



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

November 16, 2017 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of October 5, 2017 through November 2, 2017, the Enforcement Division received 41 complaints, opened 13 for investigation, and rejected 16. The Enforcement Division received 185 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 139 cases including:

- 63 warning letters,
- 36 no action letters,
- 2 advisory letters,
- 21 as a result of the adoption of stipulations and defaults at the October Commission meeting, and
- 17 committees were administratively terminated.

The Division had 1,138 cases in various stages of resolution at the time of the October Monthly Report and currently has approximately 1,162 cases in various stages of resolution, including the 33 cases before the Commission as listed in the November 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, 48 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 74 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

II. LEGAL DIVISION

STAFF:**JACK WOODSIDE, GENERAL COUNSEL****BRIAN LAU, ASSISTANT GENERAL COUNSEL****TRISH MAYER, ASSISTANT CHIEF****JOHN FESER, SENIOR COMMISSION COUNSEL IV**

A. Pending Litigation

Howard Jarvis Taxpayers Association, et al. 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 to finance 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 Act¹ (the “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. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, “entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The appeal will be filed with the Third District Court of Appeal. Notice of Appeal must be filed 60 days after notice of entry of judgment, which has not been served to date. Thus, the deadline to file the appeal is not currently set.

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.

¹ The 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 this source, unless otherwise indicated.

Mr. Burgess's case was first heard by an Administrative Law Judge (ALJ), and then Mr. Burgess challenged the ALJ's decision to the Commission. On March 19, 2015, the Commission rejected the ALJ's decision and decided the case based on the record and the parties' supplemental briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Act and imposed a \$5,000 fine on July 7, 2015.

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 Superior 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 Superior Court's judgment stand and to vacate and set aside its Decision and Order in the underlying matter, thereby dismissing the administrative proceedings against Mr. Burgess. The Commission timely filed a Return to the Writ.

On November 14, 2016, Burgess filed a Motion for Attorney's Fees under Code of Civil Procedure section 1021.5 ("private attorney general"). The FPPC in conjunction with the Attorney General's office prepared an opposition to this motion which was filed on January 25, 2017. The fee motion was heard on April 3, 2017, and the Superior Court took the matter under submission after argument by the parties. On April 10, 2017, the Superior Court granted Burgess's motion for attorney's fees. The Commission voted in closed session to appeal the Superior Court's order granting Burgess attorney's fees at the June meeting.

The briefing schedule has been set as follows: Appellant's opening brief is due by November 6, 2017; Respondent's opposition brief is due by December 5, 2017; and Appellant's Reply brief is due by December 26, 2017.

B. Outreach and Training

On October 23, 2017, Assistant Chief Trish Mayer spoke at the California Special District Association's annual Board Secretary/Clerk Conference in Anaheim. During this comprehensive session, attendees received an overview of the rules as they apply to Statements of Economic Interests. Also discussed were conflict of interest codes and how they relate to the Form 700, and general information was provided about conflicts of interests, gifts, and ticket disclosure.

C. Advice

In October 2017, 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 723 e-mail and telephone requests for advice.

- **Advice Letters:** Legal Division received 21 advice letter requests and issued 21 letters.
- **Section 1090 Letters:** Legal Division received eight new advice letter requests concerning Section 1090 and issued seven. This year to date we have received 73 advice requests regarding Section 1090.

D. Advice Letter Summaries

Full copies of FPPC Advice Letters, including those listed below, are available at:
<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Campaign

Wayne Craig

[A-17-181](#)

In defending a civil lawsuit related to its status as general purpose committee, a committee may receive contributions for its legal defense, subject to the Act and local contribution laws. Because the action involves the committee's compliance with campaign and disclosure laws, campaign funds may be used for the defense of its officers. However, funds may not be used for third parties' legal costs. The committee may coordinate fundraising activities with other political action committees for legal expenses, but must make clear the specific amount allocated to each committee for reporting and record-keeping purposes.

