



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

July 21, 2016 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of May 5, 2016 through July 7, 2016, the Enforcement Division received, opened and rejected the following referrals and complaints:

Type	SWORN	PROACTIVE/INFORMAL	NON-FILER
Number Received	55	72	392
Case Opened	18	17	382
Rejected	27	37	10
Under Review	10	18	0

Also during this time, the Division closed a total of 242 cases including:

- 53 warning letters,
- 1 advisory letter,
- 77 no action letters,
- 28 as a result of the adoption of stipulations and defaults at the May Commission meeting, and
- 83 committees were administratively terminated.

The Division had 402 cases in various stages of resolution at the time of the May Monthly Report and currently has 577 cases in various stages of resolution, including the 48 cases before the Commission as listed in the July 2016 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 181 have been resolved with fines and 289 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 48 have been resolved with fines and 371 are currently being worked. As for the remaining referrals, they were rejected, the committees were terminated locally without notice to Secretary of State, the committees were administratively terminated or are slated for administrative termination, or the committee received no violation or warning letters.

II. LEGAL DIVISION

STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JACK WOODSIDE, SENIOR COMMISSION COUNSEL

A. Pending Litigation

Frank J. Burgess v. Fair Political Practices Commission.

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission's decision and order in *In re Frank J. Burgess*, Case No. 12/516. Following an administrative hearing in front of an Administrative Law Judge (ALJ), Mr. Burgess challenged that decision to the Commission. After oral argument before the Commission on March 19, 2015 and a thorough review of the record, the Commission rejected the ALJ's decision and decided the case based on the record, oral argument, and the parties' supplemental briefing on the "governmental decision" element of the case. The Commission found that Mr. Burgess violated Government Code Section 87100 of the Political Reform Act and imposed a \$5,000 fine on July 7, 2015. Mr. Burgess challenges that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On May 2, 2016, Mr. Burgess filed his Opening Brief in superior court. On June 6, 2016, the Commission filed its Opposition Brief, and Mr. Burgess's Reply to the Commission's Opposition was filed on July 6, 2016. The Court will schedule the hearing date for this matter on July 12, 2016.

B. Outreach and Training

Political Reform Consultant Ivy Branaman presented a workshop to local government agency staff who administer conflict of interest code amendments. There was active participation among attendees who had many questions concerning which positions should be designated in a code and what level of disclosure to assign to those positions. In addition, Ivy and Cynthia Jones conducted a webinar on the same topic. Since many agencies need to amend their conflict of interest codes this year, there was a high level of interest in the webinar with over 70 participants. Another workshop and more webinars are scheduled for July.

Senior Commission Counsel Sukhi K. Brar and Political Reform Consultant Deborah Hanephin of the External Affairs and Education Division conducted a training on the Act's gift rules for the State Treasurer's office staff. The presentation covered the reporting gifts and travel as well as hypothetical situations that implicate the Act's gift rules.

C. Advice

In May and June of 2016, the Legal Division responded to the following requests for advice:

- ***Email and Telephone Advice:*** Legal Division Political Reform Consultants and Attorneys collectively responded to more than 852 email and telephone requests for advice in May and 372 in June.
- ***Advice Letters:*** The Legal Division received 36 advice letter requests and issued 29 advice letters.
- ***Section 1090 Letters:*** Legal Division received eight advice letter requests concerning Section 1090 and issued five. This year to date we have received 25 requests regarding Section 1090.

D. Advice Letter Summaries

Campaign

David Bauer**I-16-099**

As currently structured, Facebook advertisements created in Facebook's "Ad Manager" fall under the exception for advertisements of limited size, including those of "500 characters or less," described in Regulation 18450.4(b)(3)(G)(1). As stated in that regulation, campaigns may fulfill the disclaimer requirement by providing a click-thru URL to a web page, informational Facebook page with full disclaimer information, or other technological means that provide the user with disclosure information. We also note that other Facebook advertisement programs may not limit the number of characters. Thus, this conclusion is limited to those posted through the Facebook Ad Manager.

