



**FAIR POLITICAL PRACTICES COMMISSION**

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**To:** Chair Remke and Commissioners Casher, Eskovitz, Wasserman and Wynne

**From:** Zackery P. Morazzini, General Counsel

**Subject:** Monthly Report on Legal Division Activities

**Date:** June 9, 2014

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**A. OUTREACH AND TRAINING**

On April 10 and April 17, Legal Division attorneys Scott Hallabrin and Bill Lenkeit met with students from the Hastings College of Law Legislation Clinic and discussed the regulation process, regulation issues unique to the FPPC, and conflict of interest regulations considered by the Commission at its April 17 meeting.

**B. PROBABLE CAUSE DECISIONS**

***Please note, 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.***

In the Matter of Familias Por Maywood Aka Familias Por Maywood Supporting Aguirre Magana Varela For Maywood City Council, Felipe Aguirre, Oscar Magana, Edward Varela, Veronica Guardado, Ana Rosa Rizo, And Elsa Solorio, FPPC No. 12/422. On

April 2, 2014, after hearing, probable cause was found to believe that Respondent Felipe Aguirre<sup>1</sup> committed twelve violations of the Political Reform Act, as follows:

- Counts 4-10: Respondents Committee, Aguirre, Magaña, and Varela failed to file semi-annual campaign statements in violation of Section 84200, subdivision (a).
- Count 11: Respondents Committee, Aguirre, Magaña, and Varela failed to file a late contribution report for a contribution of \$1,000 received on or before November 2, 2009, in violation of Section 84203.
- Count 12: Respondents Committee, Aguirre, Magaña, and Varela failed to properly report cumulative contributions of \$100 or more on Respondent Committee's 2009 pre-election campaign statements in violation of Section 84211, subdivision (f).
- Count 13: Respondents Committee, Aguirre, Magaña, and Varela received cash contributions of \$100 or more in violation of Section 84300, subdivision (a).
- Count 14: Respondents Committee, Aguirre, Magaña, and Varela made cash expenditures of \$100 or more in violation of Section 84300, subdivision (b).
- Count 15: Respondents Committee, Aguirre, Magaña, and Varela failed to maintain detailed accounts, records, bills and receipts necessary to prepare campaign statements and to establish campaign statements were properly filed in violation of Section 84104.

### C. LEGAL ADVICE TOTALS

- **Email Requests for Advice:** In April, Legal Division attorneys responded to more than 149 email requests for legal advice.
- **Advice Letters:** From April 1 to May 20, 2014, the Legal Division received 38 advice letter requests and issued 35 advice letters.

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<sup>1</sup> Respondent Aguirre was the only named respondent to request a probable cause conference, and Counts 1-3 did not allege any violations against him.

- **Section 1090 Letters:** From April 1 to May 30, 2014, the Legal Division received three advice letter requests concerning Section 1090 and issued nine advice letters. This year to date we have received 15 requests.

## D. ADVICE LETTER SUMMARIES

### Campaign

*Marc G. Hynes*

*A-14-016*

A fire protection district is a “committee” if it spends \$1,000 or more on paid circulators to gather sufficient written protests to force a Local Agency Formation Commission’s decision to dissolve the district to be submitted to voters for confirmation or rejection. The protest procedure is a “measure” because it is substantially similar to the referendum procedure. The definition of “measure” includes a proposition that is intended to be submitted to a popular vote at an election by initiative, referendum or recall.

*Bryan Burch*

*A-14-032*

A candidate is not prohibited from using an airplane owned by his own wholly owned corporation. So long as the fair market value of the use is reported as an in-kind contribution from the candidate and his corporation, the contribution of the use of the plane owned by the candidate’s corporation is not limited. Fair market value (for campaign purposes) is determined by using the equivalent commercial air rate or the charter rate divided by the number of passengers.

### Conflict of Interest

*Helen Holmes Peak*

*I-14-028*

In itself, serving on a nonprofit board while simultaneously holding public office does not create a potentially disqualifying conflict of interest and is not prohibited under the Act. However, to the extent that the official has an interest in the organization, the official may be disqualified from making, participating in making, or influencing a governmental decision with a reasonably foreseeable material financial effect on the organization. Moreover, while the Act does not prohibit the organization from using the official’s name and title on the organization’s letterhead, there may be implications under the Act if a mailing constitutes a campaign contribution or a behest for a donation. Finally, tickets provided to the official for sponsoring the organization are not gifts and not reportable or disqualifying so long as the same tickets and quantity of tickets are provided to other sponsors. Tickets provided to all members of the board may constitute gifts or income to the official.

*Steve Boyle*

*A-14-037*

Under the facts presented, the Assistant Superintendent of a school district will have a conflict of interest in a District decision only if the decision will have a material financial effect on his spouse's employer.

