



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

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

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: October 16, 2014

A. OUTREACH AND TRAINING

Senior Commission Counsels Bill Lenkeit and Heather M. Rowan presented at the annual California Political Attorneys Association conference on a panel regarding conflicts of interest. They were joined by Vern Pierson, El Dorado County District Attorney, and Andrea Visheshwara, Assistant City Attorney for the City of Petaluma.

Mr. Lenkeit provided an overview of the history of conflicts of interest and focused on the Commission's ongoing overhaul of the conflict regulations.

Ms. Rowan discussed the legislative history of Government Code section 1090 and the Commission's efforts to provide advice and counsel to officials in an area that was previously difficult to obtain advice. She also explained the Commission's process in receiving and responding to letters that request Section 1090 advice and responded to many questions on the subject.

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 American Metal Group, Inc. (“AMG”) and Howard Misle, FPPC No. 12/490. After a hearing on August 13, 2014, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: Respondents made a \$250 contribution to the campaign committee “Re-elect Madison Nguyen for City Council” on or about March 12, 2010 in the name of Juana Ponce, rather than Respondent AMG’s name, in violation of Section 84301.
- Count 2: Respondents made a \$350 contribution to the campaign committee “Re-elect Armando Gomez for City Council 2010” on or about September 27, 2010 in the name of Juana Ponce, rather than Respondent AMG’s name, in violation of Section 84301.
- Count 3: Respondents made a \$250 contribution to the campaign committee “Re-elect Madison Nguyen for City Council” on or about August 14, 2010 in the name of Jennifer Correia, rather than Respondent AMG’s name, in violation of Section 84301.
- Count 4: Respondents made a \$350 contribution to the campaign committee “Re-elect Armando Gomez for City Council 2010” on or about August 4, 2010 in the name of Jennifer Correia, rather than Respondent AMG’s name, in violation of Section 84301.
- Count 5: Respondents made a \$350 contribution to the campaign committee “Re-elect Armando Gomez for City Council 2010” on or about September 27, 2010 in the name of Dora Zuniga, rather than Respondent AMG’s name, in violation of Section 84301.

The following findings were reached based solely on the papers. The respondents did not request a probable cause hearing.

In the Matter of Committee to Elect Sean Bookout School Board 2013, Sean Bookout, and Malika Bookout, FPPC No. 13/1336. On August 19, 2014, probable

cause was found to believe that the named Respondents committed two violations of the Political Reform Act, as follows:

Count 1: Respondents Committee to Elect Sean Bookout School Board 2013, Sean Bookout, and Malika Bookout failed to file a second pre-election campaign statement by October 24, 2013 for the reporting period September 22, 2013 through October 19, 2013, in violation of Sections 84200.5(c) and 84200.8(b).

Count 2: Respondents Committee to Elect Sean Bookout School Board 2013, Sean Bookout, and Malika Bookout failed to file a semi-annual campaign statement by January 31, 2014 for the reporting period October 20, 2013 through December 31, 2013, in violation of Section 84200(a).

In the Matter of Leticia Garcia, FPPC No. 13/646. On August 28, 2014, probable cause was found to believe that the named Respondent committed two violations of the Political Reform Act, as follows:

Count 1: Respondent Leticia Garcia, as a Board Member of the Fontana Unified School District, failed to report a gift from E.J. De La Rosa & Co. in the amount of fifty dollars or more on her 2010 Assuming Office Statement of Economic Interests, in violation of Sections 87300 and 87302.

Count 2: Respondent Leticia Garcia, as a Board Member of the Fontana Unified School District, failed to report a gift from E.J. De La Rosa & Co. in the amount of fifty dollars or more on her 2011 Annual Statement of Economic Interests, in violation of Sections 87300 and 87302.

In the Matter of Robert E. Bernosky and Bernosky for Assembly 2012, FPPC No.13/1162. On September 11, 2014, probable cause was found to believe Respondents committed the following violations of the Act.

Count 1: Respondents Robert E. Bernosky and Bernosky for Assembly 2012 failed to file, in paper format, a semi-annual campaign statement by January 31, 2013 for the reporting period October 21, 2012 through December 31, 2012, in violation of Section 84200(a).

Count 2: Respondents Robert E. Bernosky and Bernosky for Assembly 2012 failed to file, in electronic format, a semi-annual campaign statement by January 31, 2013 for the reporting period October 21, 2012 through December 31, 2012, in violation of Sections 84200(a) and 84605(a).