John Z'berg**A-16-123**

Payments made by a candidate for state office to purchase items for his campaign and for filing fees are not "net debt" for purposes of raising campaign funds after the election.

Conflict of Interest

Robert Boco**A-16-058**

The city's Economic Development Manager has an interest in Apple, Inc. Apple will be applying directly to the city for permits and entitlements for office sites and new development projects. The manager's interest in Apple is explicitly involved in the decisions and the financial effect of the decisions on Apple is both foreseeable and material. Accordingly, she may not take part in the decisions involving Apple.

Fred Galante**A-16-067**

Councilmembers who live with adult children that are applicants for a low-income housing project may participate in project decisions because it is not foreseeable at this time that the decisions will affect the councilmembers' financial interests, including their personal finances.

Rebecca Moon**A-16-074**

The Act does not prohibit Sunnyvale Planning Commissioners from taking part in decisions relating to the Butcher's Corner project, a mixed use development on an undeveloped parcel in the city's commercial and retail corridor. The decisions would not have a reasonably foreseeable material financial effect on either Commissioner's financial interest in real property since both Commissioners live in a single-family residential neighborhood to the southeast of the project site, one 2,372 feet away from the project and the other 1,267 feet from the project site. Although the decisions would generally increase traffic levels in the area of the project site, they would not affect traffic levels or intensity of use of property surrounding either Commissioner's residence, and would not affect or influence the market value of either Commissioner's residence.

Thomas J. Ballanco**A-16-080**

A County Planning Commissioner may participate in Planning Commission decisions relating to commercial cannabis land use ordinance despite being a member and employee of a limited liability company engaged in research, development, marketing and distribution of cannabis-based therapeutic products. The decisions will not have a reasonably foreseeable, material financial effect on his financial interests.

Albert S. Yang**A-16-082**

The Act permits an official to participate in a decision despite a conflict of interest if the official establishes that the "limited neighborhood effects" exception applies. The exception did not apply to the following decisions: the establishment of a Residential Preferred Parking District because the decision would have a unique effect on the official's 6-unit multi-family residential real property; decisions relating to the creation of a Single-Story Overlay District because the action associated with the decision is not authorized by the exception; and a Concept Plan to establish and expand bike boulevards throughout the city because there was not sufficient evidence presented that the action was needed at any specific location.

Leigh-Anne Harrison-Bigbie**A-16-083**

A public cemetery manager was advised that the Act's conflict of interest provisions did not prohibit her from selling pre-need insurance to those looking to pay funeral costs in advance. The cemetery manager's duties include selling of grave sites, book keeping, preparation of Trustee meetings, and burial arrangements when the need arises. The manager is not involved in negotiations with clients or price setting and is not involved in any governmental decisions that would have a reasonably foreseeable financial effect upon the pre-need insurance company or the prospective clients.

Rich Lentine**A-16-091**

The San Bernardino City Professional Firefighters Political Action Committee (SBCPF PAC), which is set to dissolve, was advised that it cannot transfer its remaining funds to the SBCPF sponsoring organization to pay general operating expenses, but it may transfer its funds to SBCPF if the funds are segregated and used only for purposes that are reasonably related to a political, legislative, or governmental purpose. Also, the SBCPF PAC was advised that it can return contributions to its original contributors.

William H. Ihrke**A-16-092**

The city is considering a development proposal involving three acres of undeveloped land located in La Quinta that will include 24,000 square feet of first floor retail space located in multiple buildings, 72 multi-family residential units located above those retail spaces, surface level parking lots, and a 60-unit multi-family residential building with underground property. The project is 750 feet from the Mayor Pro Tem's home. Based on the magnitude of the development that is the subject of the governmental decision in relation to that property's current use, the Mayor Pro Tem would have a conflict of interest.

