



FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Ravel and Commissioners Casher, Eskovitz, Wasserman and Wynne

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: June 10, 2013

A. OUTREACH AND TRAINING

Nothing to report this period.

B. FINDINGS OF PROBABLE CAUSE

A finding of probable cause does not constitute a finding that a violation has actually occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding.

The following case was decided based on the papers submitted since the respondent did not request a probable cause conference.

In the Matter of Rancho Bernardo Democratic Club and Pat Jones, Treasurer, FPPC No. 12/230. On May 30, 2013, probable cause was found to believe that Respondent Rancho Bernardo Democratic Club and Pat Jones, Treasurer, committed three violations of the Political Reform Act, as follows:

Count 1: As a county general purpose committee pursuant to Government Code Section 82013, subd. (a), and the committee's treasurer, Respondents Rancho Bernardo Democratic Club and Pat Jones had a duty to file a semiannual statement with the San Diego County Registrar of Voters by January 31, 2012, for the July 1, 2011, through December 31, 2011, reporting period. Respondents failed to file a semiannual statement with the San Diego County Registrar of voters by January 31, 2012, for the July 1, 2011, through December 31, 2011, reporting period, in violation of Government Code section 84200, subd. (a).

- Count 2:** As a county general purpose committee pursuant to Government Code Section 82013, subd. (a), and the committee's treasurer, Respondents Rancho Bernardo Democratic Club and Pat Jones had a duty to file a semiannual statement with the San Diego County Registrar of Voters by July 31, 2012, for the January 1, 2012, through June 30, 2012, reporting period. Respondents failed to file a semiannual statement with the San Diego County Registrar of voters by July 31, 2012, for the January 1, 2012, through June 30, 2012, reporting period, in violation of Government Code section 84200, subd. (a).
- Count 3:** As a county general purpose committee pursuant to Government Code Section 82013, subd. (a), and the committee's treasurer, Respondents Rancho Bernardo Democratic Club and Pat Jones had a duty to file a semiannual statement with the San Diego County Registrar of Voters by January 31, 2013, for the July 1, 2012, through December 31, 2012, reporting period. Respondents failed to file a semiannual statement with the San Diego County Registrar of voters by January 31, 2013, for the July 1, 2012, through December 31, 2012, reporting period, in violation of Government Code section 84200, subd. (a).

C. LEGAL ADVICE TOTALS

- ***Email Requests for Advice:*** In May, Legal Division attorneys responded to more than 39 email requests for legal advice.
- ***Advice Letters:*** From April 30, 2013 to May 23, 2013, the Legal Division received 19 advice letter requests and issued 17 advice letters.

D. ADVICE LETTER SUMMARIES

Campaign

Thomas A. Willis

A-13-041

Prohibiting a state political party from purchasing real property does not serve the purposes of the Act. Such an expenditure, however, must be reasonably related to a political, legislative, or governmental purpose and otherwise meet the standards set forth in Section 89512.5. Provided the expenditure meets that standard and does not personally benefit any individual, the purchase is not prohibited.

Carole Leigh Hutton

A-13-042

A committee's use of an organization's bulk rate permit is a nonmonetary contribution from the organization. The use of the permit must be reported as a contribution from the organization to the ballot measure committee. Under the Act, a nonprofit organization making contributions or expenditures in California elections is required to disclose donors to the organization who knew or had reason to know that their funds might be used for political purposes.