- Count 3: Respondents Robert E. Bernosky and Bernosky for Assembly 2012 failed to file, in paper format, a semi-annual campaign statement by July 31, 2013 for the reporting period January 1, 2013 through June 30, 2013, in violation of Section 84200(a).
- Count 4: Respondents Robert E. Bernosky and Bernosky for Assembly 2012 failed to file, in electronic format, a semi-annual campaign statement by July 31, 2013 for the reporting period January 1, 2013 through June 30, 2013, in violation of Sections 84200(a) and 84605(a).
- Count 5: Respondents Robert E. Bernosky and Bernosky for Assembly 2012 failed to file, in paper format, a semi-annual campaign by January 1, 2014 for the reporting period July 1, 2013 through December 31, 2013, in violation of Section 84200(a).
- Count 6: Respondents Robert E. Bernosky and Bernosky for Assembly 2012 failed to file, in electronic format, a semi-annual campaign statement by January 1, 2014 for the reporting period July 1, 2013 through December 31, 2013, in violation of Sections 84200(a) and 84605(a).

In the Matter of Wendy Albright and Wendy Albright 38th County Central Committee 2012, FPPC No. 13/1234. On September 29, 2014, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: Respondents Wendy Albright and Wendy Albright 38th County Central Committee 2012, failed to file a semi-annual campaign statement for the reporting period of January 1, 2013, through June 30, 2013, which was due by July 31, 2013, in violation of Code 84200(a).
- Count 2: Respondents Wendy Albright and Wendy Albright 38th County Central Committee 2012, failed to file a semi-annual campaign statement for the reporting period of July 1, 2013, through December 31, 2013, which was due by January 31, 2014, in violation of Section 84200(a).

C. LEGAL ADVICE TOTALS

- **Email Requests for Advice:** In August and September, Legal Division attorneys responded to more than 178 email requests for legal advice.
- **Advice Letters:** From August 1, 2014 to September 30, 2014, the Legal Division received 29 advice letter requests and issued 35 advice letters.

- **Section 1090 Letters:** From August 1, 2014 to September 25, 2014, the Legal Division received 6 advice letter requests concerning Section 1090 and issued 4 advice letters. This year to date we have received 34 requests (not including conflict of interest letters that incidentally deal with Section 1090).

D. ADVICE LETTER SUMMARIES

Campaign

Jonathan Maintzer

A-14-123

Section 84223, requiring committees primarily formed to support or oppose a state candidate that raise over \$1,000,000 to submit a list to the FPPC of their top 10 contributors, does not apply to a committee controlled by a state candidate for his or her own election or reelection.

Betty Ann Downing, Esq.

A-14-137

The surplus funds restrictions in Section 89519 do not apply to funds recovered by a candidate's committee, which was previously terminated, in a settlement with First California Bank for alleged negligence arising out of the misappropriation of campaign funds by former campaign treasurer Durkee and Associates, because the funds were not under the control of the committee at the time the candidate left office. Therefore, the funds may be transferred to the candidate's committee for a different future office pursuant to the attribution rules of Section 85306 and Regulation 18536.

Kathryn Donovan A-14-150

A-14-150

A candidate for governor in 2010 whose campaign committee terminated more than two years ago with no outstanding debts, and who was recently notified by a campaign consultant that media buy rebates of \$18,000 have accrued to the campaign, may obtain a refund check and endorse it over to a nonprofit 501(c)(3) organization, instead of reopening the 2010 committee to accept the refund. The 2010 committee's final campaign report will be amended to show receipt of the media buys refund and the payment in full of the refund to the charitable fund.

Vicki Kozikoujekian

I-14-157

The Act's post-election fundraising restrictions of Section 85316 do not apply to a local candidate, and the Act does not override provisions of the county campaign finance ordinance on this issue.

Conflict of Interest

Amy R. Webber

I-14-108

A city council member will be making and participating in making government decisions when the city council deliberates and votes on a proposed amendment to a Development and Improvement Plan where she owns and leases a condominium located in the development area. She will be attempting to influence a government decision if she speaks at community outreach and study sessions, unless the “personal interest” exception applies. Each decision leading up to the amendment will have to be individually analyzed to determine whether the decision will have a reasonably foreseeable material financial effect on her property.

