



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

From: Hyla Wagner, General Counsel

Subject: Legal Division's Monthly Report

Date: June 3, 2015

A. OUTREACH AND TRAINING

None to report.

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.

In the Matter of George S. Briggeman, Jr., FPPC No. 13/936. On April 20, 2015, after hearing, probable cause was found to believe that the named Respondent committed four violations of the Political Reform Act, as follows:

COUNT 1: Respondent Briggeman made a contribution of \$3,000 to Taxpayers for Safer Neighborhoods on October 22, 2012, in a name other than his legal name, in violation of Section 84301.

COUNT 2: Respondent Briggeman made a contribution of \$6,000 to Taxpayers for Safer Neighborhoods on October 22, 2012, in a name other than his legal name, in violation of Section 84301.

COUNT 3: Respondent Briggeman made a contribution of \$4,200 to Taxpayers for Safer Neighborhoods on November 14, 2012, in a name other than his legal name, in violation of Section 84301.

COUNT 4: Respondent Briggeman, who qualified as a major donor committee in 2012 by making three contributions in the amount of \$13,200 to Taxpayers for Safer

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.

Neighborhoods, failed to file a campaign statement disclosing those contributions, in violation of Section 84200, subdivision (b).

C. MISCELLANEOUS MATTERS

Regulation 18740 provides that an official or candidate (with the approval of the General Counsel) is not required to disclose the name of a person under Section 87207 if disclosure would violate California or Federal law. The following request for exemption from disclosure was approved, in part, in March.

Donald W. Fitzgerald, Consultant
California Housing Finance Agency

D. LEGAL ADVICE TOTALS

- ***Email and Telephone Requests for Advice:*** In May 2015, Legal Division attorneys responded to more than 75 email and telephone requests for legal advice.
- ***Advice Letters:*** In May 2015, the Legal Division received 11 advice letter requests and issued 18 advice letters.
- ***Section 1090 Letters:*** During the same period, the Legal Division received two advice letter requests concerning Section 1090 and issued four advice letters. This year to date we have received 19 requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

E. ADVICE LETTER SUMMARIES

Conflict of Interest

Rich Stewart

A-15-030

The Act prohibits a planning commissioner from taking part in decisions regarding a large residential development adjacent to his existing neighborhood because the anticipated increase in traffic on an existing primary access route for the neighborhood will experience a potential increase in traffic that will likely affect the market value of his property.

Tod Hickman

A-15-061

A water district board member has a conflict of interest in decisions relating to bringing untreated water service to his own neighborhood. He does not, however, have a conflict of interest for those decisions and discussions that do not involve his properties and neighborhood.

Steven L. Dorsey

A-15-074

Generally, it is not reasonably foreseeable that decisions regarding grants that will fund beautification projects for residential neighborhoods within the city will have a material financial effect on City Council members' business entities or real property interests. However, it is

reasonably foreseeable in the case where a council member has numerous real property holdings within the same neighborhood as the beautification project.

Robert Boco **A-15-078**

Councilmembers and city staff may make, participate in making, or influence decisions related to the update of the El Camino Real Precise Plan since at this time it is not foreseeable that the decisions will materially financially affect the officials' real property.

Joseph M. Montes **A-15-082**

The City of Santa Clarita and the College of the Canyons are renegotiating a Memorandum of Understanding (MOU) that allows certain groups to use the College's Performing Arts Center at a discounted rate. Councilmember Boydston has a conflict of interest that would prohibit his participation in the City Council's renegotiation of the MOU because he is the Executive Director of a nonprofit group that utilizes the MOU discount. In addition, since the nonprofit has other staff that could likely speak on its behalf in the negotiations, the exceptions in Regulation 18704.4(a)(2) and (b)(1) would not apply.

Robert Boco **A-15-084**

Mayor Griffith is employed as a Senior Software Engineer at Apple. Apple recently leased office space in Sunnyvale in a building located within the proposed Peery Park Specific Plan area. The city attorney asked if Mayor Griffith may participate in and vote on governmental decisions relating to the Peery Park Specific Plan. Since there is no indication that any of the Peery Park Specific Plan decisions will affect Apple materially, the Mayor does not have a conflict of interest.

Tod Hickman **A-15-086**

A public official does not "make, participating in making, or attempt to influence" a decision under the Act when he or she performs ministerial or clerical tasks such as approving (or disapproving) the minutes of a prior meeting even if the official makes comments to correct the substance of the minutes.

June Pujó **A-15-089**

The City of Santa Barbara Planning Commissioner who is also a private planner was advised: (1) pursuant to the exception in Regulation 18704.4(b)(4), she may prepare drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before her agency, so long as the commissioner has no other direct oral or written contact with the agency with regard to the client's proceeding except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions; (2) other contacts were prohibited only if made for the purpose of influencing a decision, merely requesting publically available information or attending a meeting would not, in itself, be considered influencing a decision; and (3) she must disqualify himself or herself from decisions affecting current clients of their business and past clients for 12 months after the last income was received. Assuming there is no future anticipated business with that client, the official will not have a conflict of interest under the Act in discussing matters affecting that client.

Megan K. Garibaldi

A-15-083

Based on Regulation 18703(e)(3), the financial effect on the official's interest is indistinguishable from the effect on the public generally because "the decision affects residential real property limited to a specific location, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location." (Regulation 18703(e)(3).) Thus, Councilmember Collacott may take part in a governmental decision to approve or amend residential parking requirements proposed on the street on which he resides.