Conflict of Interest

Michael R.W. Houston

I-13-031

For an official with an economic interest in a business entity that has been or will be hired as a consultant or sub-consultant for a project pending before the official's agency by the project's applicant, the official's economic interest in the entity is directly involved in the decision. Accordingly, the reasonably foreseeable financial effect on the official's interest in the entity is presumed to be material, and the official is prohibited from making, participating in making, or using his official position to influence the decision. However, if the entity has not and will not be hired to assist in the project by the project's applicant, the official's economic interest in the entity is indirectly involved in a decision regarding the project even if the applicant is a client of the entity. Where the official's economic interest in the entity is indirectly involved, the official may take part in the decision, barring any other potentially disqualifying economic interest he may have, so long as the reasonably foreseeable financial effect on the entity is less than the applicable materiality threshold under Regulation 18705.3(c). **Supersedes** the *Goldstein* Advice Letter, No. A-12-035. The *Houston* Advice Letter, No. I-13-031 supersedes the *Goldstein* Advice Letter, No. A-12-035 to the extent that *Goldstein* finds a subcontractor indirectly involved in a governmental decision, so long as the subcontractor does not initiate the proceeding and is not named in the bidding process, even when the official with an economic interest in the subcontractor knew that the subcontractor would ultimately be hired.

Jessica Jahr

A-13-045

Decisions that effect the agricultural sector of the economy in a jurisdiction do not affect a "single industry, trade or profession" as contemplated by Regulation 187007.1. However, since the decisions in question will not affect either 2,000 or 25% of all business entities in the jurisdiction in "substantially the same manner" as it affects the official's own economic interest, the public generally exception does not apply.

Jim Griffith

A-13-048

A public official who will vote on whether to reauthorize a Business Improvement District ("BID") does not have a disqualifying conflict of interest under the Act. The official has an economic interest in his employer, a Fortune 500 company, which maintains a business location within the BID. However, the official provided no facts to suggest that the governmental decision whether to reauthorize the BID would have a foreseeable and material financial effect on his economic interest in the company.

Michelle Vassel

I-13-051

A city council member who owns business property within 500 feet of a public works project may not participate in decisions related to the project, nor may he participate in selecting alternative approaches to implement the project when each alternative affects property within 500 feet of his property. The public generally standards are not met.

Richard Egan

A-13-052

A County Treasurer/Tax Collector who owns a small ranch and leases other properties that are assessed a water fee by an independent government agency that operates in the Treasurer's/Tax Collector's county does not have conflict of interest when he provides opinions to that agency in his official capacity as Treasurer/Tax Collector regarding the

agency's financial structure, budget or compliance with government codes. It is not reasonably foreseeable that the opinions offered by the Treasurer/Tax Collector will have a material financial effect on his identified financial interests.

Michael A.M. Lauffer**A-13-057**

A SWRCB board member may participate in decisions related to a desalination plant and a cease and desist order against a water company despite the fact that the same water company provides water service to the member's residential rental property. None of the facts suggest that the member's rental business or property will be foreseeably and materially financially affected by the decisions in question. The criteria for the cease and desist order do not apply to the member's property. Moreover, the desalination decision, to the extent that we can speculate that it will ultimately financially benefit property or rate payers, would presumably affect a significant segment of the public generally in substantially the same manner as the member.

Judith Propp**A-13-058**

A councilmember is not prohibited from participating in decisions regarding development of real property where her spouse is a partner in a law firm which provides legal services to a proposed tenant for an office in the development if the decisions will not have a reasonably foreseeable material financial effect on her husband's law firm under the standards set forth in the Act.

Honoraria**Marivic JoAnn Fields****A-13-055**

A field representative for an assembly member is not prohibiting from accepting payment for services rendered in three outside positions that involve writing articles, consulting, and training. "Honorarium" under the Act does not include any earned income for personal services in connection with a bona fide business, trade, or profession. A business is presumed to be "bona fide" if the owner of the business has maintained certain documents for the two calendar years immediately preceding the year in which consideration for any payment was provided. To the extent that the field representative is engaged in bona fide business, trade, or professions, she must report her payments as income on her Form 700.

Revolving Door**Ben Williams****A-13-047**

An official is prohibited from bidding on general project management contracts for his former agency if either the one-year ban or permanent ban applies. More specifically, an official who has drafted a feasibility study report and budget change proposal for a project has participated in the implementation of a contract. Under the permanent ban, the official is prohibited from bidding on the project in the award stage as it is considered part of the same implementation proceeding.

Paul Benedetto**I-13-061**

Undersecretary at a state agency plans on retiring in the future and working for a private company. Post employment restrictions of the Act depend on the facts of the potential employer and the nature of the future work. General advice was provided.