Conflict of Interest

Anthony H. Trembley

[I-17-217](#)

A city council member who was an associate at a law firm has a disqualifying interest in the law firm as a source of income for 12 months following the final receipt of income from the firm. As a general rule, an official "has reason to know" that a decision will affect a source of income whenever a reasonable person, under the same circumstances, would be likely to know or should know the identity of the source of income and should be aware or is aware of the decision's probable impact on the source.

Richard D. Pio Roda

[A-17-218 and A-17-221](#)

City manager and council member do not have disqualifying conflict of interests in governmental decisions involving a rezoning and development of several businesses into a 73-unit apartment building. Both public officials resided more than 1,300 feet from the project area in a dense residential subdivision, insulated from the effects of the project.

Heather M. Minner

[A-17-220](#)

A planning commissioner may make, participate in making, and influence a decision concerning commercial property located within 500 feet of (and across the street from) his own commercial property. Based on the limited scope of the project (behind the existing structure), the decisions will not impact the character of the commissioner's neighborhood or the fair market value of the commissioner's property, nor will it impact the value of the commissioner's business or those of his tenants.

Mary Beth Barber[I-17-223](#)

The Act does not preclude an employee of the State Library from serving as a review team member for the California Collaborative for Educational Excellence, another public agency. Moreover, while the Act does prohibit an official from taking part in decisions with a foreseeable and material effect on any financial interest the official may have, the Act does not limit the official's participation as a review team member because there is no indication that the official's work as a state employee will have a unique effect on the stipend received.

Wendy L. House[I-17-228](#)

Following the announcement of the agenda item and prior to any discussion of the item, a city council member who has a conflict of interest involving one or more applicants to a city board or commission must publicly identify the conflict, recuse himself or herself, and leave the room until the applicants in question are nominated and votes are cast.

Lori Herbel[I-17-229](#)

Under the Act's conflict of interest provisions, salary received as a contract instructor from the town's community service department does not preclude an official from serving on an advisory council. Moreover, the Act does not limit the official's participation as a member of the advisory commission because there is no indication that actions by the advisory commission may have a unique effect on the official's salary as a contract instructor for the town.

Michael Torres[A-17-233](#)

Councilmember, who is the sole owner of a business with two long term leases for property adjacent to the harbor and the exclusive use of a marina under a commercial pier permit, may not take part in decisions to redraft the city's code as it pertains to the management and use of the harbor. Considering the councilmember's substantial business interests in the harbor, the councilmember's business is the subject of the decisions under Regulation 18702.1(a)(6) and the financial effect of the decision on the business is both foreseeable and material.

Amy Harrington[A-17-236](#)

A councilmember who is an owner of residential property near (but more than 500 feet from) the district affected by the decision is not prohibited from taking part in a decision regarding a temporary moratorium prohibiting additional wine tasting rooms. Based on the facts provided, it does not appear that it is reasonably foreseeable that the moratorium on new wine tasting rooms will affect the value of the councilmember's residential property.

Larissa Seto[A-17-241](#)

A planning commissioner does not have a conflict of interest in taking part in a decision concerning a proposal to rebuild a restaurant located approximately 1,200 feet from her residence because the decision will not have any reasonably foreseeable financial effect on her property.

Conflict of Interest Code**William Sperling**[A-17-025](#)

Nonprofit entity was advised that it is still considered a public agency for purposes of the Act and required to have a conflict of interest code under which the entity's public officials file a

Statement of Economic Interests (Form 700). Notwithstanding recent changes to some of the entity's functions, the impetus for formation of the entity was a government agency, the entity is still substantially funded by government funds, and the entity provides services that public agencies are legally authorized to perform.

Gifts

Jonathan P. Hobbs

[A-17-222](#)

Mayor may accept complimentary transportation, lodging, and subsistence to attend an educational seminar in Israel because the payments are provided by a 501(c)(3) organization and reasonably related to a legislative or governmental purpose and concern international public policy. However, the payments are reportable gifts and must be reported on the official's statement of economic interests.