Anne M. Russell and Christine Dietrick *A-14-116*

A city council member is not prohibited from taking part in decisions regarding the creation of an Airport Overlay Zone where she owns a small parcel of land on which her mobile home is located (similar to 234 other residents in the mobile home park), and the mobile home park is located in the Airport Overlay Zone. The decisions will not have a reasonably foreseeable material financial effect on her real property.

Michael A.M. Lauffer

A-14-120

The State Water Resources Control Board will vote on whether to adopt an amendment to the Los Angeles Regional Water Quality Control Board’s Water Quality Control Plan for the Los Angeles Region to establish a Total Maximum Daily Load for toxic pollutants in the Marina Del Rey Harbor. The Act does not prohibit the official from voting whether to adopt the amendment because the decision will not have a reasonably foreseeable material financial effect on her real property.

Jeffrey A. Mitchell

A-14-124

A city manager, who also serves in official capacities for the city’s port district and successor redevelopment agency, whose residence is located within 500 feet of the boundary of a proposed 215-acre development containing up to 2,500 housing units, 1.5 million square feet of office space and 890,000 square feet of retail space is prohibited under the Act’s conflict of interest provisions from participating in agency decisions on the proposed development because the decisions will have a reasonably foreseeable material financial effect on his real property.

Jeffrey A. Mitchell

A-14-124(a)

This letter considered additional information submitted after issuance of the Mitchell Advice Letter, No. A-14-124, which concluded that, because he owned a residence within 500 feet of a major development under consideration by the City of West Sacramento, the City Manager would have a conflict of interest if he participated in City decisions regarding the development. Based on the additional information, this letter concludes that the “public generally” exception applies and the City Manager may participate in the City’s decisions.

Alexandra Stupple

I-14-126

A Health Facility Evaluator Nurse with the Licensing and Certification Program Division of the California Department of Public Health would have a conflict of interest in any decision in which Kaiser Permanente Medical Group (her spouse's employer) is directly involved.

Stephen P. Deitsch

A-14-141

A councilmember may not make, participate in making, or influence a decision which will have a foreseeable and material financial effect on the councilmember's tenants who are sources of income to him.

Kris M. Becker

A-14-147

The city attorney may participate in decisions concerning the proposed affiliation between the El Centro Regional Medical Center (a city-owned facility) and another private hospital despite owning a residence that is within 500 feet of medical center property. Nothing in the facts suggests that the affiliation decisions will have any measurable effect on her property.

Steven M Anderson

A-14-151

A water district board president whose family has a close personal relationship with the family of the district's general manager does not have a conflict of interest if the president participates in performance reviews of the general manager, even though the president occasionally babysits the general manager's daughter for free, the general manager provides the president free boat storage on his residential property, and the president and general manager split the costs of boarding a horse in which they own equal $\frac{1}{4}$ interests.

Alexander Abbe

A-14-158

Despite having a conflict of interest, a Planning Commissioner may submit written comments during the 45-day comment period on an Environmental Impact Report (EIR), just as any other member of the general public, regarding his personal interests. The commissioner may also appear as a member of the public during the public hearing on the EIR before the Planning Commission and the city council, consistent with Regulation 18702.4.

Advice Memorandum to File

M-14-160

Staff advised that when city councilmembers vote on their appointment to office under the provisions of Elections Code Section 10229, they do not have a conflict of interest under the Act. Elections Code Section 10229 expressly permits the city councilmembers to vote on their own appointment to office, and offers a practical approach to avoid the cost of holding an election when the councilmember has no

opponent in the election. Actions taken under Elections Code Section 10229 do not conflict with the Act's conflict of interest provisions.

William M. Wright

A-14-163

Commissioner resides within the area proposed to be incorporated as the town of Olympic Valley. In February 2013, the commissioner sold his property to his son, but retained a nontransferable life estate for the upstairs of the residence. Based on the limited nature of the commissioner's property interest, and the fact that it is not a transferrable interest, he does not have a conflict of interest in the incorporation decision based on the life estate.