D.R. Curtze**I-16-093**

A Planning Commissioner's spouse is a part-time employee with a contractor for the City of Pismo Beach. So long as he does not make, participate in making, or attempt to influence any governmental decision that will have a reasonably foreseeable material financial effect on the spouse's employer, he will not have a conflict of interest under the Act.

Ian Martin**A-16-096**

The Act does not prohibit a Planning Commissioner from making, participating in making or influencing governmental decisions involving the Event Center where he has no interest in it under the Act.

John A. Nagel**A-16-101**

The Act prohibits Councilmembers, who are also Successor Agency Board Members, from taking part in governmental decisions regarding proposed amendments to existing contractual agreements and land use entitlements related to the Town Center Project because the decisions would have a foreseeable material financial effect on those Councilmembers' property interests in close proximity to the project. Under the Act's segmentation rules, the Councilmembers may take part in certain decisions related to the project so long as those decisions do not reopen, determine, affirm, nullify, or alter the previous decisions approving the project, the DSP, or the development plan for Block 18.

Jonathan W. Smith**A-16-102**

The Planning Commissioner is employed by a for-profit company that owns and operates multiple entertainment venues in downtown Redwood City, including the Fox Theatre, Club Fox, and the Fox Forum. However, the Planning Commissioner may participate in the developments proposed by Habitat for Humanity, Anton, and MidPen since these projects will not likely affect the Commissioner's employer. The Commissioner may not participate in the mixed-use development proposals of Greystar and Acclaim because these major developments will have foreseeable and material financial effects on the downtown area, including the Commissioner's employer.

Rachel Le Roux**A-16-103**

The Planning Commissioner may participate in specified development projects in the downtown area, despite being employed by a CPA firm located in the same area. Due to the nature of the business of the Commissioner's employer which relies minimally on walk-up business and the

distances between the projects and the employer's office, the projects will not have any foreseeable financial effect on the employer.

Ignacio Velazquez**A-16-105**

A Councilmember who owns two commercial properties within 500 feet of a city-owned vacant lot, may not participate in the decision to develop the vacant lot. The public generally exception would not apply.

Craig A. Steele**A-16-106**

The Act does not prohibit a Councilmember from simultaneously serving as a member of the Orange County Transportation Authority Board of Directors and holding employment with the California Department of Transportation. The Councilmember would not have a financial interest in either capacity that could give rise to a disqualifying conflict of interest under the Act.

Kathleen M. Mallory, AICP**I-16-109**

Requestor had consulting contract with County of Ventura and was offered employment with the City of Oxnard. The contract will be assigned to an existing sub-consultant to perform the remainder of the services and the requestor will receive buyout payments from the sub-consultant. So long as she does not, in her official capacity, make, participate in making, or influence any decisions concerning the sub-consultant and/or Ventura County, the requestor will not violate the Act's conflict of interest provisions.

Eduardo Olivo**A-16-110**

Based on the magnitude of the project that is the subject of the governmental decision in relation to that property's current use and the proximity of the councilmember's property to the project site, the councilmember would have a conflict of interest. However, under the "public generally" exception the councilmember may participate in the decision.

Kyle Jones**A-16-122**

A city employee may communicate with the city in the same manner as any other member of the general public to represent his own personal interest in property in connection with the city's abandonment of city property on which the city relocated the employee's driveway to his home.

Kristin Pelletier**A-16-127**

The Act does not prohibit Councilmembers from taking part in decisions relating to short-term rentals of residential properties. The Councilmembers may take part in those decisions because the effect on their interests would be indistinguishable from the effect of those decisions the public generally.

C/I Code**Brent Fremming, MA****I-16-068**

The West County Solid Waste Planning Committee has decision-making authority and thus is a local government agency that is required to adopt a Conflict of Interest Code.

