



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

February 16, 2017 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of January 6, 2017 through February 2, 2017, the Enforcement Division received 42 complaints, opened 9 for investigation, and rejected 11. The Enforcement Division received 49 non-filer referrals during this time and rejected 2.

Also during this time, the Enforcement Division closed a total of 119 cases including:

- 53 warning letters,
- 30 no action letters,
- 26 as a result of the adoption of stipulations and defaults at January Commission meeting, and
- 10 committees were administratively terminated.

The Division had 1,087 cases in various stages of resolution at the time of the January Monthly Report and currently has approximately 1,036 cases in various stages of resolution, including the 28 cases before the Commission as listed in the February 2017 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, 192 have been resolved with fines and 155 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 62 have been resolved with fines and 220 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

Howard Jarvis Taxpayers Association v. Edmund Brown, et al.

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds for the purpose of financing campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act because it does not “further the purposes of the Act,” an express requirement in the Act for legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. It filed an Answer in response to the lawsuit on January 27, 2017.

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 (the “Act”)¹ and imposed a \$5,000 fine on July 7, 2015.

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.

Mr. Burgess challenged that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On September 15, 2016, the Court issued its Judgment granting the Petition on due process grounds. The Court further ordered the Commission to file a Return to the Writ on or before November 7, 2016. After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the Judgment stand and to vacate and set aside its Decision and Order in the underlying matter. The Commission has therefore dismissed the administrative proceedings against Petitioner Burgess and timely filed a Return to the Writ. On November 14, 2016, Burgess filed a Motion for Attorney's Fees. The FPPC in conjunction with the Attorney General's office prepared an opposition to this motion which was filed on January 25, 2017. A hearing on the fee motion is scheduled for March 16, 2017 in Riverside County.

B. Outreach and Training

- Senior Commission Counsel Emelyn Rodriguez participated in two panel discussions (on January 17, 2017 and February 2, 2017) as part of the lobbyist ethics training course conducted by the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics. The training is required for all registered lobbyists.
- On February 3, 2017 Senior Commission Counsel Sukhi K. Brar and Trish Mayer Assistant Chief, Legal Division in coordination with the California Judges Association conducted a webinar training for Judges across the state. The training covered the Act's gift rules and economic interest reporting rules. Approximately 100 judges are signed up to attend.

C. Advice

In January 2016, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and Attorneys collectively responded to more than 1,145 email and telephone requests for advice.
- **Advice Letters:** The Legal Division received 28 advice letter requests and issued 17 advice letters.
- **Section 1090 Letters:** Legal Division received five new advice letter requests concerning Section 1090 and issued six. This year to date we have received five requests regarding Section 1090.

D. Advice Letter Summaries

Campaign

Peggy Bimbi

A-17-004

The requestor inquires how medical marijuana businesses can support a ballot measure with contributions if they operate in cash and do not have bank accounts. The letter advises that under the Act, a contribution of \$100 or more may not be made in cash or by cashier's check.

Similarly, neither cash or a cashier's check may be used to make a contribution of \$100 or more to another person who will act as an intermediary to deliver that contribution to a committee, even if the intermediary delivers the contribution in the form of a check.

Conflict of Interest

Jeffrey D. Gospe

A-16-207

A trustee of a board of education for a school district was advised that he may participate in a governmental decision involving the school district purchasing vacant real property that is located about 1,200 feet from his home because there will be no reasonably foreseeable material financial effect on his real property interest as a result of the purchase. The trustee was also advised to seek further assistance should decisions come before his board about future uses of that property.

Teresa L. Stricker

A-16-240

The Act prohibits the Mayor of the City of Santa Rosa from taking part in decisions relating to a referendum petition challenging the City's Rent Stabilization and Other Tenant Protection Ordinance because those decisions are "inextricably interrelated" to the City Council's prior decision to adopt the ordinance. Decisions are "inextricably interrelated" to the when one decision will effectively nullify the other decision. The Act precluded the Mayor from taking part in the original decision to adopt the ordinance because the decision would have a reasonably foreseeable material financial on the Mayor's residential rental business.