Conflict of Interest Codes

Michael S. Frank

A-15-076

Regulation 18700 provides three alternative standards to determine if an agency is a decision-making body. The first two standards (may it make a final governmental decision or may it compel or prevent the decision) are based on the powers/duties given to the body, whether the powers have been exercised yet or not. However, if the agency does not qualify as a decision-making body under either of these two tests, the third standard is applied. The third standard considers the actual track record of the body (does it make substantive recommendations that over an extended period of time are regularly approved without significant amendment or modification). Under these three tests, the city Economic Development Advisory Committee is currently considered an advisory body and the members are not considered public officials under the Act. Thus, the members need not be included in the City's Conflict of Interest Code and are not required to submit Annual Statements of Economic Interest.

Samantha Adams

A-15-079

The requestor asked if 6 Basins Watermaster was a public agency. Watermaster (1) was created by court action and the parties to the litigation and the stipulated Judgment included several public entities; (2) it is funded by member contributions, including substantial funding by members that are government agencies; (3) it was formed in connection with the acquisition and distribution of water; and (4) it is required by the Judgment that created it to conduct meetings in compliance with the California Open Meetings Law (the Brown Act). Thus, based on *In re Siegel*, Watermaster is a public agency subject to the conflict of interest code requirements of the Act.

Gifts

Deena R. Ghaly

A-15-077

General discussion of Metropolitan Water District's (MWD) educational field inspection trips of its water facilities. As to whether the expenditures by MWD for these trips are lawful is outside the scope of the Act and the Commission cannot advise on that issue. However, we advised that: (1) under Section 89506(a)(2) the payments for an inspection trip to officials not affiliated with MWD are reportable but not subject to gift limits; (2) a gift to an official's spouse (where the receiving official did not exercise discretion and control over the gift) would be a gift to the official from MWD because MWD would have no established working, social, or similar

relationship with the spouse of the receiving official; and (3) generally, Regulation 18941(a) provides that a gift is “received” and “accepted” by an official when the official takes any action exercising direction or control over the gift, such as redirecting the gift to another individual.

Benjamin T. Reyes II **A-15-087**

Mayor Carol Dutra-Vernaci has been invited to participate in “The Mayors of Silicon Valley on an Expedition to China” as part of an all-expenses paid economic development trip. US-China Innovation, a nonprofit, will pay for all expenses associated with the expedition. Payments for the travel, lodging and subsistence are reportable gifts, but not subject to gift limits because they will be provided in connection with a legislative or governmental purpose by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

John Bakker **A-15-092**

Mayor Haubert has been invited to participate in “The Mayors of Silicon Valley on an Expedition to China” as part of an all-expenses paid economic development trip. US-China Innovation, a nonprofit, will pay for all expenses associated with the expedition. Payments for the travel, lodging and subsistence are reportable gifts, but not subject to gift limits because they will be provided in connection with a legislative or governmental purpose by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

Revolving Door

Kim Delfino **A-15-055**

A former commissioner may not, on behalf of her new employer, communicate with her former agency for one year after leaving state employment for the purpose of supporting, promoting influencing, modifying, opposing, delaying or advancing actions or proceedings involving the (1) adoption of water storage regulations, or (2) awarding bond funds for water storage projects. The former commissioner is forever barred from participating in any judicial, quasi-judicial or other proceeding in which she participated as a commissioner. The commissioner may write a newspaper editorial regarding water storage issues. The commissioner may communicate with current commissioners so long as the communications are not intended to influence the commission’s actions or proceedings.

Amber Maltbie **I-15-080**

In his new position at WestEd, the one-year ban prohibits a former employee from making appearances and communications before the California Community Colleges Chancellors Office 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. The “permanent ban” prohibits him from “switching sides” and participating, for compensation, in certain proceedings involving his former employer if the proceeding is one in which he participated while employed with the State.

SEI

Brian Pierik

A-15-081

An Atascadero councilmember is required to report income received from her employer on the Form 700 which she files as an alternate member of the Board of the San Luis Obispo Council of Governments, but she is not required to report the source on the City of Atascadero Form 700. This is because her employer is incorporated in the State of California with a registered corporation address in Cayucos in San Luis Obispo County but does not do business in Atascadero. Holding the San Luis Obispo location out as a corporate office and conducting even minimal business in the county is sufficient to meet the “doing business” requirement of the statute. However, since it does no business in Atascadero, the employer need not be reported on the Form 700 filed for her city council position.

Section 1090

J. Christine Dietrick

I-15-027

Under Section 1090, a city is not prohibited from leasing property to a nonprofit organization or contracting with nonprofit organizations in light of a councilmember’s interest in the organizations so long as the councilmember does not participate in the decisions involving the contracts because the interests are remote interests. Moreover, neither Section 1090 nor the Act precludes the councilmember’s spouse from working on a project for a nonprofit under the nonprofit’s contract with the city if she has not participated in the preparation of the contract proposal. Finally, the mere fact that an applicant or contractor has previously donated or volunteered for a nonprofit that employs the councilmember does not give rise to a reasonably foreseeable financial effect on the councilmember’s interests under the Act, but all payments made to the nonprofit at the councilmember’s behest aggregating to \$5,000 from the same source must be reported as behested payments.

Robert Kuu

A-15-062

A councilmember does not have a financial interest, either under the Act or Section 1090, in a contract between the city and the councilmember’s adult children.

David M. Snow

A-15-067

A councilmember has no financial interest under Section 1090 in contracts between the city and a broker with whom the councilmember is affiliated as a real estate agent. Accordingly, the councilmember and the Yucaipa City Council may approve such contracts.

James C. Harrison

A-15-073

A Port Commissioner does not have a conflict of interest under the Act or under Section 1090 as a result of his adult son’s income from the City. Therefore, the Commissioner may participate in decisions affecting the City.