*Fred Galante*

*A-14-063*

The "public generally" exception will apply to future approvals of amendments to a Disposition and Development Agreement regarding affordability levels and final approval of the Housing Selection Guidelines because the amendments will apply equally to all the subject properties and effect all properties within 500 feet of the subject properties in the same way. These properties constitute a significant segment of the public generally.

*Jon Kennedy*

*A-14-035*

A county supervisor is not prohibited from participating in a decision to reduce fees payable by a city to a Local Agency Formation Commission where the supervisor provides consulting services to the city. Under the "public generally" exception, the decision will affect the public under the city's jurisdiction and will not uniquely benefit the supervisor.

*Christopher Drop*

*I-14-052*

Generally, a public official may not participate in service decisions applicable to property within 500 feet of his residence if his residence receives new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties. However, with respect to other decisions affecting property within 500 feet, amended Regulation 18705.2 no longer applies a "one-penny" rule, but rather focuses on the facts and circumstances of the decision. Thus, decisions of a minor nature do not require disqualification. Legally required participation and the public generally exception for small jurisdictions may also apply to future decisions.

*M. Lois Bobak*

*A-14-055*

*Commercial Development Guidelines:* A Planning Commissioner's residence is within 500 feet of commercial property that will be subject to new Commercial Development Guidelines. However, his property will not be materially affected by the decision because the nearest property subject to the guidelines is separated from the Commissioner's residence by several other independently owned residential properties. With respect to the Commissioner's commercial property, Regulation 18705.2(a)(11) provides that commercial property is not analyzed under the real property rules, but rather under Regulation 18705.1. (Regulation 18705.2(a)(11).) There are no facts to suggest that the Guidelines will materially affect the Commissioner's office building.

*Selection of the consultant for the Downtown Commercial Core Master Plan.* The Commissioner may participate in the selection of a consultant so long as (1) the

decision on selecting a consultant will not result in a reopening of, or otherwise financially affect, a decision in which he has a conflict of interest, and (2) so long as the Commissioner does not have an independent interest in the consultants bidding on the contract (such as having received income from them in the prior 12 months).

*Second Unit Ordinance:* The Commissioner owns residential property that would be directly subject to the proposed ordinance. Therefore, the Commissioner may not participate in the amendment of the second unit ordinance, but may participate in his personal capacity as a member of the public.

*M. Lois Bobak*                      *A-14-065*

*Commercial Development Guidelines:* The Commissioner owns a partial interest in condominiums located beyond 500 feet of commercial property that will be subject to new Guidelines. The condominiums will not be materially affected by the decision because properties subject to the guidelines are separated from the Commissioner's residence by several other independently owned residential properties.

*Selection of the consultant for the Downtown Commercial Core Master Plan.* The Commissioner may participate in the selection of the consultant so long as the Commissioner does not have an independent interest in the consultants under consideration (such as having received income from them in the prior 12 months).

*Second Unit Ordinance:* The Commissioner may participate in the decision because no facts suggest that a potential change in the second unit ordinance will materially affect his rental business.

*James Sutton*                      *A-14-066*

Payments to prepare a Local Agency Formation Commission (LAFCO) application, interact with LAFCO staff and represent the applicant at LAFCO hearings are not "expenditures." Payments made to consultants to prepare maps, legal descriptions and reports are also not "expenditures." Rather, these are payments for costs that are necessarily incurred to comply with LAFCO requirements and, therefore, are not "expenditures." In addition, payment of wages by the applicant to employees working with the law firm on the application is not an "expenditure." However, payments to the law firm to prepare and send materials to neighbors and to attend community meetings to answer questions about the annexation are made to influence or attempt to influence voters or the LAFCO and therefore are "expenditures."

*John G. Barisone*                      *I-14-067*

Regulation 18702.4 permits direct contact with an agency only if "necessary" for the processing or evaluation of the drawings or submissions. While Regulation 18702.4 permits an official to participate in the more technical aspects of preparing drawings and submissions, contacts with agency staff for the purpose of gathering information relevant to the preparation of drawings and submissions are not considered "necessary" as required by the exception. However, for the purposes of preparing the drawings or

submissions, an official may initiate limited contacts that are ministerial in nature, such as seeking information that would otherwise be available to the public.

*Barbara Coler*                      *A-14-076*

A public official has a conflict of interest when a decision will have a reasonably foreseeable financial effect on the public official's property, which is located within 500 feet of the property that is the subject of the decision. The official may participate in related decisions, however, because the public generally exception for small jurisdiction applies.

*William J. Brunick*                *I-14-080*

The Act prohibits a board member, who is part of a class action lawsuit that will affect property owners, from participating in the board's decision regarding whether to sign on to the settlement agreement that would end the lawsuit. The public generally exception applies, allowing him to vote, however, because the settlement agreement would apply to a significant segment of the property owners in the jurisdiction and it would affect all similarly situated property owners in substantially the same manner.

