



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

To: Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: October 26, 2011

Kinde Durkee Matter: Since the last Commission meeting on October 13, 2011 the Legal Division has been actively involved in reviewing the Commission's options to deal with the problems resulting from the Kinde Durkee incident. In addition to feedback received at the October Commission meeting in Los Angeles, the Commission also solicited comment from the public at an October 20, 2011 Interested Persons meeting in Sacramento, focusing on proactive steps the Commission can take to prevent such events in the future.

Legal Division has also received two advice letter requests for, and issued one advice letter related to, committee termination in light of the Durkee embezzlement. The letter that was issued -- *Rios* Our File No. A-11-198 -- was issued the week of October 21, 2011. We advised that special committee termination procedures could be used under limited circumstances.

Council on Governmental Ethics Laws: Commission Counsel Heather Rowan has been invited to speak at COGEL's annual conference in Nashville in early December. Ms. Rowan will sit on a panel entitled, "Implications of Extending Lobbying, Pay-to-Play, and Gift Laws to Contractors." The panel will address, in part, California's new practice of including placement agents within the disclosure scheme that has historically applied to lobbyists.

Chair Ann Ravel will also be participating at the conference. The Chair will be speaking on a panel called "Independent Expenditures – disclosure – 'World of Independent Expenditures' " The conference is December 4-7 in Nashville, Tennessee. (www.cogel.org)

Regulations: On October 26, 2011, Commission staff held an Interested Persons meeting regarding revisions to the regulation defining General Purpose Committees and Primarily Formed Committees and a proposed regulation to clarify reporting contributions made to multi-purpose Groups.

Public Record Act Requests and Advice Letters: Between September 22, 2011 and October 21, 2011 the division received 18 CPRAs and responded to 11. During the same period we received 21 advice letter requests and issued 24 advice letters.

Other staff activity: Commission Counsel Sukhi Brar won second place in the Paralyzed Veterans of America's eighth annual Law & Public Policy writing competition for her paper titled "The Problem with the Veterans Affairs Disability Claims Process." The topic of this year's competition was "Should the Board of Veterans' Appeals (BVA) be decentralized and regionally located with the initial claims adjudicators to achieve significant cost savings and improvements in quality and customer service?"

October Commission Meeting Advice Letter Summaries from September 22 to October 21, 2011

Campaign

Edward S. Levin

A-11 161

The Act requires that public officials, including a member of the West Hollywood Historic Preservation Commission, make, participate in making, or influence a governmental decision to meet the threshold of analyzing a conflict of interest. Absent the participation in such a decision, there can be no conflict under the Act, even where a public official has business in his or her private capacity that suggests a relation between the public and private role.

Gary H. Mayo

A-11-168

The Act does not prohibit a mobile home association from making a contribution to a political action committee formed by members of the association. However, if the association receives contributions or makes expenditures totaling \$1,000 or more in a calendar year, it will be deemed to be a "committee" and will be required to file a statement of organization within ten days and will be subject to the recordkeeping, reporting and other rules governing committees.

Jeffrey Epp et al

A-11-184

A private citizen's underwriting the costs for several city mayors to write and publish a letter to their constituents in a community newspaper does not constitute a gift under the Act. The payments are also not an in-kind contribution as long as the mayors do not engage in express advocacy in these communications.

Conflict of Interest

Lona N. Laymon

A-11-132

In order to determine whether the “public generally” exception to the Act’s conflict-of-interest rules applies, a public official must provide information regarding the financial impact the governmental decision will have on the relevant property. A public official with a disqualifying conflict of interest in one decision may not participate in other decisions in which she does not have a conflict of interest under the “segmentation” exception because the decisions are inextricably linked. A city council member may not address the city council under the “member of the public generally” exception regarding impacts a proposed development will have on the city as a whole, where the impacts cannot be separated from the impacts on her real property so that she would be able to limit her remarks solely to effects on her property

Dominic Holzhaus**I-11-153**

A nonprofit that makes payments to an official on behalf of member entities is not a source of income to the official. If payments are generated by the member entities directly in exchange for labor performed by the official, the nonprofit is merely a “conduit” for the payments, and the member companies are the actual source of income. A public official may not participate in decisions involving sources of income that are directly involved in decisions before his agency if the decision will have *any* financial effect on the sources of income.

Mark C. Anderson**I-11-154**

In itself, the Act does not prohibit a public official from accepting private employment. Nonetheless, the official’s potential employment with a private employer may ultimately implicate the Act and disqualify the official from governmental decision-making. Under the Act’s conflict-of-interest provisions, the official may not make, participate in making, or use his position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect on any economic interest he may have including any interest in a private employer. Similarly, under Section 87407, the official may not make, participate in making, or use his position to influence a governmental decision directly related to a prospective employer even prior to accepting employment.

Christopher Thomas**A-11-58**

The Act’s conflict-of-interest provisions do not bar a planning commissioner from voting on matters regard a charter school where his only connection with the school is that his children attend the school which does not charge any fees for attendance. The Act’s conflict-of-interest rules apply only to an official’s financial interests. Because he does not have a financial interest in decisions regarding the school, he is not barred from participating in these decisions.

Ariel Pierre Calonne**I-11-172**

A city councilmember who is nominated to be mayor may not participate in the decision to appoint himself or herself if the position will have a personal financial effect on the official of \$250 or more in a 12-month period.

Steven L. Flower**A-11-186**

A member of an advisory committee is not subject to the Act’s conflict-of-interest provisions because the committee is solely advisory and does not exercise decisionmaking authority

Kris Kuhl**A-11-189**

An employee of the California Department of Transportation who has an investment of \$2,000 or more in state infrastructure bonds is not prohibited from making decisions to award construction contracts that are financed by the bonds. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from certain enumerated economic interests, including investments. Because the Act excludes government bonds from the definition of "investment," the official is not prohibited from making decisions to award the contracts.

Kathleen Mallory**A-11-192**

The Act exempts from the definition of income those payments earned from federal employment. A conflict of interest cannot exist under the Act where there is no cognizable economic interest. A city contractor who is also a federal employee may not have a conflict of interest under the Act, but must be aware of other sources of conflicts, such as Government Code 1090 or common law conflicts of interest.

Honoraria**Brian W. Jones****A-11-164**

An Assemblymember is prohibited from accepting payments for speeches under the Act's honorarium provisions when the predominant activity of the business for which he or she makes speeches is making speeches.

Mass Mailing**Lacey E.****A-11-174**

For purposes of the Act's mass mailing provisions, the institution for which a volunteer provides services, including departments and parts of buildings and other sites of the institution, is the "place of employment" of a volunteer even if the volunteer provides services at a different location of the institution. A request by an institution for recognition certificates honoring its volunteers is not an "unsolicited request" because the volunteer is the intended recipient of the certificate and the institution is merely a conduit for delivery.

Miscellaneous**Kathryn E. Donovan****A-11-156**

To the extent that a health related business entity is a covered entity subject to the federal Health Insurance Portability and Accountability Act, an official with an economic interest in the business entity need not disclose the names of patients of the business, nor the amounts of payments received from any particular patient, under Regulation 18740.

Revolving Door**Bill Maile****I-11-160**

An official may not appear before or communicate with his former agency regarding the issuance, amendment, or awarding of any contracts – including contracts involving the official's own consulting business – for a period of one year after he leaves state service.

John P Christopher**A-11-163**

The Act does not prohibit a former employee from obtaining private employment after leaving state service. Former state employees, however, may not “switch sides” and assist a private employer on the same proceeding that the employee participated in as a state employee. This permanent ban does not apply to new proceedings.