

Commissioners,

The mission of the Fair Political Practices Commission is to promote the integrity of state and local government through the fair, impartial interpretation and enforcement of political campaign, lobbying and conflict of interest laws. On November 1<sup>st</sup>, FPPC Executive Director Thomas Jones issued a response to the appeal of the decision on my sworn complaint stating that due to insufficient evidence the Enforcement Division could not conclude that Placer County Supervisor Kirk Uhler had a disqualifying conflict of interest to require disqualification from governmental decisions. Yet, he voluntarily left the room under the pretense of being “absent” and subsequently abstained which is sufficient evidence that he knew that he did have a conflict. At no time did the Supervisor disclose his potential and/or actual conflict of interest.

In a subsequent phone conversation, Mr. Jones acknowledged that the FPPC does not condone Supervisor Uhler’s actions. There is more information that could shed light through an investigation by FPPC. An amended complaint was submitted today regarding the Supervisor’s conduct, failure to disclose, potential actions of the County to aid and abet and whether this (and potential other action) has created a situation within the County where individuals feel reprisal – as the only way we were made aware of this was based upon an anonymous complaint, which referred to more information could be found through Human Resources. Thus, there is further information that would be helpful or informative in this matter which could be procured by FPPC through its investigative powers.

Government code section 81002(f) notes that “Adequate enforcement mechanisms should be provided to public officials and private citizens in order that the Political Reform Act will be vigorously enforced.” If the FPPC regulation grants Supervisor Uhler an exemption for his temporary absence, it does not meet this standard.

The basic definition of “absent” is – not being present in a place, occasion or as part of something; to go away and remain away”. Mr. Uhler remained as a part of the Board on the day of the vote. It is highly unlikely that he even left the building since he was only gone for 10 minutes. The term “absent” is not defined in the Political Reform Act nor in FPPC regulations. Being “temporarily absent” is also not defined in the Political Reform Act nor in FPPC regulations. Stepping out of a public meeting for 10 minutes is a statutory requirement of the Political Reform Act, it is not an absence! Voluntarily leaving a meeting to make yourself appear absent, and failing to disclose an actual conflict of interest, flies in the face of the Political Reform Act and its intent. The Political Reform Act section 87105 (a) (3) states that for a financial conflict of interest “the official must leave the room for the duration of the discussion and/or vote on the item.” The FPPC never contemplated a “temporary absence” when considering the absent clause in their conflict of interest regulations and its interpretation is in direct conflict with the Act. **Supervisor Uhler’s temporary absence is a requirement of the Act.** By allowing Mr. Uhler to circumvent the requirements of the Political Reform Act, this commission is not meeting the intent of the law and is condoning a lack of transparency, a lack of disclosure, and a lack of information being provided to the public.

November 20, 2019

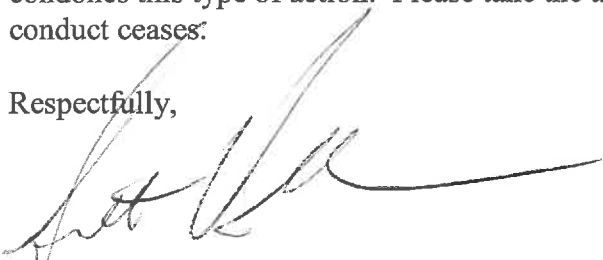
The intent of the Political Reform Act is that elected officials **shall** disclose actual financial or potential financial conflicts of interest even if only perceived.

As noted by the California Supreme Court in its ruling on *Brovelli v. Superior Court of Los Angeles County*: “the power to make administrative inquiry is not derived from a judicial function but is more analogous to the power of a grand jury, which does not depend on a case or controversy in order to get evidence but can investigate ‘**merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.**’”

I urge this commission to conduct a thorough Administrative Investigation of this offense, and utilize the powers granted to the FPPC under Government Code sections 1181 and 83118 to subpoena Placer County records, interview individuals and to uphold the tenants of the Political Reform Act. Without further investigation, the FPPC’s conclusion is premature. The FPPC cannot grant Supervisor Uhler clemency in this case. Supervisor Uhler has deliberately attempted to deceive the public and hide his personal financial interest. You ask for an employee to come forward and speak. I received an anonymous letter apparently from a County employee. Without this letter, the public would have remained ignorant.

