



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

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

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

**Date:** March 9, 2020

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The following advice letters have been issued since the February 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>.

### **Behested Payments**

**Ravinder S. Kapoor**

**[I-20-017](#)**

A state elected official who also serves as a member of a governmental board tasked with overseeing a fund (designed to expand access to higher education through savings) must report donations to the fund of over \$5,000 as behested payments if the funds are given at the request or suggestion of the official. However, the funds are not reportable behested payments if given in response to a solicitation by the board that does not feature the official.

### **Campaign**

**James R. Sutton**

**[I-19-190](#)**

Under the Act's subvendor reporting rules, payments of \$500 or more by a campaign consulting firm, law firm, or political treasurer firm on behalf of a committee must be reported as if the committee had made the expenditure itself, unless the expenditure is for "overhead or normal operating expenses." Regulation 18431 clearly details the types of payments to subvendors, including specific products and services, which are reportable. More specifically, payments to canvassers or petition circulators, hired by a consulting firm, are considered "overhead or normal operating expenses" only if the individuals are employees of the firm. Payments to independent contractors for these purposes must be reported under subvendor reporting rules.

**Peter Sullivan**

**[I-19-233](#)**

A payment of \$2,000 by a committee to a slate mailer organization intended to repay outstanding debt incurred for the production or design of slate mailers by a slate mailer organization is a contribution to the slate mailer, which will qualify the slate mailer as a recipient committee. The recipient committee will be required to file the Form 410 with the Secretary of State, along with a copy to its local filing officer, and a 460, which will disclose the contribution from the committee to the slate mailer organization on Schedule A. The recipient committee will be

required to file campaign statements until the recipient committee is no longer engaging in committee activity and terminates the committee.

**JJ Jelincic**[A-20-026](#)

An elected state officer may establish a legal defense fund under Section 85304 to legally challenge an administrative action by her agency arising directly from her alleged unauthorized and improper use of the agency logo and name during her election campaign and in the performance of her duties as an elected officer.

**Conflict of Interest****John Abaci**[A-19-184](#)

The conflict of interest provisions do not prohibit city mayor from taking part in decisions relating to a proposed streetlight structure containing wireless telecommunications equipment stored and located within 500 feet of the mayor's apartment. Because he leases the property on a month-to-month basis, the lease does not qualify as a potentially disqualifying real property interest under the Act.

**James R. Williams**[I-19-237](#)

If investments in exchange traded funds are not diversified, but rather concentrated in one industry such as "oil," "natural gas," or "coal," these interests are reportable as investments under the Act. (Regulation 18237.) If a sector-specific investment reaches a value of \$2,000 or more during the official's reporting period, the investment must be disclosed and the official's interest in the investment may be a disqualifying financial interest. Additionally, if the value of any specific holding reaches \$2,000, it must be reported and the official's interest in the holding may be a disqualifying financial interest.

**Jimmy Paulding**[I-20-010](#)

The Act prohibits a city councilmember from taking part in a decision involving a permit application by a client of the councilmember's law firm because it is reasonably foreseeable that those decisions would have a material financial effect on the client. This prohibition extends to any contact with or appearance before an officer or employee of the city to influence the officer or employee's decision regarding the application. Additionally, the councilmember is generally prohibited from taking part in decisions relating to generally applicable city laws and policies regarding accessory dwelling units if it is reasonably foreseeable that such a decision would have a material financial effect on any of the councilmember's financial interests including his law firm or clients.

**Gregory Rubens**[A-20-011](#)

The Act does not prohibit city councilmembers from voting on a proposed minimum wage ordinance because the "public generally" rule applies to any financial effect the decision may have on the officials' respective interests, including a source of income interest in a non-profit organization that may employ people at minimum wage and an interest in a business entity that may contract with employers with minimum wage employees. Based upon the facts provided, the decision will apply to all businesses in the city and there is no unique effect on the councilmembers' interests.

**Alex J. Lorca**

[A-20-016](#)

A city councilmember may not take part in a decision whether to allow an airport access road through the city because it is reasonably foreseeable that the decision will have a material financial effect on the councilmember's interest in her residence under Regulation 18702.2(a)(7), where the official's residence is within 500 feet of the preferred option for the access road.

**Pat Lintell**

[A-20-023](#)

A city councilmember has a real property interest in a residence gifted to an adult child, where the official retains the right to title if the child predeceases the official. That being the case, the councilmember may not take part in a decision whether to allow an airport access road through the city because it is reasonably foreseeable that the decision will have a material financial effect on the councilmember's property interest under Regulation 18702.2(a)(8), where the official's interest is between 500 to 1,000 feet from the proposed road, and the decision may substantially alter traffic levels near the property interest.

**Daniel G. Sodergren**

[A-20-024](#)

A city councilmember may take part in decisions related to bicycle and pedestrian walkway improvements between 500 and 1,000 feet from the councilmember's home, where the decisions would not change the development potential, income producing potential, highest and best use, character, or market value of the councilmember's property.

**Gift Limits**

**Peter J. Nolan**

[A-20-005](#)

The exception to the definition of a "gift" under Regulation 18942(a)(18)(B), for acts of human compassion unrelated to the official's status, does not apply where the individual(s) making the payments is connected to the city elected officer through his or her business interests within the city, the business has had decisions before the city within the past 12 months, and the individual anticipates having business license and permit decisions before the city in the near future.

**Revolving Door**

**Chris Nance**

[A-20-019](#)

Neither the Act's One Year Ban nor its Permanent Ban prohibits a former state official, who recently left state service, from being a subcontractor on a contract proposal before another state agency. The One Year Ban does not apply to appearance or communications before another state agency, and the Permanent Ban does not apply because the official did not previously participate in any proceeding involving the contract at issue while employed by the state.

**Section 1090**

**Scott C. Smith**

[A-19-008](#)

Under Section 1090, a city mayor has a financial interest in any contract involving the city's litigation against a joint powers authority, where he also represents a separate co-plaintiff in the same lawsuit as an attorney in his personal capacity. However, under the rule of necessity, the

city may proceed with decisions regarding the litigation and may enter any potential contract related to the litigation, such as a settlement agreement. Additionally, the mayor is not prohibited from serving as a director for another joint powers authority under the Act or Section 1090.

**Gary B. Bell**

**[A-19-232](#)**

So long as a councilmember remains in office, Section 1090 prohibits town from making any decision to transfer town-owned property to the councilmember, including any decision that will result in the future transfer of the property to the councilmember.