Heather C. McLaughlin

A-14-170

A councilmember may participate in and vote on a decision to enter into an agreement to study whether the City should join the Marin Clean Energy Program, a program to develop renewable electricity sources that may reduce income to Pacific Gas and Electric Company. While, as a former PGE employee, the Councilmember receives a pension from PGE, the pension is a defined benefit pension plan qualified under Internal Revenue Code Section 401(a). Section 82030(b)(11) states that income does not include "[p]ayments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a)." In addition, the Councilmember also holds stock in PGE valued at over \$2,000. However, so long as decisions regarding the Program will not have a foreseeable and material financial effect on PGE, he may participate in the decisions.

Conflict of Interest Code

Glenda E. Finley

A-14-1083

A Supervising Investigator I, based on her conflict of interest code disclosure category, is not required to report her businesses as a licensed real estate agent, notary or private investigator.

David Chang

A-14-165

The Santa Barbara County Mosquito and Vector Management District is a single-county agency for purposes of the Act, despite performing work for the City of Pismo and the Oceano Dunes State Park in a neighboring County under a fee-for-service contract. Generally, we consider whether the District exercises or shares authority in the other county, or in some other manner creates an entitlement to services for the population of the other county. We also look at whether the District owns land in the other county. Since the District's contracts with Pismo and Oceano Dunes State Park are essentially independent service contracts and do not involve the exercise of authority in San Luis Obispo County or shared authority with that county, the contracts do not make the District a multicounty agency.

Gifts

Jason D. Kaune

I-14-135

Food and beverages provided by an oil company (a lobbyist employer) to governmental officials at emergency preparedness drills are not considered gifts to the officials if the food and beverages meet the criteria of Regulation 18950.1. However, because the food and beverages must be reported by the official's agency to rebut the presumption that the food and beverages confer a personal benefit to the official, the company must treat food and beverages provided to a governmental official as a gift unless the official's agency has advised the company that it is reporting the payments pursuant to the regulation.

William D. McMinn

A-14-156

Ten percent tuition discounts provided by the University of Phoenix to employees of a port district are not considered gifts to the employees under the Act, as they are a rebate or discount made by the University in the regular course of business to attract students, and the tuition discounts are widely made to members of the public without regard to official status.

Michele Beal Bagneris

A-14-129

The American Israel Education Foundation is paying for Vice Mayor Jacque Robinson's travel, lodging and subsistence relating to his trip to Israel for the Educational Seminar for African American Leaders. The seminar will focus on such things as policy and security issues that impact both Israel and the United States, and will involve discussions with current and former Israeli government officials, Palestine Authority representatives, and leading academics and journalists. Pursuant to Section 89506(a)(2), payments for the Vice Mayor's lodging, transportation and food related to the trip are reportable gifts that are not subject to gift limits because the American Israel Education Foundation is a non-profit, 501(c)(3) organization, and the trip is directly related to a legislative or governmental purpose and concerns international public policy.

Lobbying

Mary Weaver

A-14-127

Individuals employed by a company that provides businesses with assistance in obtaining California Competes Tax Credit do not meet the Act's definition of "lobbyist" because, based on the facts provided, the employees will not be "communicat[ing] directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action."

Mass Mailing

Jean B. Savaree

I-14-117

Notwithstanding the fact that an advertisement in the city guide book prepared by the chamber of commerce will be funded by public moneys and potentially subject to the mass mailing prohibitions, or the fact that the councilmember's and his spouse's businesses sponsor chamber of commerce and city events and may be identified in advertisements and materials for the events, the mass mailing prohibition does not apply to advertisements or materials that merely identify the councilmember's business or his spouse's business so long as the advertisement or materials do not contain any references to the councilmember such as use of the councilmember's name or a photograph.

Revolving Door

John Maguire

A-14-143

The permanent ban would apply to state employee's post-governmental employment participation in lawsuits against his former employer if he participated in the lawsuits as a state employee. However, the permanent ban would not prohibit him from representing clients in new cases, representing clients in criminal cases in court, or working as a volunteer for other state agencies. The one-year ban would prohibit him from influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a license before his former employer for one year, except for appearances before a court or administrative law judge.

Matthew C. Maclear

A-14-154

An Assistant General Counsel of Enforcement for the California Environmental Protection Agency ("CalEPA") separated from the state on April 9, 2014. He then started his own environmental law firm and intends to contact boards and departments under the authority of CalEPA to obtain their opinions on whether technology developed by his clients does what it purports to do. The one-year ban would not prohibit such communications so long as he is not attempting to influence administrative or legislative action, or influencing any 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 of the boards or departments. As a former state employee, he is also subject to the permanent ban and is permanently disqualified from "switching sides" to participate in judicial or quasi-judicial proceedings in which he participated while employed with the state.