The Enforcement Division has 6 possible resolutions when reviewing formal complaints ranging from a No Action Closure letter to a Civil Action. Enforcement staff are currently recommending a No Action Closure letter. This tacitly condones Supervisor Uhler’s behavior and provides further incentive to circumvent the Political Reform Act. A No Action Closure is defined as “no further information would be helpful or informative.” Information from Human Resources, from personnel, from Supervisor Uhler, from staff involved in the development of the Agenda and presentation at the meeting (which excludes any disclosure of this topic), from e-mails when they have produced none, would be helpful and informative. An Amended Complaint was filed. Please review and conduct an investigation into this matter. No one here condones this type of action. Please take the appropriate action of ensuring that this type of conduct ceases.

Respectfully,

A handwritten signature in black ink, appearing to read 'Scott Vaughan', with a long horizontal flourish extending to the right.

Scott Vaughan  
Concerned Taxpayer and constituent

Additional information in response to the Executive Director's Findings:

Lack of Evidence:

FPPC has continually asserted that there is insufficient evidence to charge Supervisor Uhler with violating the Political Reform Act's conflict of interest and public disclosure laws. When asked "what information would be required to convince the FPPC?" Executive Director Thomas Jones noted that if the FPPC could interview a county employee with specific information or they had documentation showing that Supervisor Uhler was directly involved, they could prosecute. What additional evidence of his direct involvement are needed since he "physically left" and then "orally abstained"? Over the past 3 months I have received 2 sets of responses to my Public Records Act request on this topic from Placer County. Neither contained any correspondence from Supervisor Uhler's office. Over the past 3 and a half years I have submitted approximately 10 PRA requests to Placer County on varying topics dealing with Supervisor Uhler. I have specifically asked for correspondence from his office but to date the answer has always been the same, Supervisor Uhler does not have any responsive documents. I know this to be untrue since I corresponded with him in email on many of the topics, yet I did not even receive these communications in response. As a private citizen, I do not have the authority or power to extract additional information from the county. The FPPC has the authority to investigate Placer County and subpoena Supervisor Uhler's records. In the interest of open and honest government, the FPPC should investigate this matter and subpoena the county to determine what further evidence exists. Its current ruling action of providing a No Action closure letter (If there is insufficient evidence to prosecute a case and no further information would be helpful or informative.) conflicts with Executive Director Thomas statement. There is evidence or information that could convince the FPPC that Supervisor Uhler acted illegally but the FPPC has not required Placer County to provide it. Regardless of the outcome, additional information is needed to ensure that no violation occurred.

Compaction (representative of the management group):

Attached is the summary of the compensation and potential compaction for Assistant Directors of Child Support Services throughout the state. As you may recall, I have already provided an the email record I obtained from the Placer County showing that supervisors of licensed professionals that are not required to be licensed are not generally considered in compaction studies. To that point, your letter noted that Ms. Uhler's very large raise was due to compaction with the attorney's in her department and therefore her treatment was no different than what was provided to all other managers. The specific wording in the Placer County Ordinance approving her raise says otherwise, a footnote in the ordinance states that the raise for the Assistant Director of Child Support Services only applies to the incumbent, Ms. Uhler, and that the salary will be re-evaluated when she leaves the office. This proves that the raise was not a standard but a unique situation. As further proof, I reviewed the job descriptions and salary ranges for Assistant Director of Child Support Services and the associated Child Support Attorneys in 6 of the counties that were included in the original salary survey. All of the information is readily available at each of the respective county websites (in the HR department under job classifications and salary tables). The information below shows that in every other county attorney to assistant director pay scales are not considered a management compaction issue. Please review the information and let me know when you are available to discuss this case.