Jeffrey G. Scott

A-16-246

A member of the Vallecitos Water District may take part in decisions regarding the District's Master Plan where she owns real property located approximately 2,500 feet from a proposed development. The Master Plan is merely a planning tool for District-wide growth and does not take into account proposed development projects that have not been approved by the appropriate land use entity. It is not reasonably foreseeable that the decisions will have a material financial effect on her real property. However, she may not take part in decisions to approve the Water Supply Assessment, Water Supply Verification and agreement with the developer relating to the proposed development.

Richard Gonzalez

A-16-249

Section 87100 does not prohibit a School Board Member's marketing of a movie that she made while a board member so long as she does not make, participate in making, or influence a governmental decision that will financially affect her or her interests.

Laura E. Gasser

I-16-250

A manager with an interest in the stock of a parent company, Alphabet, Inc., is not disqualified from taking part in a rulemaking proceeding merely because a subsidiary of the company, Nest Labs, Inc., is participating in the proceeding. However, while it does not generally appear that a financial effect on the subsidiary will necessarily affect the parent company considering the relative small amount of the parent company's revenue derived from the subsidiary, the potential effect of the proceeding on the manager's interest in the parent company must be analyzed on a case-by-case basis.

Lance H. Olson**A-16-255**

Requestor asked the Commission to reconsider its advice in a previous letter that applied the *Siegel* test and concluded members of the Six Basins Watermaster, which was established by a judgment in a water rights litigation matter, were public officials for purposes of the Act. After considering the new facts provided by the requestor, we concluded that there was not a sufficient basis to conclude that enough of the factors under the *Siegel* test were satisfied to make the Six Basins Watermaster a public entity for purposes of the Act. We therefore concluded its members were not public officials subject to the Act's conflict of interest provisions.

Jolie Houston**A-16-258**

The Act does not prohibit a council member from paying her share of the application fee for a Single Story Overlay District encompassing her residence or participating in the mail-in vote to establish the District because neither of these actions would constitute making, participating in making, or using her position to influence a governmental decision.

Monica Cooper**A-16-261**

The elected City Treasurer may accept campaign contributions from financial institutions, even though the City has funds at the financial institutions. Campaign contributions are not deemed gifts or income under the Act, but must be reported under the campaign provisions of the Act. Additionally, the prohibition in Section 84308 (certain agency officers may not accept, solicit, or direct a contribution of \$250 or more from parties to a proceeding involving a license, permit or entitlement) does not apply to local government agencies whose members are directly elected by the voters.

Adriana Nuñez**A-16-262**

A board member of the Regional Water Quality Control Board, Colorado River Basin Region, may take part in the board's decision permitting the discharge of wastes from a slaughterhouse and meat processing facility which would enable the facility to re-open after being vacant for almost three years. It is not reasonably foreseeable that the decision will have a material financial effect on her real property which is located 4.5 miles from the facility.

Bill Kampe, Mayor**A-16-267**

The Mayor owns residential real property within 500 feet of the Coastal Zone subject to Local Coastal Program decisions. He may participate in those decisions that only affect property that is further than 500 feet from his property, if the decisions do not implicate materiality factors such as those listed in Regulation 18702.2(a)(10) and (12); and he may participate in decisions that affect the entire Coastal Zone under the "public generally exception," so long as his residential property is not uniquely financially affected. More than 25% of the City is in or within 500 feet of the Coastal Zone.

Jon Ansolabehere**A-17-001**

A Councilmember may not participate in her official capacity in City Council meetings, staff briefings, or internal or external discussions regarding projects where a local architectural firm that is a source of income to her will be identified in the materials submitted by the applicants

and will appear on behalf of the applicants at the hearing. The official's source of income is considered to be explicitly involved and a named party in the decision and disqualification is required.

Daniel G. Sodergren**A-17-005**

A city council member does not have a conflict of interest in a decision on a downtown specific plan update despite conducting her real estate business through a company that leases offices in the plan area, because there would be no reasonably foreseeable financial effect on her interests.

Donna Mooney**A-17-010**

A Councilmember who is a real estate agent in her private capacity and receives commission income in connection with property transactions has an interest in party she represents in a sales transaction and her broker. Therefore, if she represents the seller of property in a transaction, she does not have an interest in the buyer/current owner of the property and the financial effect on the property and the buyer/current owner does not create a conflict of interest.

