



FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne
From: Zackery P. Morazzini, General Counsel
Subject: Monthly Report on Legal Division Activities
Date: January 15, 2015

A. OUTREACH AND TRAINING

On December 5, 2014, General Counsel Zack Morazzini participated in the annual Assembly Fellows panel at the State Capitol, discussing the history and future of political reform in California, along with the Chief Consultants to the Senate Elections and Constitutional Amendments Committee and Assembly Elections and Redistricting Committee, and political attorney Thomas Hiltachk, managing partner at Bell, McAndrews & Hiltachk.

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 Political Reform Act (the "Act")¹ unless a violation is proved in a subsequent proceeding.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

In the Matter of Roger Hernandez and Roger Hernandez for Assembly 2010, FPPC No. 10/692. On December 12, 2014, after hearing, probable cause was found to believe that the named Respondents committed three violations of the Act, as follows:

- COUNT 1: On or about December 30, 2009, Respondent Roger Hernandez made a \$1,000 campaign contribution to Respondent Hernandez for Assembly 2010 committee in the name of Piero Nakasato, rather than in his own name, in violation of Section 84301.
- COUNT 2: On or about December 30, 2009, Respondent Roger Hernandez made a \$2,000 campaign contribution to Respondent Hernandez for Assembly 2010 committee in the name of Mitsuo Nakasato, rather than in his own name, in violation of Section 84301.
- COUNT 3: On or about January 18, 2010, Respondents Roger Hernandez and Hernandez for Assembly 2010 filed an inaccurate semi-annual campaign statement with the Secretary of State, falsely reporting information regarding the true sources of contributions received, in violation of Section 84211, subdivision (f).

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

In the Matter of Madeleine Zayas-Mart, FPPC No. 12/935. On October 31, 2014, probable cause was found to believe that the named Respondent committed two violations of the Act, as follows:

- COUNT 1: As a member of the Oakland Planning Commission, Respondent Madeleine Zayas-Mart failed to file a 2011 annual statement of economic interests, in violation of Section 87200.
- COUNT 2: As a member of the Oakland Planning Commission, Respondent Madeleine Zayas-Mart failed to file a leaving office statement of economic interests, in violation of Section 87200.

In the Matter of Ryan Embree and Embree for City Council, FPPC No. 12/097. On December 2, 2014, probable cause was found to believe that the named Respondents committed seventeen violations of the Act, as follows:

- COUNT 1: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the March 26 through June 30, 2006, reporting period, by July 31, 2006, in violation of Section 84200, subdivision (a).

- COUNT 2: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2006, reporting period, by January 31, 2007, in violation of Section 84200, subdivision (a).
- COUNT 3: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2007, reporting period, by July 31, 2007, in violation of Section 84200, subdivision (a).
- COUNT 4: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2007, reporting period, by January 31, 2008, in violation of Section 84200, subdivision (a).
- COUNT 5: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2008, reporting period, by July 31, 2008, in violation of Section 84200, subdivision (a).
- COUNT 6: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2008, reporting period, by January 31, 2009, in violation of Section 84200, subdivision (a).
- COUNT 7: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2009, reporting period, by July 31, 2009, in violation of Section 84200, subdivision (a).
- COUNT 8: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2009, reporting period, by January 31, 2010, in violation of Section 84200, subdivision (a).
- COUNT 9: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2010, reporting period, by July 31, 2010, in violation of Section 84200, subdivision (a).
- COUNT 10: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2010, reporting period, by January 31, 2011, in violation of Section 84200, subdivision (a).

- COUNT 11: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2011, reporting period, by July 31, 2011, in violation of Section 84200, subdivision (a).
- COUNT 12: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2011, reporting period, by January 31, 2012, in violation of Section 84200, subdivision (a).
- COUNT 13: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2012, reporting period, by July 31, 2012, in violation of Section 84200, subdivision (a).
- COUNT 14: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2012, reporting period, by January 31, 2013, in violation of Section 84200, subdivision (a).
- COUNT 15: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2013, reporting period, by July 31, 2013, in violation of Section 84200, subdivision (a).
- COUNT 16: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2013, reporting period, by January 31, 2014, in violation of Section 84200, subdivision (a).
- COUNT 17: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2014, reporting period, by July 31, 2014, in violation of Section 84200, subdivision (a).