Summary of California County Assistant Director Child Support Services and Child Support Attorney Salary Compaction:

<u>County</u>	<u>Title</u>	<u>Annual Top Pay scale</u>	<u>Requirements</u>	<u>Title</u>	<u>Annual Top pay scale</u>	<u>Requirements</u>
Sonoma	Assistant Director Child Support Services	\$134,055	4 year degree	Chief Child Support Attorney	\$181,579	Active membership in State Bar (lawyer)
Solano	Assistant Director Child Support Services	\$151,838	4 year degree	Child Support Attorney IV	\$159,232	Active membership in State Bar (lawyer)
San Luis Obispo	Assistant Director Child Support Services	\$133,078	4 year degree	Child Support Attorney IV	\$152,672	Active membership in State Bar (lawyer)

Merced	Assistant Director Child Support Services	\$123,843	4 year degree	Chief Child Support Attorney	\$152,235	Active membership in State Bar (lawyer)
Marin	Assistant Director Child Support Services	\$149,115	4 year degree	Deputy Child Support Attorney IV	\$187,387	Active membership in State Bar (lawyer)
Butte	Assistant Director Child Support Services	\$143,062	4 year degree	Chief Child Support Attorney	\$142,001	Active membership in State Bar (lawyer)
Placer	Assistant Director Child Support Services	<b>\$173,264</b>	4 year degree	Child Support Attorney - Senior	<b>\$160,264</b>	Active membership in State Bar (lawyer)



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811

November 1, 2019

Mr. Scott Vaughan  
via email at: [vaughan@quiknet.com](mailto:vaughan@quiknet.com)

Re: Reconsideration of Sworn Complaint Against Mr. Kirk Uhler; COM-08252019-01647

Dear Mr. Vaughan:

This letter is in response to your request for reconsideration of the complaint against the above-named individual. The Fair Political Practices Commission only enforces the provisions of the Political Reform Act (the "Act") found in Government Code section 81000, et seq.<sup>1</sup>

The complaint you filed on August 25, 2019 alleged that Mr. Uhler, Placer County Supervisor, failed to properly recuse himself from two governmental decisions that related to an ordinance amending the compensation of some of the County's managerial positions. Mr. Uhler's spouse is the Assistant Director of Child Support Services, and her position was included in the ordinance subject to receiving a salary increase. After a thorough review of the complaint, the applicable legal standards, and the relevant facts, the Enforcement Division staff declined to open a case because they concluded that the facts presented do not satisfy the required legal standards.

You subsequently submitted additional information and are now asking the Enforcement Division to revisit this request for an investigation. That additional information has been reviewed in light of the applicable legal standards and there is no good cause to direct the Chief of the Enforcement Division to reopen this matter. Therefore, your request for reconsideration under Regulation 18360, subdivision (d), is denied. Please note that conflict of interest cases are extremely fact-specific, both as to the governmental decisions and financial interests at issue. A detailed explanation follows.

The Enforcement Division found that the Human Resources Department ("HRD") of Placer County recommended amendments to the uncodified Schedule of Classifications and Compensation Ordinance. Based on concerns expressed by Department Heads related to compaction between specific management classifications and their highest paid direct reports, the HRD initiated a review. The HRD recommended to the Board of Supervisors salary adjustments for 13 management classifications to place them approximately 8% above their highest paid direct report.

Further, the Act has specific rules and requirements for disqualification for public officials under Section 87200. Pursuant to Section 87105 and Regulation 18707, when a public official whose office is specified in Section 87200 who has a financial interest in a decision within the meaning

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

of 87100, upon identifying a conflict of interest or potential conflict of interest, he or she must also do the following:

- (1) The official must publicly identify each type of financial interest involved in the decision that gives rise to the disqualifying conflict of interest. The identification must be made after the announcement of the agenda item to be discussed or voted on, but before the discussion or vote commences.
- (2) The official must also recuse himself or herself from voting on the matter.
- (3) The official must leave the room for the duration of the discussion and/or vote on the item.

In addition, Regulation 18707(a)(3)(B) states that “[i]f the public official is absent when the agenda item...is considered, there are no public identification duties on the public official for that item at that meeting.” At the July 9, 2019 Board of Supervisors meeting, Mr. Uhler left the room at the start of the prior item and did not return until the item at issue had concluded and therefore meets this exception to the disqualification requirements.