*Julie Soinila*                      *A-14-088*

Employees of a non-profit do not have a conflict of interest when they attend and participate in the open meetings of a board on behalf of the non-profit, despite the fact that the Executive Director of the non-profit is also a public official on the board. The Act regulates the actions of public officials, not private actors.

*Debra Dengler*                    *A-14-089*

A member of a community services district who lives within 500 feet of the community center may participate in a decision to designate the center as a Red Cross shelter in the event of a major disaster. It is not reasonably foreseeable that the designation of the community center as an emergency shelter will have a measurable economic impact on the official's property under Regulation 18705.2(a)(11).

### **C/I Code**

*William B. Connors*                *I-14-054*

An advisory committee that does not take final action on matters before them, but merely makes recommendations to the City Council for the council's consideration, and cannot compel or prevent any governmental decision, does not have decision-making authority unless it has or will make substantive recommendations regularly approved by the City Council without significant amendment or modification. For a newly created committee, a single approved recommendation does not establish a record of regularly approved recommendations. Accordingly, the advisory committee does not currently have decision-making authority, and the Act's conflict-of-interests provisions do not apply to its members.

*Jackie Gong*

*A-14-092*

The Napa-Lake Workforce Investment Board meets the definition of a multi-county agency. Thus, the Fair Political Practices Commission will act as the agency's code reviewing body and the agency must follow the procedures outlined in Regulation 18750.1 in order to have a conflict-of-interest code approved.

### **Gifts Limits**

*Lori J. Barker*

*A-14-034*

Payments for registration, travel and accommodations are income under the Act if consideration of equal or greater value is provided. Income payments that are reimbursement for travel expenses and per diem and received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are exempt from the Act's reporting provisions pursuant to Section 82030(b)(2).

*Mona Pasquil*

*A-14-068*

A gift of travel received from a 501(c)(3) is not prohibited or limited because the purpose for the trip is reasonably related to an issue of international public policy. However, the official will still have to report the full value of the cost of the travel on her Form 700 and, in addition, will have a conflict of interest in any government decision that would have a reasonably foreseeable material financial effect the donor.

*Benjamin T. Reyes II, Michael S. Lawson, William L. McClure, Orry P. Korb*

*A-14-071, 072, 078, 079*

Twelve Mayors have been invited to travel to China. The principal purpose of the trip involves facilitating investment and international trade between China and the Silicon Valley, and the Mayors are attending in their official capacities to represent their respective cities. Payments for the Mayors' travel, lodging and subsistence are reportable gifts, not subject to gift limits because they will be provided in connection with a legislative or governmental purpose by both a foreign government and a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

### **Honoraria**

*Nwadiuto ("DT") Amajoyi – Fellow A-14-069*

Senate Fellow was prohibited by the Act from accepting payment from University of California Santa Cruz of \$1,000 for her participation as a speaker in a workshop sponsored by the university. Because the Senate Fellow was designated under "full disclosure" in the Senate's conflict of interest code, the payment would be considered a prohibited gift or honorarium under the Act. However, payments, advances, or reimbursements made by the university to the Senate Fellow for travel connected to her speech, "including actual transportation and related lodging and subsistence" may be

reported as gifts not subject to gift limits under Section 89506 or, in the alternative, reported as income as the Senate Fellow is providing consideration for the expenses.

### **Lobbying**

*Michael Millman*                      *I-14-029*

Requestor sought advice regarding lobbyists potentially arranging or advising on political campaign contributions. Requestor was provided with general guidance as well as the FPPC's Lobbying Disclosure Manual.

*Kathryn E. Donovan*                *A-14-044*

Even though a law firm that is also a lobbying firm is generally subject to the Act's ban against lobbyists and lobbying firms receiving payments contingent on the outcome of proposed state legislative or administrative action, the law firm's representation of a client, on a contingent fee basis, in county proceedings contesting the amount of personal property assessed values placed on certain equipment is separate from its lobbying activities in attempting to influence decisions by the State Board of Equalization on the tax law applicable to the county proceedings. Therefore, the law firm may represent the client on a contingent fee basis in the county proceedings.

### **Mass Mailing**

*Kimberly D. Willy*                    *A-14-064*

A public official submitted additional facts to supplement a prior request for advice (A-14-008). The official was advised that the new facts do not change the original conclusions of the prior request for advice. However, the new facts support application of "the official agency event" exception to the Act's mass mailing restrictions under Regulation 18901(b)(9)(A).

### **Revolving Door**

*Lance Olson*                            *I-14-047*

For a former state official subject to the revolving door provisions, the official is representing his private employer for compensation so long as he is a paid employee. An official may not provide "volunteer" services on behalf of his employer, which would otherwise be prohibited, while simultaneously being compensated for other services.