Gifts

Evann Whitelam**A-16-071(a)**

A tour of the PG&E Energy Education Center, the 4.4-mile shuttle ride between the PG&E Energy Education Center and the Diablo Canyon Power Plant, and the Diablo Canyon Power Plant tour itself are not considered a single site for purposes of Regulation 18942.1(c)(2). However, under the facts presented, each of the phases, including the travel, qualify as informational material and would not be a gift. Informational material provided to an official for the purpose of assisting him or her in performing official duties (and that does not also provide a personal benefit) is not reportable.

Alan Seem**I-16-079**

The requestor sought advice regard a trip for mayors to China. The trip was aimed at improving business cooperation between China and the Silicon Valley and helping create jobs and increase economic activity in both China and the Silicon Valley. The principal purpose of the 2016 China Trip is to facilitate investment and international trade, and promote communications between China and the Silicon Valley region. The requestor was advised that the travel would be reportable but not subject to the Act's gift limit to the extent the travel payments would be from governmental entities and a nonprofit that fit the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code, and the activities covered were for a Legislative or governmental purpose, or an issue of state, national, or international public policy.

Lobbying

Robin Smutny-Jones**A-16-081**

A company that is a dues-paying member of an association, which along with five or six other members, provides additional payments to help defray the cost of the association's lobbying contract is not part of a "lobbying coalition." The company does not meet the statutory definition of a lobbying coalition because it is not part of a group of ten or more individuals or entities that pool their funds for the purpose of employing a "lobbyist" or contracting for the services of a "lobbying firm" to influencing legislative or administrative action.

Revolving Door

Neal Reardon**A-16-118**

The Act does not prohibit a former Public Utilities Commission (PUC) employee from accepting private employment on departure from state service. However, the Act does restrict his ability to appear before the PUC for one year and permanently prohibits the employee from participating in any proceeding (such as any application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency) that the employee participated in as a PUC employee. Neither prohibition applies to prohibit his attendance at public workshops and public Commission meetings of the PUC.

Section 1090**Kendra L. Carney****A-16-073**

A member of the Board of the Orange County Sanitation District who is a surveyor has a conflict of interest under the Act in a decision to award a contract to his employer or to a prime contractor who will list his employer in the bid as a subcontractor. It is reasonably foreseeable that the decision will have a material financial effect on his employer which is a source of income to him. The remote interest exception of Section 1090 which applies to engineers would not apply to the Board member unless, under relevant California law, a “surveyor” is considered to be an “engineer.” The Board member, and not the Commission, must make that determination.

Jolie Houston**A-16-075**

Section 1090 does not prohibit a Los Altos City Councilmember from pursuing, interviewing for, or being hired for the Contract Interim Chief Executive Officer position or the full-time Chief Executive Officer position with the Silicon Valley Clean Energy Authority (SVCEA). The SVCEA is a joint powers authority comprised of the County of Santa Clara and 11 cities within the County, including the City of Los Altos. The SCVEA will administer the region’s Community Choice Aggregation program, enabling the constituent municipalities to pool their electricity demand to directly procure or generate electrical power supplies on behalf of the residents and businesses in those jurisdictions. Section 1090 is not applicable to the Councilmember because she did not make or participate in the making of the public employment contracts at issue.

Vicky Green**A-16-084**

Section 1090 is not applicable to Loud and Clear Inc., an independent contractor hired by the town of Windsor to design the town’s A/V system, such that it may not bid on the upcoming A/V project. In this matter, the business provided technical expertise in drafting an equipment list and system flow-chart and did not exert considerable influence over the decisions of town staff.

Marcia L. Scully**A-16-086**

Section 87407 of the Act prohibits a Metropolitan Water District of Southern California (MWD) board member from taking part in any governmental decision directly relating to MWH Americas, Inc. (MWH) because the board member is negotiating prospective contract employment with MWH. Furthermore, Section 1090 would prohibit the MWD board member from making or participating in the making of, and the MWD from entering into, potential future contracts with MWH because the board member would be financially interested in MWH if the board member accepts MWH’s offer of contract employment.