C. LEGAL ADVICE TOTALS

- **Email Requests for Advice:** In November and December, Legal Division attorneys responded to more than 156 email requests for legal advice.
- **Advice Letters:** From November 1, 2014 to December 31, 2014, the Legal Division received 22 advice letter requests and issued 18 advice letters.
 - **Section 1090 Letters:** During the same period, the Legal Division received 7 advice letter requests concerning Section 1090 and issued 8 advice letters.

In 2014 we received 50 requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

D. ADVICE LETTER SUMMARIES

Conflict of Interest

Steven L. Dorsey

A-14-183

Under the revised provisions of the 500 foot rule, city council members do not have a conflict of interest in a governmental decision to amend a zoning ordinance that would likely affect most of the hotels and motels in the jurisdiction, despite their owning property within 500 feet of hotels and motels, and may participate in the decision.

Krishan Chopra

A-14-185

A public official is not prohibited from participating in a decision regarding a mixed-use development when the decision will not have a reasonably foreseeable material financial effect on the rental value of the property that he leases.

Krista Whitman

A-14-186

A member of a county board of supervisors is prohibited from participating in decisions regarding a General Plan amendment that would move the Urban Services Boundary to allow development and change land use designations from “agricultural” to “urban reserve” where he owns residential real property located 310 feet from the nearest boundary of the project area. However, he may participate in decisions regarding another General Plan amendment that would move the Urban Policy Area to allow development in another area, the nearest boundary of which is 1.4 miles from his property.

Nathaniel Bates

A-14-188

A city council member may not participate in decisions regarding the development of ocean-view property with 60 condominium units, where the project area is located approximately 440 feet from his residential real property. It is reasonably foreseeable that, by virtue of the magnitude and proximity of the project, such decisions will have a material financial effect on his property.

Eric S. Vail

A-14-192

Councilmember may participate in city deliberations and negotiations with employee unions, despite receiving income from some city employees represented by the unions, and may continue receiving income from employees, so long as the deliberations and negotiations will not affect the income, investments, or other tangible or intangible assets or liabilities of the sources of income by \$1,000 or more within 12 months after the decision.

Richard Egan

A-14-197

Under the facts, free benefits that an official will receive are reportable gifts and are subject to the \$440 gift limit unless the “payments” are a rebate or discount made in the regular course of business to members of the public without regard to official status. Relevant to this inquiry is whether the donor has offered the free invitations as part of their business practice in the past, how many such invitations to the event are being offered, and how many of those offered are to public officials compared to how many are to nonpublic officials.

Aaron C. Harp

A-14-204

A newly elected city councilmember does not have a conflict of interest based on income received more than 12 months prior to taking office. Absent any other interests in the upcoming decisions related to residential piers located on public tidelands in Newport Harbor, the councilmember-elect will not have a conflict of interest.

Anamarie Avila Farias

A-14-212

The fact that an official is the guarantor on a loan on property owned by her mother does not create a reportable interest for the official in her mother’s property. Since the official has no interest in her mother’s real property, the property will not be a basis for a disqualifying conflict of interest under the Act.

Conflict of Interest Code

Sachi A. Hamai

A-14-194

For a charter school academy that has only been granted a charter within the county, the county board of supervisors is the code reviewing body notwithstanding any property owned by the academy outside of the county or the academy’s attempts to expand outside of the county. The county board of supervisors will remain the code reviewing body unless the academy is granted a charter outside of the county.

Andre Boutros

A-14-196

Under Regulation 18701(a)(1), newly appointed members of the Road Usage Charge Technical Advisory Committee are not considered public officials subject to the Act’s conflict-of-interest provisions, and are not required to report economic interests, because the committee was formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has the final decision making authority.

Gifts

Andreas Borgeas

A-14-201

County Supervisor invited by the Nagomo Karabakh Republic to serve as a political observer for their 2015 Parliamentary elections is required to report travel payments made by the Republic, but such payments are not subject to gift limits pursuant to Section 89506(a)(2). However, any payments made by third parties for items other than travel and related lodging and subsistence may be considered reportable gifts subject to the \$440 gift limit and the conflict of interest provisions of the Act, because those items would not be related to a legislative or governmental purpose or issues of international public policy.

Personal Use

David J. Terrazas

A-14-209

Because there is a direct relationship between the purpose of the expenditure and the office sought, the candidate may make expenditures with campaign funds for attorney's fees and related expenses associated with the action.

Section 1090

Joshua Morrison

A-14-132-1090

Under the Act and Section 1090, a school board member may make or participate in making decisions to develop property owned by the school district. The official owns a recorded easement on the district property but the easement will not be affected in any way by the development decisions.

