



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: July 7, 2014

A. OUTREACH AND TRAINING

On June 19th, the General Counsel gave a presentation at the California Political Attorneys Association meeting in Sacramento, discussing the operations of the Legal Division.

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.

There are no findings to report for the month of June.

C. LEGAL ADVICE TOTALS

- ***Email Requests for Advice:*** In June, Legal Division attorneys responded to more than 81 email requests for legal advice.

- **Advice Letters:** From June 1, 2014 to June 30, 2014, the Legal Division received 16 advice letter requests and issued 17 advice letters.
 - **Section 1090 Letters:** From June 1, 2014 to June 30, 2014, the Legal Division received three advice letter requests concerning Section 1090 and issued two advice letters. This year to date we have received 18 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 for paid circulators to gather written protests to force a Local Agency Formation Commission to place the proposed dissolution of the district on the ballot. 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.

Jay Nagdimon, Ph.D., ABPP

A-14-086

In closing a committee, a committee established by a union may not return campaign funds to the union’s general account for the payment of general operating expenses. However, the committee may return the funds to the union if the funds are segregated and the use of the funds is restricted to expenditures that are reasonably related to a political, legislative, or governmental purpose such as collective bargaining and assisting members with workplace grievances. Alternatively, the committee may return the funds to the individual union members who contributed the funds to the committee or donate the funds to another nonprofit organization.

The Honorable Lou Correa

A-14-098

A controlled committee that recovers funds in an interpleader action (based on the conviction of former campaign treasurer for embezzlement), may attribute funds to known contributors for purposes of transferring funds into the committee under Section 85306. So long as the committee has taken all reasonable steps to try to identify the original donors, the Act does not require the forfeiture of the funds recovered in the interpleader action to the state general fund, and the funds may be retained by the committee.

Behested Payment

William B. Conners

A-14-091

1. A council member is not prohibited from (a) serving as a board member of a nonprofit that raises funds for the town to build a new town hall, or (b) volunteering for a

nonprofit and soliciting donations for the city hall project. However, the Act's "behested payment" provisions may require the council member to file reports providing information about the donations he solicited.

2. The council member is not prohibited from participating in a decision to approve a project if the council member solicited donations from the applicant.

Laurence S. Wiener

A-14-099

Payments for invitations to a charity gala sent by the nonprofit organization hosting the gala, and payments made in response to the invitations, are not reportable behested payments under Section 82015 merely because the elected officer has been identified on the invitation as an "honoree."

Conflict of Interest

Frank S. Furtek

A-14-074

A First 5 California Commissioner that is president and CEO of a nonprofit organization will not have a conflict of interest in serving on the Legislative Advisory Commission of First 5 California and recommending positions on legislation unless the decision would have a reasonably foreseeable material financial effect on the nonprofit organization.

Gregory J. Rubens, Esq

A-14-090

A city attorney does not have a conflict of interest regarding a property that is a mile or more away from his own property. The city attorney does, however, have a disqualifying conflict of interest with respect to decisions that involve developing property that is within 500 feet of his property.

Linda Rubin

A-14-094

A board member of a healthcare district is not prohibited from participating in decisions regarding the district's potential affiliation with the board member's employer, a medical center, which is an agency of a city. Salary from a local government agency does not constitute "income" under the Act. Therefore the employer is not a source of income and the board member does not have a financial interest in the decisions.

John Watson

A-14-104

A member of an architectural review board may appear before a separate architectural review board in the same county that shares its planning department staff with the official's agency. The official may do so as long as the official does not act or purport to act as a representative of, or on behalf of his agency to any member, officer, employee, or consultant of the planning department or the separate architectural review board.

Christine Dietrick

A-14-097

Officials have conflicts of interest and may not make, participate in making, or influence decisions concerning the conversion of a vacant hospital into multiple residential housing units. While the city manager's property is beyond 500 feet of the project site, it is foreseeable that the value of her property would be materially financially affected by the conversion of the vacant hospital to its new proposed use.

Karin Hold

A-14-100

An official with a conflict of interest based on her property being adjacent to property that is the subject of a decision may file an appeal as a private citizen, and may appear to represent the official's own personal interests. However, the official may only appear in the same manner as the public to represent the official's personal interests.

Jannie L. Quinn

A-14-106(a)

A Councilmember has a conflict of interest with respect to the proposed San Antonio Precise Plan because the councilmember's property is within 500 feet of the boundary of the precise plan and located on a street that will be substantially changed under some of the alternatives being considered in the proposed plan.

Anne Russell

A-14-114

The Mayor of San Luis Obispo does not have a legal interest in real property that may be foreseeably and materially financially affected by the update to the City's Land Use and Circulation Element. However, the mayor's adult daughter who rents a mobile home coach from the mayor is considered a potentially disqualifying source of income. Since the mayor's daughter rents a space in a rent-controlled mobile home park on a month-to-month basis, it is not foreseeable that the decision in question will have a foreseeable financial effect on the Mayor's daughter. **Superseded Letter:** This letter supersedes the *Dietrick* Advice Letter, No. A-09-102 (also to the Mayor) which was based upon inaccurate facts that affected the analysis and conclusion in that letter.

Payments to Agencies

Gina M. Ratto

I-14-057

Advice to a state agency regarding application of Regulation 18950.1 to the agency's reporting of travel payments with regard to specificity of the payments, timeliness of reporting, and estimating when the exact values of payments have not been received.

Section 1090

Alan R. Burns *A-14-060*

Neither the Act nor Section 1090 precludes the sanitary district from offering its interim finance manager a permanent employment position district. Neither the interim finance manager, nor her husband (the district treasurer), will be making, participating in making, or influencing the contract under the Act or as contemplated by Section 1090.

Karl Drexel, SDA *I-14-075*

Section 1090 does not prohibit independent contractors that provide services to a government entity from making or participating in making their contracts so long as they are doing so in their private capacities.

SEI

Nathan Jacobsen *A-14-103*

Effective July 1, 2014, Governor Brown's 2014 -2015 Budget will transfer California's Drinking Water Program from the Department of Public Health ("DPH") to the State Water Resources Control Board ("SWRCB"). This reorganization will transfer the authority and responsibilities for the administration of specified drinking water programs currently under the DPH to the SWRCB, and the DPH's current regulations will remain in full force. DPH designated employees who transfer with no material change in duties can continue to file annual SEIs under their old code until the SWRCB amends its code to cover them. It is not necessary for those employees to file leaving and assuming office statements. With respect to the few employees who will experience a material change in their job duties, the SWRCB will have 90 days to submit a code amendment that encompasses these new positions. In the meantime, those employees must file under the broadest disclosure category unless the agency determines the broadest disclosure is not necessary and sets interim disclosure that is tailored to the range of duties. It is not necessary for them to file leaving and assuming office statements.