Molly S. Stump**A-17-014**

The Act does not prohibit six Palo Alto City Councilmembers and the City Manager from taking part in governmental decisions relating to the City's general plan update because the general plan exception set forth in Regulation 18702.2(c)(2) applies to those decisions. The general plan update decisions at issue include decisions regarding growth-management, housing, and height-limit policy options. The general plan exception applies because these decisions solely concern the general plan update, only identify planning objectives or otherwise exclusively relate to policy, will require further decisions before implementing the planning or policy, do not concern an identifiable parcel or parcels or development project, and do not concern the city's prior, concurrent, or subsequent approval of, or a change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

Conflict of Interest Code**Tim Taschler****I-16-228**

(1) Members of the governing board of the Wynola Water District make decisions concerning the management of District investments, and therefore must file statements of economic interests under Section 87200 and not under the District's conflict of interest code. (2) Amendments to the conflict of interest code must be reviewed and approved by the code reviewing body, in this case the San Diego County Board of Supervisors. (3) When an individual designated in an agency's conflict of interest code receives income as a consultant of the agency, that income will not be reportable because it is governmental income.

Section 1090**Tava Ostrenger****A-16-088**

A city official who was involved in the City of Santa Barbara's request for proposal to outsource management of its municipal golf course is precluded under Section 1090 from leaving city employment and seeking private employment with the company selected to provide services under that contract. However, the official may leave city employment and seek private

employment with the selected company at a golf course not owned by the City, so long as he did not have an understanding, agreement, or arrangement regarding prospective employment with the company at the time he participated in the City's contract with the company.

Robert P. Otilie**A-16-211**

Section 1090 does not prohibit a consultant from serving as the communications subcontractor on a city contract for engineering services where the consultant had previously provided communications consulting services to the city. The consultant is not a "public officer" because the prior consulting services did not enable the consultant to exert considerable influence over the city's contracting decisions relating to the contract.

Heather L. Stroud**A-16-237**

Section 1090 does not prohibit an agency from entering into a new contract to complete essentially the same services specified in a previous contract with the same contractor because the contractor has not exerted considerable influence over the agency's decisions to complete the work specified in the expired contracts or to hire the same contractor to complete the work.

Thomas Brown**A-16-245**

Where an official's source of income is named in a proposal for a development agreement, foreseeability and materiality are presumed. Therefore, the official has a conflict of interest under Section 87100. In addition, the Vice Mayor has a financial interest in the agreement under Section 1090 because his employer is a named party in the application. Therefore, the Vice Mayor and the city are barred from selecting the proposal which includes the Vice Mayor's employer and awarding them the contract.

Kenneth R. Hetge**A-16-264**

The Act does not prohibit a City of Tehachapi Councilmember from taking part in governmental decisions relating to the potential development and construction of a motocross track on Tehachapi Municipal Airport lands because those decisions would not have a reasonably foreseeable material financial effect on the Councilmember's financial interests relating to his aviation business located on airport lands. Section 1090 does not prohibit the potential contract or contracts relating to the project because the Councilmember would not be financially interested in the potential contracts.

Sonia R. Carvalho**A-16-265**

A councilmember who is also an executive director of a nonprofit children's organization does not have a conflict of interest under Section 87100 in decisions that affect donors to the nonprofit. In addition, Section 1090 only applies to contracts and not permits and licenses. With respect to Section 1090, it will apply to city contracts that are made with the nonprofit, however under the remote interest exception in Section 1090(b)(1) the city may contract with the nonprofit so long as the councilmember discloses his financial interest in the contract and abstains from participating in the contract.

E. Upcoming Regulations

March 16, 2017: Controlled Committee. A committee controlled by a candidate or state measure proponent is defined in Section 82016. Staff proposes to codify legal advice regarding what constitutes having significant influence over a committee to make the committee a controlled committee under that section.

April 16, 2017: None Scheduled

May 18, 2017: Conflicts of Interest Regulations. Having advised on the new conflict of interest rules for over a year, staff will present a review and refinement of select provisions of the conflict of interest regulations enacted in 2014 and 2015.