Theodore J. Reynolds

A-14-180-1090

A Planning Commissioner may not make, participate in making, or influence the decision involving her application for a Mills Act contract with the city involving her personal residence. However, the Act provides a narrow exception allowing the official to represent her own personal interests, as long as she does not purport to be acting in her official capacity. Under the facts submitted, Section 1090 does not prevent the City from entering into a Mills Act contract with the Commissioner.

Carrie Ann Potts

A-14-181-1090

A board member for the Ventura County Schools Self-Funding Authority has an adult child who is interviewing with the Executive Director for a staff position. The board member, and the board itself, do not have a conflict of interest under Section 1090 because they have no input and are thus not participating in the decision whether to hire her child. With respect to future staff compensation plans, which the board does determine, the board member (and the board) would not have a conflict of interest under Section 1090 because the board member has no financial relationship with her adult child.

Daniel Hentschke **A-14-187-1090**

Members of the water authority board are not prohibited under Section 1090 from participating in a district-wide conservation program because the program is a “public service generally provided” by the district. This non-interest exception allows the water authority board members to participate as any member of the general public would.

Craig Price **A-14-189-1090**

Under Section 1090, the rule of necessity permits a school district to decide whether to fill a vacant teaching position, and to consider a district board member’s spouse for the position, including any “preferential reemployment right” the spouse may have resulting from her temporary teaching position. However, the board member must abstain from any participation in these decisions.

Scott Chadwick **A-14-191-1090**

A City Council, including a councilmember, must vote to authorize the City to use a cooperative procurement agreement for wireless services where the amount requested exceeds \$1,000,000. It is expected that most of the public safety departments will opt to use Verizon Wireless and the spouse of councilmember works as a consultant to a company that was acquired by a subsidiary of Verizon. Section 1090 does not prohibit the City Council, including the councilmember, from voting to approve the use of the cooperative procurement agreement because even if the public safety departments opt to use Verizon Wireless, there is no evidence to suggest that the contract will benefit the Councilmember’s spouse directly or indirectly in the form of a “tangible benefit” such as impacting his “salary, benefits, or status.”

Steven L. Dorsey **A-14-200-1090**

A city council member is not prohibited by Section 1090 from participating in the making of a contract between the city and a school district where he is employed as a teacher by the school district. The council member is not “financially interested” in the contract.

Daniel G. Sodergren **A-14-202-1090**

A city councilmember’s interest in her husband’s salary from the city fire department is deemed a “non-interest” under an exception applied to government salaries provided that the decision does not result in new or different employment for her husband. Similarly, the Act does not prohibit the city councilmember from participating in the decision because salary from a local government entity is not “income” under the Act.

Michael C. Ghizzoni **A-14-215-1090**

A county Supervisor is not prohibited under either the Act or Section 1090 from approving a new or amended property lease between the County and the Department of Veterans Affairs where he is enrolled to receive medical healthcare benefits from the Department of Veterans Affairs.

Revolving Door

Irene T. Anderson

A-14-184

The Act's post-employment provisions do not prohibit a former employee of the Department of General Services (DGS) from working for an outside private firm that has been hired by the California High Speed Rail Authority to perform property acquisitions for the high speed train project after she retires from DGS. Under the one-year ban, however, the employee will be prohibited from being paid by the private firm to make an appearance or communication before DGS for the purpose of influencing any action or proceeding involving the sale or purchase of property.

Gerald Yee

I-14-208

Requestor is a designated employee at the California Health and Human Services Agency (CHHS) and will retire on April 29, 2015. Requestor is interested in performing consulting services as an independent contractor or as an employee of a consulting firm subsequent to his retirement. The one-year ban prohibits him, for the one-year after leaving the CHHS, from representing any other business or organization in administrative proceedings before the CHHS, and in any proceedings involving the issuance, amendment, awarding, or revocation of a contract involving the CHHS. Requestor 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, if any, while employed by the CHHS.

Deborah Moorhouse

A-14-213

Because the requestor worked for a private contractor to a state agency and was not a "designated" consultant under the Act, the Act's post-employment provisions do not apply.

SEI

Julie McCarthy

A-14-193

A public official's income includes her community property interest in the income of her spouse. Thus, a public official has a 50-percent interest in the amount that her spouse receives in a settlement. If her community property share of the settlement is \$500 or more, she will report the source of the income on her Form 700 and will have a conflict of interest in government decisions that will foreseeably and materially financially affect the source.