*Katherine Ross*                        *A-14-061*

An employee who is not designated in her agency's conflict of interest code, and based on her job duties should not be designated, is not subject to the revolving door provisions under the Act. Consequently, the employee is not limited in her duties and participation in her new position with a private agency.



*Erika E. Webb-Hughes*      *A-14-085*

An employee of the California Department of Education (DOE) would be prohibited from appearing for compensation before any state administrative agency in any judicial, quasi-judicial or other proceeding (as defined in Section 87400) that she previously participated in as a state employee. In addition, she would be prohibited from appearing before or communicating with any officer or employee of any of her former state employers for 12 months after leaving state employment. The prohibitions do not apply to mere social interaction with officers or employees of the former agency, participation as a panelist or formal speaker at a conference or similar public event, attending a general informational meeting, seminar, or similar event, requesting information concerning any matter of public record, or communicating with the press.

*Daniel J. Schroeder*      *I-14-070*

Conducting health plan surveys for licensing compliance purposes would not constitute an “appearance or communication to influence administrative or legislative action,” or an action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Thus, Section 87406 would not prohibit a former state employee from conducting health plan surveys for licensing compliance purposes on behalf of the state agency as an employee of a private contractor.

*Kyle Jones*      *A-14-082*

An employee of the California Bureau of Real Estate (BRE) would not be prohibited after he leaves BRE from representing licensees in administrative hearings (other than cases in which he participated). Any other communications and appearances before BRE to influence administrative or legislative action, or involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property, would be subject to the one-year ban.

### **Section 1090**

*Deepak Moorjani*      *A-14-014a*

Requestor was co-owner of a firm that provided engineering services to a City under a consulting contract entered into in 1993. By September of 2013, he had finished providing consulting services to the City and had sold his engineering firm. Therefore, the conflict-of-interest provisions under Section 1090 do not prohibit him from entering into an employment contract on a part-time basis as an engineer with the City because, in his current capacity, he is not subject to those provisions.

*Phaedra Norton*      *I-14-045*

Under Section 1090, a city councilmember does not have a financial interest that would prevent either him or the council from entering into contracts with an insurance agency where the councilmember’s only financial interest is a fixed salary. Under the Act, the

council member may not participate and must recuse himself from the decisions that have a material financial effect on his employer, which will be directly involved.

*Lisa Rodman*                      *I-14-049*

Informal advice regarding the Act's conflict of interest provisions and Government Code Section 1090 to an individual who is employed by a foundation that receives grants from a city. The individual is running for election to city council and is concerned about possible future decisions on grants to the foundation if she were elected.

*Ana McKee*                      *A-14-050*

Contract employees hired by the Department of Motor Vehicles to provide independent verification and validation services for solutions proposed under the department's information technology modernization project are consultants of the department and must file statements of economic interests as required by the Act.

*Michelle Culp*                      *I-14-051*

A retiring public official was advised that the Act's permanent ban would prohibit her from working on the performance or implementation of contracts she worked on while in state service to the extent that she worked on the creation, formation, application, drafting or awarding, or implementation and management of the contracts. The official was also advised that she may have a financial interest under Section 1090 in nonprofit groups that she has an agreement with for future consulting services if those nonprofits would be named as subcontractors or would otherwise benefit from the contracts before her former agency.

*Joshua E. Morrison*                      *A-14-056*

Section 1090 does not prohibit a board member of a school district from participating in decisions regarding a lease for new district offices where the proposed offices are located 517.5 feet from property owned and leased out by the board member. The board member does not have a financial interest in the lease.

*Robert P. Oglesby*                      *A-14-059*

The California Energy Commission is not prohibited from contracting with a former University of California Irvine employee who, as a university employee, worked on a contract with the Energy Commission. The university employee did not have any input on a subsequent contract on which he bid as a private contractor after leaving the university. He therefore has no conflict under Section 1090. Under the Revolving Door provisions of the Act, the employee is not barred from contracting with the Energy Commission under the one-year ban because he was never an Energy Commission employee. The permanent ban does not bar the Energy Commission from contracting with the university employee because the two "proceedings" are distinct for purposes of the Act's one-year ban.

*Lori Asuncion*                      *I-14-062*

A planning commissioner who is also employed by a company that seeks to do business with the city council in the same city does not have a conflict of interest under Section 1090 because he will not be entering into a contract in his public capacity. The contract will be between a different entity that is not under the jurisdiction or control of the planning commission and a private entity.

*Caroline Bolton*                      *I-14-081*

Subject to some exceptions, the Act and Section 1090 regulate only persons who hold a public office in California. A private contractor would not be a public official based merely on his or her communications with a state agency under the Act or Section 1090.