



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

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: April 6, 2020

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-19-190a

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 generally must be reported as if the committee had made the expenditure itself, unless the expenditure is for i) "overhead or normal operating expenses," defined as the kinds of services that the committee's agent or independent contractor is retained to provide; or ii) a category of subvendor payment not explicitly listed in Regulation 18431. However, while a subvendor must report any payment to a firm or business entity that is paid to provide signature gathering or door-to-door solicitation of voters, the names of individual signature gatherers, door-to-door solicitors, or canvassers need not be reported. This letter clarifies and supersedes previously issued *Sutton* Advice Letter, No. I-19-190.

Jesse Mainardi

I-19-197

All slate mailers distributed by a slate mailer organization, including those distributed electronically via social media post, e-mail, text message, "banner ads" on commercial websites, and Google search result ads, must include the same sender identification information as the

“outside” of an envelope in the initial electronic message. The message may then link to the full slate mailer providing all proper disclosures.

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.

Theresa L. Stricker[A-20-013](#)

A councilmember whose property will be subject to amended development standards under a governmental decision has a prohibited conflict of interest and may not take part in the decision. Whether the councilmember may take part in decisions relating to the town's response to a state agency, if the agency finds any aspect of the local ordinance is noncompliant with state law, will depend on the nature of the agency's findings and the city's response.

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.

Jessica Morsell-Haye[A-20-022](#)

The Act does not prohibit a city councilmember from taking part in governmental decisions relating to the rezoning of a 420-acre mill site. While the councilmember has property and business interests within 1,000 feet of the site, the public generally exception applies because 54% of the city's businesses are also within 1,000 feet of the site and any financial effect on the official's interests is indistinguishable from the effect on the public generally.

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.

Charlotte Craven

[I-20-030](#)

A city councilmember is generally prohibited from taking part in governmental decisions involving a city-owned trolley stop within 500 feet of her real property economic interests, as the Act presumes that such a decision will have a reasonably foreseeable, material financial effect on those interests in the absence of an exception or clear and convincing evidence of no measurable impact.

Lisa A. Travis

[A-20-038](#)

A county supervisor may take part in governmental decisions relating to a specific plan establishing a new community, including additional residential units and retail space, where the Supervisor's economic interests in a commercial building is located more than 10,000 feet away from the nearest boundary of the plan. However, if the decision implicates any tenant of the building the supervisor should seek additional advice.

Jeffery A. Walter

[A-20-051](#)

A city attorney who serves as a volunteer board member of a nonprofit organization, which supports the local school district, does not have a financial interest in the nonprofit under the Act. Barring any other interest, the official is not prohibited from taking part in decisions involving a proposed cannabis business that may partner or provide funding to the nonprofit.

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.

Ricardo Martinez

[I-20-037](#)

Former branch chief is prohibited for one year from making any appearance before or communication with the official's former state agency, for compensation, with the purpose of influencing administrative or legislative action or any proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property for one year. The former official is also permanently prohibited from aiding, advising, counseling, consulting, or assisting in representing any other person, other

than the State of California, in an appearance or communication, for compensation, to influence any judicial, quasi-judicial, or other proceeding involving specific parties in which the official participated as a state official.

Joanna Gubman

[I-20-041](#)

Under the permanent ban, a former state official who participated in decisions that, in part, shaped the requests for bids solicited by program administrators may not thereafter work for an outside employer and take part in the bidding process, as it is part of the same proceeding. However, the former official may work for an outside employer in implementing a contract previously awarded, if the former official did not previously participate in the implementation of the contract.

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.

Geoff Straw

[A-20-031](#)

Section 1090 does not prohibit a transit authority from contracting with a construction firm to provide construction monitoring subconsultant services for the prime contractor with respect to a bus maintenance facility project where the firm previously provided technical environmental services for the same project. Under the initial contract, the firm prepared environmental compliance documents for the project and did not have any public contracting duties that would bring it within the ambit of 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.

Pat Eklund

[A-20-035](#)

Under the Act and Section 1090, a city mayor is prohibited from taking part in a governmental decision to approve a contract between the city and a homeowners association transferring the city's maintenance obligations to the association, where the official is an officer of the association and owns a residence within the association's boundaries. Under the Act, it is reasonably foreseeable that the decision would result in the modification of taxes, fees, or assessments that apply to the official's property. Additionally, the official has an interest in the contract under Section 1090, and the city may not enter the contract unless it can establish that the rule of necessity applies.