Mass Mailing

Brittany E. Roberto

[A-17-216](#)

A city funded mailing of more than 200 copies of an item that includes a photograph of the entire city council, which is delivered to recipients' residences, places of employment or business, or post office boxes, would be a prohibited mass mailing under Section 89001 and Regulation 18901.

Personal Use

Felix Tinkow

[A-17-242](#)

Councilmember may use his campaign re-election funds for attorneys' fees and costs related to his representation in litigation against the city under the Public Records Act including attorneys' fees and costs of a public relations firm, which was hired to assist with media inquiries regarding the litigation.

Section 1090

Mark J. Hattam

[A-17-174](#)

Under Section 1090, a utility authority board member has a financial interest in a contract with an energy company that employs her spouse. However, because it is a "remote interest," the utility authority may enter into the contract as long as the board member discloses the interest, it is noted in the agency's records, and she abstains from any participation in making the contract.

Dirk Starbuck

[A-17-179](#)

City will not violate Section 1090's prohibitions by contracting with the city's cemetery district regarding water service rates merely because a councilmember owns two plots within the cemetery. Likewise, the Councilmember did not have a disqualifying conflict of interest under the Act because any effect on his plots as a result of the agreement is not foreseeable.

Kyle W. Holmes[A-17-200](#)

School district's payments mandated by the Department of Education or ordered by an administrative law judge are not "contracts" for purposes of Section 1090.

Nathan Magsig[A-17-202](#)

Section 1090 does not prohibit a county supervisor from entering into a contract with a private contractor under which the supervisor would provide consulting services regarding potential water, waste-water, or energy projects in cities in and around the county. However, if the supervisor enters into that contract, Section 1090 may prohibit the supervisor from making or participating in the making of, or the county from entering into, a future contract with the other private contractor, and the Act would prohibit the supervisor from taking part in any governmental decision that would have a reasonably foreseeable material financial effect on the supervisor's consulting business, the private contractor, or the supervisor's personal finances.

Donna Mooney[A-17-226](#)

Section 1090 prohibits a member of a fiber optic advisory board from accepting employment with a city contractor to market and sell telecommunications services provided by the contractor pursuant to that contractor's contract with the city to manage the city's fiber optic network and related infrastructure.

Amy Gonzalez[A-17-231](#)

Member of airport authority board, who provides accounting services to a firm that qualifies under the city's rules as a city lobbyist on behalf of an airport contractor, is not prohibited under the Act from receiving income for services from the firm. However, income is reportable if it is \$500 or more from a single source. In addition, income may be the basis for disqualification if \$500 or more is received from the source within the 12 months preceding a decision affecting the firm. However, it does not appear that under the Act, either the board member's business or the firm will be materially affected by decisions concerning the airport contractor. Finally, with respect to Section 1090, the board member has no financial interest in the airport contractor's contract.

E. Miscellaneous Decisions

None to report.

F. Potential Upcoming Regulations**December 2017:**

- AB 249 Regulation Packet Phase 1 (Adopt) – Approximately 10 non-substantive regulation amendments resulting from implementation of AB 249.
- Regulation 18450.1 (Adopt) – Definitions. Advertisement Disclosure. Proposed amendments to clarify and distinguish yard signs from larger signs.

- Regulation 18535 (Adopt) – Restrictions on Contributions Between State Candidates. Proposed amendment to permit candidates to make unlimited contributions to candidate controlled legal defense funds and candidate controlled ballot measure committees.
- Prenotice discussion of possible amendments to conflict of interest rules as applied to small shareholders and related business entities.