Chris Becnel, JD CPA**A-16-097**

Merely holding a private sector position is not in itself a conflict of interest under Section 1090 or the Act for an elected councilmember. However, the councilmember will have a conflict of interest under both Section 1090 and the Act in decisions regarding the contract with the councilmember’s nonprofit employer.

E. Miscellaneous Decisions

None to report.

F. Upcoming Regulations

August 18, 2016

Regulation 18751 Code Exemptions. Current Regulation 18751 provides the procedure for requesting an exemption from the Act's requirement to adopt a conflict of interest code. Proposed amendments to Regulation 18751 are intended to simplify and clarify existing procedural requirements such as (1) the supporting information that must be submitted with a request, and (2) the requirements for approving a request.

September 15, 2016

Regulations Regarding Electronic Filing of Statements of Economic Interest (SEIs). Staff will propose amendments to Regulation 18756 (Local Agency Electronic Statement of Economic Interest Filing) and possibly other SEI regulations concerning electronic filing of statements in order to facilitate the successful launch of our new e-filing system.

October 20, 2016

Regulation 18940 Guide to Gift Regulations; Minor Amendments to Implement SB 21. SB 21 (Hill), Chapter 757, Statutes of 2015 requires a nonprofit organization that makes travel payments of \$5,000 or more for one elected state or local officeholder or \$10,000 or more a year for elected state or local elected officeholders, and whose expenses for such travel payments total 1/3 or more of the organization's total expenses in a year as reflected on the organization's Internal Revenue Service Form 990, to disclose to the Commission the names of donors who donated \$1,000 or more and also went on the trips. The bill also requires a person who receives a gift of a travel payment from any source to report the travel destination on his or her Form 700. Current Regulation 18940 is a guide to the regulations underlying the provisions of the Act that relate to gifts. Staff will propose amendments to Regulation 18940(d) to provide notice of the new disclosure requirement added by the enactment of SB 21.

G. Conflict of Interest Codes

Adoptions and Amendments:

Multi-County Agency Conflict of Interest Codes

- AC Transit District
- Allan Hancock Community College District
- Aromas Water District
- Association of CA Water Agencies JPIA
- Consolidated Mosquito Abatement District

Exemptions and Extensions

Exemptions

- Governor's Military Council
- International Trade and Investment Advisory Council

- El Dorado Irrigation District
- Elsinore Valley Municipal Water District
- Fresno-Kings-Madera Regional Health Authority
- Independent Cities Risk Management Authority
- Kingsburg Joint Union High School District
- Las Virgenes-Triunfo JPA
- Madera Groundwater Authority
- Marysville Joint Unified School District
- M-S-R Public Power Agency
- North Orange County Community College District
- Pajaro Valley Water Management Agency
- San Francisquito Creek JPA
- San Juan Water District
- Tri-County Water Authority
- Western Riverside County Regional Wastewater Authority

Extensions

- California Climate Action Team

State Agency Conflict of Interest Codes

- Department of Aging
- Department of Business Oversight
- Department of Conservation
- Office of State Treasurer

Conflict of Interest Code Biennial Notices

Every local government agency in California is required to review its conflict of interest code in 2016 and submit a notice by October 3, 2016, to its code reviewing body on whether the code needs to be amended. Information on this requirement has been sent to all multi-county agencies, as well as to counties and cities who must administer this requirement. This information is also posted on the FPPC website.

