



**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:** September 9, 2013

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**A. OUTREACH AND TRAINING**

**None to report.**

**B. FINDINGS OF PROBABLE CAUSE**

*A finding of probable cause does not constitute a finding that a violation has actually occurred. 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 solely on the papers. The respondent did not request a probable cause hearing.

**In the Matter of Regina Callan, FPPC No. 12/749.** On August 5, 2013, probable cause was found to believe that Respondent Regina Callan committed one violation of the Political Reform Act, as follows:

**Count 1:** Respondent, while a member of San Francisco's Citizen's General Obligation Bond Oversight Committee, failed to file an annual statement of economic interest for 2011 by the April 2, 2012 due date in violation of Government Code section 87300.

**In the Matter of Charles R. “Chuck” Reed, San Jose Fiscal Reforms, Mayor Reed, Chamber PAC and Issues Mobilization PAC Proponents, and Benjamin J. Roth, FPPC No. 12/761.** On August 28, 2013, probable cause was found to believe that Respondents Charles R. “Chuck” Reed, San Jose Fiscal Reforms, Mayor Reed, Chamber PAC and Issues Mobilization PAC Proponents, and Benjamin J. Roth committed one violation of the Political Reform Act, as follows:

**Count 1:** On or about September 24, 2012, Respondent Charles R. “Chuck” Reed, Respondent San Jose Fiscal Reforms, Mayor Reed, Chamber PAC and Issues Mobilization PAC Proponents, and Respondent Benjamin J. Roth, used funds of Respondent Committee, Respondent Reed’s candidate controlled committee, to make a \$100,000 contribution to San Jose Reform Committee Supporting Rose Herrera for City Council 2012, a primarily formed committee supporting Rose Herrera for San Jose City Council, for the purpose of making independent expenditures to support Rose Herrera and to oppose Jimmy Nguyen for City Council in the November 2012 election, in violation of Government Code Section 85501.

### **C. LEGAL ADVICE TOTALS**

- ***Email Requests for Advice:*** In August, Legal Division attorneys responded to more than 51 email requests for legal advice.
- ***Advice Letters:*** From July 31, 2013, to August 30, 2013, the Legal Division received 12 advice letter requests and issued 14 advice letters.

### **D. ADVICE LETTER SUMMARIES**

#### **Conflict of Interest**

**John R. Reed, CCIM**

**I-13-091**

A planning commissioner cannot take part in decisions relating to the sale of a property, even as the county’s real estate broker, if he negotiated employment with the buyer or acquired an interest in the property. However, if he is solely acting as the county’s real estate broker and his actions are within the terms and conditions of the contract with the county, he can take part in decisions relating to the sale of a property before county staff and the planning commission.

**Julie K. Danielson**

**I-13-099**

The Act does not prohibit a commissioner of the Chula Vista Historic Preservation Commission, who is also a licensed real estate agent, from marketing and selling historically designated properties, and contacting individuals for information about the property as long as she refrains from making, participating in making, or influencing a

governmental decision that may have a reasonably foreseeable material financial effect on her interests. Once she resigns from the commission, she may participate in hearings as a member of the general public.

**Ken Brown****I-13-102**

The Act does not prohibit a mayor, who is also an independent contractor for a non-profit radio station, from selling ads for a commission or collecting debts for a percentage of the debts he collects for the radio station. However, these payments will subject him to certain reporting requirements on his annual statement of economic interests as well as the Act's conflict-of-interest provisions with respect to any source of income he may acquire as a result of these activities.

**Assemblymember Philip Y. Tang****I-13-103**

The Act does not prohibit an Assemblymember from performing private consulting services for compensation as long as he is not making, participating in making or using his position to influence certain governmental decisions which will have a reasonably foreseeable material financial effect on his interests.

**Jeff Ginsburg****I-13-081**

A city councilmember that has fifty percent interest in real property located on the street that is being resurfaced does not have a conflict of interest if the decision of resurfacing will not have a reasonably foreseeable material financial effect on any of his interests. Moreover, the adoption of a budget where the budget allocates funds for capital improvement projects, some that will be located near the councilmember's real property, will be a conflict of interest unless the capital improvement decisions can be "segmented." Finally, there is no conflict of interest on an application to build a car wash where the applicant has referred the owner of the property on which the car wash would be built to the councilmember's property management business as a potential client unless there is a "nexus" between the councilmember's private-sector obligations to the client and his duties as a councilmember.

**Michael P. Krug****I-13-095**

A Senior Engineering Geologist for the Department of Conservation who participates or makes decisions limited to surface and in-stream mines, but who does not make or participate in decisions on underground mines, will not have a conflict of interest under the Act relating to Miriah Mining Company because his decisions will not have a reasonably foreseeable material financial effect on the company.

**Sue Long****A-13-065**

A councilmember may have a conflict of interest that requires her to abstain from voting on the city's development and permit fee schedule because it may financially affect the construction company that employs the councilmember and owns several pieces of property that could be subject to the fee schedule.