F. Conflict of Interest Codes

Adoptions and Amendments

Multi-County Agency Conflict of Interest Codes

- Access Services Incorporated
- Alpaugh Academies
- Association of California Water Agencies Joint Powers Insurance Authority (JPA)
- Beaumont-Cherry Valley Water District
- BETA Healthcare Group Risk Management Authority
- Central California Alliance for Health
- Coachella Valley Water District
- Dixon Watershed Real Property Acquisition JPA
- Eastern Sierra Transit Authority
- Ednovate, Inc.
- Envision Education, Inc.
- Las Virgenes Unified School District
- Sacramento Area Flood Control Agency
- Sacramento Regional County Sanitation District
- Sierra-Plumas Joint Unified School District
- Yucaipa-Calimesa Joint Unified School District

State Agency Conflict of Interest Codes

- California Citizen Oversight Board
- California State Universities
- Public Health Department
- State Teachers Retirement System

Exemptions and Extensions

Exemption

- None

Extension

- None

G. 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.

In the Matter of David Chong, and Elect David Chong LMSVSD Board 2014, FPPC No. 15/273. On January 9, 2017, probable cause was found to believe that Respondents committed five violations of the Act, as follows:

COUNT 1: David Chong, a member of the La Mesa-Spring Valley School Board of Trustees, and Elect David Chong LMSVSD 2014, a campaign committee primarily formed in support of Chong's 2014 candidacy, failed to timely file a pre-election statement for the period ending October 25, 2014 in violation of Section 84200.5.

COUNT 2: Mr. Chong and the committee failed to timely file a semi-annual statement for the period July 1, 2014 to December 31, 2014 in violation of Section 84200.

COUNT 3: Mr. Chong and the committee failed to timely file a semi-annual statement for the period January 1, 2015 to June 30, 2015 in violation of Section 84200.

COUNT 4: Mr. Chong and the committee failed to timely file a semi-annual statement for the period July 1, 2015 to December 31, 2015 in violation of Section 84200.

COUNT 5: Mr. Chong and the committee failed to timely file a semi-annual statement for the period January 1, 2016 to June 30, 2016 in violation of Section 84200.

In the Matter of Joseph Knight, Case No. 15/1496. On January 9, 2017, probable cause was found to believe Respondent committed the following violation of the Act:

COUNT 1: Joseph Knight, a member of the California Tourism and Travel Commission, failed to timely disclose his interest in income from a rental car company on his 2014 Annual Statement of Economic Interests ("SEI"), in violation of Section 87300.

In the Matter of Martin Fuentes, Case No. 15/1390. On January 19, 2017, probable cause was found to believe Respondent committed the following violations of the Act:

COUNT 1: Martin Fuentes, a Commissioner of the City of Cudahy Planning Commission, failed to file a 2014 Annual SEI by April 1, 2015, in violation of Sections 87200 and 87203.

COUNT 2: Martin Fuentes, a Commissioner of the City of Cudahy Planning Commission, failed to file an Assuming Office SEI by November 12, 2015, in violation of Sections 87200 and 87203.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: TARA STOCK, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 853 requests for advice via phone in January.

Workshops and Other Presentations

Political Reform Consultant Deborah Hanephin participated in a panel discussion about reporting gifts and other sources of income at the annual education conference held by the California School Boards Association.

Division staff also presented the following workshops:

- Glen Bailey, workshop for candidates and treasurers in City of Glendale
- Alex Castillo, workshop for campaign filing officers in City of Glendale
- Tara Stock and John Kim, workshop for state agency Form 700 filing officers
- Alex Castillo and Glen Bailey, workshop for local agency Form 700 filing officers

Almost 50 attendees participated in each of the Form 700 filing officer workshops held at the FPPC.

Forms, Manuals, and Other Materials

Division staff updated and posted to the website Manual 1 (State Candidates) and Manual 4 (General Purpose Committees) to reflect the 2017 – 2018 state contribution and voluntary expenditure ceiling limits:

Division staff also updated and posted to the website the lobbying manual and the *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans* fact sheets (state and local) to reflect the 2017 – 2018 gift limit.

Filing Schedules

Staff created six filing schedules for local jurisdictions holding special elections in 2017.