



FAIR POLITICAL PRACTICES COMMISSION

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September 16, 2014

Ms. Paris Jackson
c/o Mr. Jeffrey D. Fulton, Esq.



Re: Warning Letter
FPPC Case No. 13/45

Dear Ms. Jackson:

The Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act (the “Act”).¹ This matter arose from your involvement in a conflict of interest case against Manuel Lopez, former Deputy Director of Administrative Services for the Department of Parks and Recreation. (See the enclosed stipulation *In the Matter of Manuel Lopez*, FPPC No. 12/540, approved Feb. 28, 2013 [\$7,000 penalty].) After an investigation, the FPPC is closing its file on this matter with a warning letter as discussed below.²

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a

¹ The 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.

² All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the events in question in 2011.

financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are several analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.³

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include an employee of a state agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has an economic interest in his or her personal finances if they are increased or decreased by the decision. (Regulations 18703.5 and 18704.5.)

Fourth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) A financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period. Although there is an exception where the financial effect is in the form of a government salary, this exception does not apply where less than all employees of the agency in the same job classification/position are affected. (See Regulation 18705.5, subs. (a) and (b).)

Fifth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

In this case, our investigation found that:

- In 2011, Manuel Lopez was the Deputy Director of the Administrative Services Division of the California Department of Parks and Recreation. In this capacity, he implemented a leave buyback program for certain employees, including himself.
- Pursuant to California Code of Regulations, title 2, section 599.744, the program was a prohibited use of department funds because the program was not authorized

³ The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official's participation was legally required—are not applicable to this case.

by the California Department of Personnel Administration, which had suspended leave buyback programs indefinitely due to California's budget situation.

- At the time, you were the Assistant Personnel Officer in the Personnel Services Division.
- It appears that you missed the meeting where Mr. Lopez decided to implement the program. Also, it appears that the program was offered to some employees—but not all employees. Additionally, it appears that when you first learned about the program, you raised a concern about financial liability related to the program. However, it also appears that you were instrumental in carrying out the program insofar as you directed your staff to use false overtime coding to circumvent the State Controller's Office payroll system controls.
- As a result, you were able to cash out 100 hours of your own time for approximately \$3,711.

The financial benefit that you received was the result of your decision to circumvent the State Controller's Office payroll system controls, as described above. This was a conflict of interest in violation of Section 87100, which prevents public officials from participating in governmental decisions in which they have a financial interest. However, as stated above, the Deputy Director of the Administrative Services Division already has been fined for implementing the leave buyback program, and it does not appear that you were involved in the *initial* decision to implement the program.

Even though we are closing this matter with a warning letter, the information in this case will be retained and may be used against you should an enforcement action become necessary due to newly discovered information and/or failure to comply with the Act in the future. Failure to comply with the provisions of the Act in the future may result in monetary penalties of up to \$5,000 per violation.

Please note that our Legal Division and Technical Assistance Division can provide advice and assistance for issues which may arise in the future. You may contact either division by calling our toll-free number: 1-866-ASK-FPPC (1-866-275-3772). Also, you may refer to the FPPC website at www.fppc.ca.gov for current information.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. Please feel free to contact me at (916) 322-5660 with any questions you may have regarding this letter.

Very truly yours,

A large black rectangular redaction box covers the signature area. A small black line extends from the right side of the box.

Neal P. Bucknell
Senior Commission Counsel
Enforcement Division

Enclosure