H. 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 proven in a subsequent proceeding.*

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

1. In the Matter of Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis, FPPC No. 14/299. On May 25, 2016, probable cause was found to believe that the named Respondents committed six violations of the Act, as follows:

- COUNT 1: Failure to Amend Statement of Organization: Garcia, the Committee, and Davis failed to file an amended statement of organization to redesignate Fred Garcia for Sheriff 2010 for the 2014 election, violating Section 84103(a) of the Act.
- COUNT 2: Failure to Timely File Statement of Intention (Garcia only): Garcia failed to timely file a statement of intention prior to the solicitation or receipt of any contribution or loan, violating Section 85200.
- COUNT 3: Failure to Timely file a Semi-annual Campaign Statement: Garcia, the Committee, and Davis failed to timely file a semi-annual campaign statement with the Monterey County Clerk by January 31, 2014, for the July I through December 31, 2013 reporting period, violating Section 84200(a).
- COUNT 4: Failure to Timely file a Preelection Campaign Statement: Garcia, the Committee, and Davis failed to timely file a preelection statement with the Monterey County Clerk by March 24, 2014, for the January 1 through March 17, 2014 reporting period, violating Sections 84200.5(a) and 84200.7(a).
- COUNT 5: Recordkeeping: Garcia, the Committee, and Davis failed to maintain supporting records for contributions and loans received and expenditures made in 2013, violating Section 84104.
- COUNT 6: Recordkeeping: Garcia, the Committee, and Davis failed to maintain supporting records for contributions and loans received and expenditures made in 2014, violating Section 84104.

2. In the Matter of Shannon Matlock, FPPC No. 15/737. On June 21, 2016, probable cause was found to believe that the named Respondent committed one violation of the Act, as follows:

- COUNT 1: Matlock failed to file a 2014 Annual SEI by April 1, 2015, in violation of Sections 87300 and 87302.

3. In the Matter of Modified Motorcycle Association of California (MMAC), Case No. 14/1086. On June 30, 2016, probable cause was found to believe Respondent committed the following two violations of the Act:

- COUNT 1: MMAC failed to timely file a lobbyist employer report for the January 1, 2014 through March 31, 2014 period in violation of Section 86117.
- COUNT 2: MMAC failed to timely file a lobbyist employer report for the April 1, 2014 through June 30, 2014 period in violation of Section 86117.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: TARA STOCK, MANAGER

Phone Advice Requests

The division responded to 1,065 requests for advice via phone in May and June.

Forms, Manuals and Other Materials

The division updated the campaign manuals for ballot measure committees (Manual 3), general purpose committees (Manual 4), major donor committees (Manual 5), and independent expenditures committees (Manual 6) to incorporate legal changes. All of the updated campaign manuals are available on the website.

The division also created and posted a fact sheet to summarize where primarily formed ballot measure committees file campaign reports, and updated the index for the 2016 Political Reform Act. The division is creating a form to implement the new donor disclosure requirements pursuant to SB 21 (Hill) for certain 501(c)(3) and 501(c)(4) nonprofit organizations that regularly organize and host travel for elected officials.

Workshops and Webinars

Political Reform Consultants conducted the following webinars and workshops:

- John Kim and Alex Castillo, webinar for campaign filing officers,
- Deborah Hanephin and John Kim, webinar for candidates and treasurers, and a Form 700 filers workshop for the California State Sheriffs' Association,
- John Kim and Cynthia Fisher, webinar for campaign filing officers,
- Glen Bailey, pre-recorded webinar on staff's administrative duties for Form 700s, and
- Deborah Hanephin, along with Senior Commission Counsel Sukhi Brar, workshop at the State Treasurer's office about gifts, honoraria, and travel payments.

This is the first time the division presented a pre-recorded webinar and we received excellent feedback. Similarly, the presentation at the Treasurer's office was so well-received that Ms. Hanephin and Ms. Brar have been asked to return and present to some of its high-level officials.

I met with Mohamad Hanif Abdullah, a Senior Analyst for the Better Nation Institute in Malaysia, to provide him with an overview of the Commission. He was visiting the United States as a fellow through the Young Southeast Asian Leaders Initiative as part of the American Council of Young Political Leaders and was interested in transparency issues in California government, particularly related to political spending.