

FPPC Meeting: March 15, 2012
Agenda Item: #43 (*Amendment to Regulation 18705.5*)
My name: JIM MOSHER
My position: OPPOSED TO AMENDMENT

California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Commissioners,

At a recent meeting the City Council of the City of Newport Beach resolved to support the December 20, 2011 petition letter sent to you by Ash Pirayou of Rutan and Tucker objecting to the Commission's interpretation of Regulation 18705.5 (finding that elected officials have a material conflict in appointing themselves to positions on other agencies with a potential to enrich themselves with a yearly stipend of \$250 or more) and proposing an amendment thereto, which is the subject of today's Agenda Item 43.

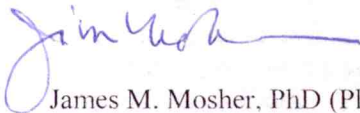
Although the City of Newport Beach is named as a client and petitioner in the Rutan and Tucker letter, I would like you to know that I, as a citizen of that City, do not in any way support my Council's endorsement of this letter and am shamed by their expenditure of public funds in seeking this amendment.

To me it defies common sense to even suggest that a public official voting to appoint themselves to a position for which they will be personally enriched through receipt of an additional governmental stipend of more than \$250 per year *does not* have a material financial interest in the outcome of that vote. Without having seen the FPPC response letters which the Rutan and Tucker letter purports to rebut, I have to suspect the Commission has already done a commendable job of harmonizing the complex and occasionally contradictory requirements of the Political Reform Act with its intent (specifically, Government Code Sections 81001(b) and 81002(c)), and that the recommended changes to Regulation 18705.5 and its current interpretation would be counterproductive. In fact, an interpretation requiring not only a public disclosure of the existence of the official's financial conflict, but also of the exact dollar amount of the anticipated additional stipend would seem entirely appropriate to me.

In addition to the largely specious arguments Mr. Pirayou advances in favor of his proposed amendment, the copy of his letter provided to me by the Newport Beach City Clerk includes as Exhibit C a letter by Tustin City Attorney David Kendig dated November 10, 2011 citing on its final two pages situations which in Mr. Kendig's view make compliance with the Commission's current interpretation of the recusal requirements not only an "inconvenience" but also a practical impossibility. I do not agree. In my view Mr. Kendig has failed to suggest a situation which is not already adequately addressed by your interpretations of Government Code Sections 87101 (allowing participation by a conflicted official to the extent needed to achieve a legally required outcome) and 87105(a)(4) (allowing a conflicted official to return to the room to address an issue before the body on the same terms as any other member of the public).

In summary, I urge you to retain Regulation 18705.5 and your interpretation of it.

Yours sincerely,



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