Randy Woolley

A-14-164

On July 1, 2014, a state employee retired from the California Department of Transportation ("CalTrans") Division of Research, Innovation and System Information.

Soon after retiring, he started his own consulting business and would like to enter into two separate contracts with Caltrans. While at Caltrans, he had no involvement with the work related to the potential contracts. The retired employee is not prohibited by the one-year ban from entering into such contracts because he would be doing so as a representative of his own business and not appearing on behalf of someone else for compensation. In addition, the permanent ban would not apply because he had no previous involvement whatsoever in either of the contracts and thus would not be switching sides.

Michael J. Lynch

A-14-166

A state parks superintendent may not make or participating in making decisions that could affect an employer with whom he is negotiating future employment. Should he work for that employer after his retirement from his public position, he may not attempt to influence the decisions of his former agency for one year after leaving state service. To the extent that the contract on which the employee worked between the private and public entities is on-going, the employee is permanently banned from working on that contract as it relates to his former employer, but the ban does not apply to new contracts between the entities.

Megan S. Bazurto

A-14-169

A former CalTrans employee who now contracts with a California High Speed Rail Authority contractor is only limited by the revolving door prohibitions under the Act to the extent that she attempts to influence legislative or administrative actions before CalTrans, or in proceedings on which she worked while a CalTrans employee. Activities that do not relate to her former employer are not prohibited under the Act.

Anna Starovoytov

A-14-149

A designated employee at the San Francisco Bay Regional Water Quality Control Board (the "Board") received an offer of employment with the Sonoma Resource Conservation District (the "RCD"). While employed with the Board, she oversaw the performance of the first phase of a grant to the RCD and had been tasked with overseeing a second grant to the RCD, but never performed any tasks in that regard. With respect to the first grant, the permanent ban prohibits her from representing, for compensation, any person or entity (other than the State of California) before the Board. The same is not true with the second grant awarded to the RCD because, although she was designated as the anticipated grant manager, she had no involvement in the selection or awarding process, and had not undertaken any management tasks with respect to that grant. In addition, the one-year ban would prohibit her from making appearances before and communications to the Board on behalf of the RCD if made for the purpose of influencing administrative or legislative action, or influencing any 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.

Section 1090

Phillip D. Kohn

A-14-136

A city manager who enters a contract with the city for which he works does not “make a contract in his official capacity” under Section 1090 when the city is the lender on his mortgage. The contract is between the city and the homeowner/city manager in his personal capacity. Additionally, the city manager is excepted from the Act’s definition of “influencing” when he communicates with the city regarding this transaction.

Rahsaan J. Tilford

A-14-140

Pursuant to the exception in Regulation 18705.2(c)(1) for decisions that solely concern repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities, the councilmember may participate in the City’s decision whether to assist in funding flood control changes proposed by the Ventura County Watershed Protection District. The planned construction is intended to maintain the current flood risk designation. The official does not have a financial interest in the City’s contract to fund flood control work simply due to the fact that his property, in addition to numerous other properties in the City owned by a large and diverse portion of the public that the official serves, will peripherally benefit from the contract.

Leslie E. Devaney

A-14-142

Neither the Act nor Section 1090 prevents the Del Mar City Council from approving a councilmember’s claim for property damage caused by the City’s sewer system, but under both laws, the councilmember has a disqualifying conflict of interest preventing him from participating in the decisions.

Elizabeth Cable

A-14-146

Under the facts, it is not reasonably foreseeable that a change order to an existing repair contract will have a material financial effect on real properties that are within 500 feet of the project. The change order only implements certain repairs in connection with a street-widening project that were not foreseen at the time of the original contract.

William McMinn

A-14-161

A port district operations officer whose daughter is employed by a company with which the district may contract in the future is not prohibited under either the Act or Section 1090 from participating in making future district contracts with the company. The officer’s daughter is not a dependent of and has no financial relationship with the officer.

SEI

Lawrence Johnson

1-14-145

Civil grand jury members are required to file Statement of Economic Interests (Form 700), whether they are chosen from a pool of volunteer applicants or through random selection by a Superior Court.