January 2018:

- AB 249 Regulation Packet Phase 2 (Adopt) – Approximately 11 additional non-substantive regulation amendments resulting from implementation of AB 249.
- Revolving Door Regulation Packet (Prenotice) – Discussion of possible regulatory amendments to the revolving door provisions for local (Regulation 18746.3) and state officials (Regulations 18746.1 and 18746.4) implementing AB 551 and AB 1620.
- Regulations 18901 and 18901.1 (Prenotice) – Discussion of possible regulatory amendments to the implement SB 45, which banned certain publicly funded mass mailings permitted under Regulation 18901 in the 90 days preceding an election.

G. Conflict of Interest Codes**Adoptions and Amendments***State Agency Conflict of Interest Codes*

- None to report.

Multi-County Agency Conflict of Interest Codes

- California Rural Water Risk Management Authority
- East Turlock Subbasin Groundwater Sustainability Agency

Exemptions

- None to report.

Extensions

- Independent Peer Review Group – California High Speed Rail Authority

H. Probable Cause Hearings

Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.

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

1. ***In the Matter of District 3 Democratic Club, Arthur Chang, and Chris Schulman, Case No. 15/1416.***

On October 12, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee and Schulman failed to timely file the semi-annual campaign statement due February 2, 2015, in violation of Section 84200.

Count 2: The Committee and Schulman failed to timely file the semi-annual campaign statement due July 31, 2015, in violation of Section 84200.

Count 3: The Committee and Schulman failed to timely file the semi-annual campaign statement due February 1, 2016, in violation of Section 84200.

Count 4: The Committee and Chang failed to timely file the semi-annual campaign statement due August 1, 2016, in violation of Section 84200.

Count 5: The Committee and Chang failed to timely file the semi-annual campaign statement due January 31, 2017, in violation of Section 84200.

2. ***In the Matter of Brenda Lewis and Lewis for Water Board 2013, Case No. 16/322.***

On October 13, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

Counts 1-7: The Committee failed to timely file a total of seven semi-annual statements for the following periods: October 21, 2013 through December 31, 2013 by the deadline January 31, 2014; January 1, 2014 through June 30, 2014 by the deadline July 31, 2014; July 1, 2014 through December 31, 2014 by the deadline February 2, 2015; January 1, 2015 through June 30, 2015 by the deadline July 31, 2015; July 1, 2015 through December 31, 2015 by the deadline February 1, 2016; January 1, 2016 through June 30, 2016 by the deadline August 1, 2016; and July 1, 2016 through December 31, 2016 by the deadline January 31, 2017, in violation of Section 84200.

Counts 8-11: The Committee failed to pay the \$50 annual fees for 2013, 2014, 2015, and 2016 by the due date each year, and failed to pay a penalty of \$150 for failing to timely pay the annual fees, in violation of Section 84101.5, subdivisions (c) and (d).

3. *In the Matter of Lola Skelton, Case No. 16/19779.*

On October 16, 2017, probable cause was found to believe Respondent committed the following violations of the Act:

Count 1: Lola Skelton, a Trustee on the Hughes-Elizabeth Lakes Union School District Board of Trustees, failed to file a 2015 Annual Statement of Economic Interests by April 1, 2016, in violation of Government Code section 87300.

Count 2: Lola Skelton, a Trustee on the Hughes-Elizabeth Lakes Union School District Board of Trustees, failed to file a 2016 Annual Statement of Economic Interests by April 3, 2017, in violation of Government Code section 87300.

4. *In the Matter of Vajezatha Payne, Sasha Cass, and Payne for Palmdale 2015, Case No. 16/19988.*

On October 16, 2017, probable cause was found to believe Respondents committed the following violation of the Act:

Count 1: The Committee, Payne, and Cass failed to timely file a semiannual campaign statement for the reporting period ending December 31, 2015, in violation of Section 84200.

Count 2: The Committee, Payne, and Cass failed to timely file a semiannual campaign statement for the reporting period ending June 30, 2016, in violation of Section 84200.

Count 3: The Committee, Payne, and Cass failed to timely file a semiannual campaign statement for the reporting period ending December 31, 2016, in violation of Section 84200.

