee controlled by one or more candidates must include the last name of each candidate that controls the committee. A committee would not be required to be designated as a committee controlled by a candidate merely because a candidate is serving as a committee treasurer and is only advising on technical requirements. However, if the candidate serving as treasurer has any influence over committee decisions, including discretion when authorizing expenditures, the committee is candidate controlled. We also caution that a treasurer is responsible for authorizing committee expenditures under the Act and is liable for improper expenditures by a committee, even if the treasurer does not exercise discretion in authorizing expenditures.

#### **David A. Schwarz, Esq.**

#### **[A-19-169](#)**

The value of pro bono or discounted legal services, or the payment of such discounted legal services by a third party, rendered in connection with a constitutional challenge to a state statute are neither considered gifts nor contributions to various agency officials because they do not provide a personal benefit to the official and are not for the purpose of influencing voters. However, there may be behested payment reporting obligations for these officials.

#### **Clementine Bonner-Klein**

#### **[A-19-181](#)**

A local filing officer may accept electronic filings of the Statement of Intention, so long as the candidate files it with the same filing officer with whom the candidate would file his or her original campaign statement. If the filing officer has an active e-filing vendor used for campaign statements, this system may also be used for e-filing the Statement of Intention. As long as the e-filing vendor's system contains a procedure for filers to meet the requirements for signing statements under penalty of perjury, a hard copy with wet signature is not required to be submitted.

### **Statement of Economic Interest**

#### **Jay Goldstone**

#### **[A-19-064\(a\)](#)**

A Bank, its employees, and its primary contact on a contract with CalHR involving a short-term investment fund, cash investment option in the CalHR Savings Plus Program, are not required to submit Statements of Economic Interests – Form 700. The Bank is not a consultant subject to full

disclosure because: it does not serve in a staff capacity or participate in governmental decisions; the account is similar to a savings account and not subject to market or investment risk; the interest rate is fixed by the terms of the contract; CalHR unilaterally determines the amount of funds deposited in the account and the Bank does not perform the function of a chief or principal investment officer or financial manager of the funds in the account; and the Bank's management and investment of funds does not affect the account, the State, the State employee investors, or the Bank's earnings under the contract.

### **Section 1090**

#### **Caren Ray Russom**

#### **[A-19-125](#)**

Under the remote interest exception of Section 1091(b)(3) for certain competitively bid contracts, a city council may exercise an option to extend a contract with a consulting firm even where the mayor is married to an employee of the consulting firm as long as the mayor discloses her financial interest in the contract and the disclosure is noted in the official records, and the mayor abstains from any participation in making the contract. To comply with the Act's conflict of interest recusal requirements, the Mayor must announce her interest and leave the room for the duration of the discussion and the vote on the option to extend the contract.

#### **Nancy Diamond**

#### **[A-19-143](#)**

A city councilmember with a source of income interest in a developer client of his consulting business may not participate in the client's project decision(s) before the council where his pro rata income from the client amounts to \$500 or more in the 12 months prior to the decision. As a supplier of services to the client for six years prior to his most recent term, the remote exception in Section 1091(b)(8) applies. The council may take action on the client's development agreement decision, so long as the councilmember takes no part in the decision.

#### **Leticia Ramirez**

#### **[A-19-162](#)**

The Act's conflict of interest provisions do not prohibit a city councilmember from taking part in governmental decisions relating to a potential grant contract between the city and the county housing authority for the support of additional affordable rental housing within the city on account of the councilmember being the executive director of a nonprofit organization that leases commercial real property within the city from the housing authority. Additionally, Section 1090 does not prohibit the councilmember from making or participating in the making of, or the city from entering into, that contract because the noninterest exception of Section 1091.5(a)(4) applies.

#### **Karin Schwab**

#### **[A-19-193](#)**

Under Section 1090, a county board of supervisors could not appoint a supervisor's spouse to the position of Director of Child Support Services, given that such an appointment would constitute a "contract" for Section 1090 purposes, and the supervisor would have a financial interest in his spouse's employment.