Mr. Uhler abstained from voting on the matter when it was on the consent calendar at the July 23, 2019 meeting. Pursuant to Regulation 18707, before the discussion and vote of the consent calendar Mr. Uhler was required to identify his financial interest orally and on the record, if he had a conflict of interest. Mr. Uhler would also have been required to recuse himself from discussing or voting on the consent calendar, which he did by abstaining. Mr. Uhler would not have been required to leave the room since this matter was on the consent calendar.

Regulation 18702.5(a) provides that the financial effect is material if the official or the official’s immediate family member will receive a measurable financial benefit or loss from the decision. However, Regulation 18702.5 also includes an exception in subdivision (b)(1) which states: “...a personal financial effect does not include: (1) Any establishment of or change to benefits provided under an employment or retirement policy for employees or retirees if the financial effect of the decision applies equally to all employees in the same bargaining unit or other representative group.”

The Enforcement Division has insufficient evidence to substantiate that Mrs. Uhler’s salary increase was greater than what was needed to be 8% higher than the highest paid person she supervised. Therefore, at this time, based on the complaint and the information provided and the regulation in effect at the time, we cannot conclude that Mr. Uhler had a disqualifying conflict of interest to require disqualification from these governmental decisions. Additionally, the Enforcement Division of the Commission has no jurisdiction to enforce violations of any laws other than the Act. Your request that the ordinance is rescinded and resubmitted for appropriate public notice is not under the jurisdiction of the Commission.

In light of these circumstances, your request for reconsideration has been denied. We have enclosed a copy of Regulation 18707 that outlines the specific procedures for recusal and a copy has been sent to Mr. Uhler. Thank you for bringing this matter to our attention.

Sincerely,

*Thomas K. Jones*

Thomas Jones  
Executive Director  
Fair Political Practices Commission

cc: Kirk Uhler (enclosed copy of Regulation 18707)



## COMPLAINT RECEIVED

The Enforcement Division of the Fair Political Practices Commission received a sworn complaint, COM-08252019-01647, on 8/25/2019. The information filed in the complaint is below.

The Complainant is:  
Scott Vaughan

The Complaint was formally filed against:  
Kirk Uhler

The following individual is listed as a Witness:  
Bradley Cutler

The Violations alleged are:

### *Conflict of Interest*

#### *Manner of Disqualification/Leave the Room Requirement (87105)*

*During the first week of August I was informed through an anonymous letter the following violation, I researched the information and am filing a complaint;*

*1) On July 9, 2019 at approximately 2 hrs and 55 minutes into the Board of Supervisors Meeting ([http://placer.granicus.com/MediaPlayer.php?view\\_id=15&clip\\_id=2437](http://placer.granicus.com/MediaPlayer.php?view_id=15&clip_id=2437)), Supervisor Kirk Uhler stood up and left the hearing without providing his reason for leaving the dais: Financial Conflict of Interest.*

*Shortly after his exit, Agenda Item 14A was presented: Equity Adjustments for Classified and Unclassified Management Employees 1. Introduce an Ordinance, waive oral reading, amending the uncodified Schedule of Classifications and Compensation Ordinance and the uncodified Allocation of Positions to Departments Ordinance.*

*Pursuant to Section 6066, the notice of the ordinance shall contain a "description deemed sufficient to give notice to the interested persons of the purpose of the ordinance and the subject matter thereof." Human Resources presented the Ordinance as an adjustment of 60+ position grade classifications. The average raise was announced as being 3%. Two positions with 10 and 11% pay increases were publicly discussed. The "subject matter" of a 25-step grade increase and 28% pay raise for the Assistant Director of Child Support Services, Tamara Uhler; Supervisor Uhler's wife was excluded.*

*It is required that Supervisor Uhler states his conflict of financial interest and officially recuse himself for the public record: FPPC Sections § 18700, § 18704, § 87105, § 87200 as well as Placer County Code 2.84.060.*

created by statute or otherwise, except when the public official is representing his or her employing state, local, or federal agency in an appearance before, or communication to, the advisory body.