Count 4: The Committee, Payne, and Cass failed to properly report campaign contributions and expenditures on the semiannual campaign statement for the period ending December 31, 2015, in violation of Section 84211.

5. *In the Matter of Christopher Pedigo and Christopher Pedigo for Mayor 2016, Case No. 16/19908.*

On October 16, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The Committee and Pedigo failed to timely file the semiannual campaign statement for the October 23, 2016 through December 31, 2016 statement period in violation of Section 84200.
- Count 2: The Committee and Pedigo failed to timely file the pre-election campaign statement for the September 25, 2016 through October 22, 2016 statement period in violation of Section 84200.5.
- Count 3: The Committee and Pedigo failed to timely file the pre-election campaign statement for the July 1, 2016 through September 24, 2016 statement period in violation of Section 84200.8.

6. *In the Matter of Joshua Mitchell, Case No. 14/1333.*

On October 26, 2017, probable cause was found to believe Respondent committed the following violations of the Act:

- Count 1: On January 2, 2014, Mitchell voted in favor of extending an Impact Fee Waiver Program, which specifically listed Royal Woods subdivision, a development of Evergreen, as eligible to participate in this Program and be charged zero impact fees. Evergreen was a source of income of \$500 or more within the preceding 12 months to Mitchell. As such, Mitchell violated Section 87100.
- Count 2: On May 15, 2014, Mitchell voted in favor of approving a development agreement for the Royal Woods subdivision, a development of Evergreen, a source of income of \$500 or more within the preceding 12 months to Mitchell. As such, Mitchell violated Section 87100.
- Count 3: On October 16, 2014, Mitchell voted in favor of approving an Amendment to the Agreement for Development of Tract 5383 allowing Evergreen, a source of income of \$500 or more within the preceding 12 months to Mitchell, to purchase Security for each phase of development in the Royal Woods subdivision before construction begins in that phase. As such, Mitchell violated Section 87100.
- Count 4: On his 2012 SEI, Mitchell failed to disclose Evergreen as a source of income over \$10,000 to his business, WLD, in violation of Section 87207.
- Count 5: On his 2013 SEI, Mitchell failed to disclose his ownership interest in JDM Enterprises and failed to disclose Evergreen as a source of income to his business, JDM Enterprises, in violation of Section 87207.
- Count 6: On his 2014 SEI, Mitchell failed to disclose his ownership interest in JDM Enterprises and failed to disclose Evergreen as a source of income to his business, JDM Enterprises, in violation of Section 87207.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: COURTNEY MILLER, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 443 requests for technical assistance via phone in October.

Training & Outreach

Political Reform Consultants conducted the following workshops and outreach activities:

Glen Bailey conducted a SEI Filing Officer Workshop for 23 filing officers in Tehama County. Glen also conducted a one-on-one Campaign Filing Officer Training with the Tehama County Assistant Registrar of Voters.

John Kim conducted a SEI Filing Officer Outreach with two members of the Bay Area Air Quality Management District.

Deborah Hanephin and Glen Bailey created and recorded a webinar to the FPPC website that provides an instruction for filling out the “Cover Page” of the Form 700. There are now two instructional webinars on the website, with additional ones to be posted in the next two months.

Alex Castillo began the process of updating training materials for our 2018 training opportunities, including a recorded webinar series for the Form 460.

Forms, Manuals, and Other Materials

Division staff updated the Candidate Toolkit on the FPPC website to include information on how to start a campaign for office. Updated fact sheets as well as direct access to pertinent forms and manuals were added to the Toolkit.

Division staff drafted updates to the following 2017/2018 documents, which will be presented for your approval at the November 16, 2017, Commission Meeting:

- Form 700 – Statement of Economic Interests
- Form 700 Reference Pamphlet
- Form 700-A – Auditors, Claims Managers/Adjusters, and Other Eligible Filers
- Form 700-U – University Principal Investigators

AB 249 Update

Division staff are currently updating all campaign materials related to AB 249.