**Jessica Jahr****A-13-045a**

The Central Coast Water Board (CCWB) regulates the discharges of waste from agricultural operations. In 2012, the CCWB adopted an order that regulated discharges from irrigated agricultural lands to protect surface water and groundwater. Thus, a Board Member who owns a company subject to the decision will have a conflict of interest unless the Board Member meets the “public generally” exception.

**Jim Griffith****A-13-072a**

Vice Mayor Griffith may not participate in a city council decision regarding the proposed development if he owns a condominium unit whose southern boundary is within the 500-foot-radius of the residential development at issue. He also may not participate in a city council decision regarding the general plan amendment for only the southern parcel of the Raintree Site which is more than 500-foot radius of his condominium unit because this decision appears to be interlinked to the decisions for which he has a conflict. However, he may participate in decisions regarding another development beyond the 500-foot-radius only if participating in that decision will not result in reopening or in any way affecting the decisions for which he has a conflict.

**Alex Mayer****A-13-077**

A member of the Central Valley Water Board (CVWB) is also managing director of her parent’s farm, but has no ownership interest in the farm. The CVWB adopted various orders to regulate discharges from irrigated agricultural lands to protect surface water and groundwater. The member’s employer will be subject to one of these orders. To the extent that the foreseeable cost increases to the employer are less than \$5,000 in a fiscal year, the member will not have a conflict of interest.

**Rod H. Coburn, D.D.S.****I-13-082**

The Fresno County Employees’ Retirement Association (the “FCERA”) has an investment in a private placement partnership. The partnership sponsor hosted an educational meeting for existing investors in the Los Angeles area and planned to cover costs of lodging and meal of the FCERA representative. The FCERA also planned to provide reimbursement for some meals and mileage to its representative.

Free admission and non-cash nominal benefits during the conference at which the FCERA representative will lead continuing education courses, as well as reasonably necessary travel, lodging, and subsistence, which satisfies the criteria for federal income tax deductions for businesses specified in 162 and 274 of the Internal Revenue Code, do not constitute as gifts or prohibited honorarium under the Act. However, payments for these purposes are considered income under the Act if the source is within his jurisdiction, is planning to do business within his jurisdiction, or has done business within his jurisdiction in the previous two years.

**Linda A. Cantillon****A-13-096**

A Civil Service Commissioner for the City of Napa has an interest in her spouse's employer. The member will have a conflict of interest in her decisions as Civil Service Commissioner when the decisions will have a reasonably foreseeable material financial effect on her husband's employer, either directly or indirectly

**Scott Chan, CFA****I-13-097**

The Act does not prohibit a Chief Investment Officer of the Sacramento County Employees' Retirement System from also serving as an advisory board member of a private-sector company.

**Steven T. Mattas****A-13-098**

A Councilmember also works as the District Operations Manager for the Cemetery Department of the Archdiocese of San Francisco. The city's planning commission approved a conditional use permit granted to Planned Parenthood for a medical clinic. A group called "Respect Life South San Francisco" appealed that decision and is now before the city council. The Archdiocese is not monetarily affiliated with Respect Life South San Francisco, though it does offer spiritual support and prayers. Therefore, the governmental decision by the city council will not have a reasonably foreseeable material financial effect on the councilmember's employer. Thus, he may participate in the decision.

**Peter M. Thorson****A-13-108**

City council members with interest in specific LLCs also have an interest in other LLCs affiliated with the LLCs in which they have an investment. However, they do not have an interest in sources of income to other affiliated LLCs so long as the council members do not own a 10 percent or greater investment interest in the affiliated LLCs.

**Behested Payments****James Harrison****I-13-106**

A member of the Legislature does not have reporting requirements under the "behested payment" rule when he or she has communicated with a local, state or federal government agency to express his or her support for a payment to be made to a local government agency within the legislator's district, and the payment is used by the local government agency for official agency business within the district.

**Gift Limits**

**Richard J. Augustine**

**A-13-094**

A member of the San Miguel Fire Board may accept more than five tickets to San Diego Padres games from a long-term personal friend as long as the friend does not engage in any activities before the San Miguel Fire District.

**Mass Mailing**

**Lacey Keys**

**A-13-115**

A 2010 Senator may send mass mailings under the “town hall meeting” exception to persons residing or doing business in the Senator’s current senatorial district, including the accelerated areas, until the completion of his or her term.

**Miscellaneous**

**John St. Croix**

**I-13-107**

Section 91013 applies to statements and reports in the Act that impose a statutory deadline. The elected officer’s agency, the filing officer for purposes of the behested payments report, has the ability to impose a fee under Section 91013(a) for late filing of Form 803, Behested Payments. A behested payments report.

**Revolving Door**

**Terry Abbot**

**I-13-110**

The “permanent ban” provision prohibits a former Caltrans employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California if the proceeding is one in which he participated while employed by Caltrans. Also, he is subject to the “one-year ban” provision, which means he may not represent any person, including a possible private employer, by appearing before or communicating with Caltrans, or any officer or employee thereof, for the purpose of influencing any administrative or legislative action for one year after he leaves state service.