History: Added by Stats. 1994, Ch. 414; amended by Stats. 1997, Ch. 145.

**§ 87105. Manner of Disqualification.**

(a) A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

(1) Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

(2) Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.

(3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

(4) Notwithstanding paragraph (3), a public official described in subdivision (a) may speak on the issue during the time that the general public speaks on the issue.

(b) This section does not apply to Members of the Legislature.

History: Added by Stats. 2002, Ch. 233.

References at the time of publication (see page 2):

Regulations: 2 Cal. Code of Regs. Sections 18702, 18702.1, 18702.5, 18707

**Article 2. Disclosure.  
§ 87200 – 87210**

§ 87200.	Applicability. ....	80
§ 87201.	Candidates.....	80
§ 87202.	Officials - Elected, Appointed and Hold Over.....	80
§ 87203.	Officeholders; Annual Statements. ....	81
§ 87204.	Leaving Office. ....	81
§ 87205.	Persons Completing and Beginning Term of Office on the Same Day. ....	81
§ 87206.	Disclosure of Investment or Interest in Real Property. ....	81
§ 87207.	Disclosure of Income. ....	81
§ 87208.	Disclosure of Investments and Interests in Real Property; Incorporation by Reference. ....	82
§ 87209.	Business Positions.....	82
§ 87210.	Gifts Made Through Intermediaries and Others - Disclosure Requirements. ....	82

**§ 87200. Applicability.**

This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political

Practices Commission, members of the California Coastal Commission, members of the High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

History: Amended by Stats. 1975, Ch. 797; effective September 16, 1975, operative September 5, 1975; amended by Stats. 1976, Ch. 129, effective May 5, 1976; amended by Stats. 1978, Ch. 537; amended by Stats. 1979, Ch. 674; amended by Stats. 1983, Ch. 214; amended by Stats. 1984, Ch. 727, effective July 1, 1985; amended by Stats. 1985, Ch. 611; amended by Stats. 1989, Ch. 403; amended by Stats. 2012, Ch. 626, effective September 27, 2012.

References at the time of publication (see page 2):

Regulations: 2 Cal. Code of Regs. Sections 18117, 18700.3, 18701, 18702, 18702.1, 18702.5, 18707, 18723, 18724, 18732.5, 18753, 18940.1

**§ 87201. Candidates.**

Every candidate for an office specified in Section 87200 other than a justice of an appellate court or the Supreme Court shall file no later than the final filing date of a declaration of candidacy, a statement disclosing his or her investments, his or her interests in real property, and any income received during the immediately preceding 12 months.

This statement shall not be required if the candidate has filed, within 60 days prior to the filing of his or her declaration of candidacy, a statement for the same jurisdiction pursuant to Section 87202 or 87203.

History: Amended by Stats. 1977, Ch. 1193; amended by Stats. 1980, Ch. 928; amended by Stats. 1984, Ch. 931; amended by Stats. 1992, Ch. 1141.

References at the time of publication (see page 2):

Regulations: 2 Cal. Code of Regs. Sections 18117, 18732.5

Opinions: *In re Boreman* (1975) 1 FPPC Ops. 101

**§ 87202. Officials - Elected, Appointed and Hold Over.**

(a) Every person who is elected to an office specified in Section 87200 shall, within 30 days after assuming the office, file a statement disclosing his or her investments and his or her interests in real property held on the date of assuming office, and income received during the 12 months before assuming office. Every person who is appointed or nominated to an office specified in Section 87200 shall file such a statement not more than 30 days after assuming office, provided, however, that a person appointed or nominated to such an office who is subject to confirmation by the Commission on Judicial Appointments or the State Senate shall file such a statement no more than 10 days after the appointment or nomination.

The statement shall not be required if the person has filed, within 60 days prior to assuming office, a statement for the same jurisdiction pursuant to Section 87203.

(b) Every elected state officer who assumes office during the month of December or January shall file a statement