



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

January 18, 2018 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of December 8, 2017 through January 4, 2018, the Enforcement Division received 23 complaints, opened 8 for investigation, and rejected 12. The Enforcement Division received 22 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 129 cases including:

- 54 warning letters,
- 14 no action letters,
- 1 advisory letter,
- 31 as a result of the adoption of stipulations at the December Commission meeting, and
- 29 committees were administratively terminated.

The Division had 1,134 cases in various stages of resolution at the time of the December Monthly Report and currently has approximately 1,065 cases in various stages of resolution, including the 20 cases before the Commission as listed in the January 2018 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, 29 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 42 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. The deadline to file notice of appeal is Friday, January 12, 2018. The notice of appeal has not been filed as of the preparation date of this report, but will be filed on or before the filing deadline.

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 parties' respective appellate briefs have been timely filed: Appellant's opening brief on November 6, 2017; Respondent's opposition brief on December 5, 2017, and Appellant's reply brief on December 26, 2017. A hearing date for oral argument has not yet been set.

B. Outreach and Training

- On December 5, Senior Commission Counsel Sukhi K. Brar moderated a panel on campaign advertisement disclaimers at the annual Counsel on Governmental Ethics Laws Conference (COGEL) in Toronto, Canada. COGEL focuses on governmental ethics, freedom of information, elections, lobbying, and campaign finance and is the preeminent organization of government ethics administrators. The panel included an overview of current campaign laws affecting political advertisement disclaimers and perspectives associated with effectiveness of disclaimers provided by experts in the field. Sukhi also served as a member of the COGEL Program Committee which assists in planning all of the sessions for this four-day conference.
- On December 14, Assistant Chief Trish Mayer made a presentation to 360 city clerks and others at their annual New Law and Elections seminar in Newport Beach. Topics included a recap of campaign and Form 700 rules, an overview of the 10 bills that affected the Political Reform Act for 2018, recent regulatory changes and an update on the Commission's Form 700 electronic filing system.

C. Advice

In December 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 579 e-mail and telephone requests for advice.
- **Advice Letters:** Legal Division received 10 new advice letter requests under the Political Reform Act and completed 11 letters.
- **Section 1090 Letters:** Legal Division received four new advice letter requests concerning Section 1090 and completed four. In 2017 we received 82 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>.

Conflict of Interest

Kristopher J. Kokotaylo[A-17-234](#)

City Planning Commissioner has a conflict of interest in governmental decisions involving a proposed rezoning and development of existing commercial property to an apartment building due to the proximity of the proposed project site to the official's real property. The decisions regarding the proposed rezoning and development would have a material financial effect on the Commissioner's residence.

Andrew Morris[A-17-255](#)

A city attorney whose spouse works for a private law firm handling matters for the city will not have a conflict of interest based on his participation in decisions relating to those matters, if pursuant to a contract made prior to his participation, the city has agreed that it may retain the law firm to handle those matters. However, the city attorney may not make a recommendation to the city that will create additional work and income for his wife's employer that is beyond the scope of the contract under which her employer is rendering advice.

Roland Simpson[A-17-258](#)

The Act does not prohibit an official who is a director for both a water district and a community services district from taking part in decisions regarding the reimbursement by the community services district of the water district's cost to repair a road because there is no foreseeable material effect on the official's business or property.

Eric Lucan[A-17-267](#)

Councilmember who owns a duplex rental property located 1700 square feet from a development project of 50 townhomes and 1300 sq. ft. of retail space does not have disqualifying conflict of

interest in decisions regarding the project. The project does not impact the rental property market, the property is not in the surrounding neighborhood of the project, and the property is separated from the project by a major roadway.

Charles A. Newman

[A-17-275](#)

Planning Commission member who owns a residential home adjacent to the AG-1 zone proposed as an area permitting cannabis activities including cultivation, manufacturing post-processing and packaging of cannabis, may not take part in decisions on the Cannabis Land Use Ordinance. The Ordinance may substantially alter the air quality, as well as the need for security and fences, within 500 feet of the residential property. The financial effect of the decision on the value of the residential property is both foreseeable and material. The effect on the real property appears unique and the public generally exception is not applicable.

Gifts

Robert G. Gottschalk

[A-17-264](#)

The Act's exception to the \$470 annual gift limit for travel payments, advances, and reimbursements set forth in Section 89506 applies to payments by Chinese city governments for transportation and related lodging and subsistence provided to city officials while in China. However, payments by the San Mateo County China Trade Association to the public officials for roundtrip airfare to China do not fall within the gift limit exception because the association is not a 501(c)(3) nonprofit entity.

Lobbying

Brian T. Hildreth

[A-17-251](#)

A lobbyist employer is required to disclose grant funds made to other nonprofit organizations, for the specific purpose of hiring lobbyists, as other payments to influence legislative or administrative action on both the Form 635 and Attachment Form 640.

Section 1090

Jason Canger

[A-17-205](#)

Section 1090's prohibition against financial interests in governmental contracts precluded the County of Mono from entering into a contract to construct a County facility with a contractor that had been previously hired to design the facility after completing an assessment of the County's office space and facility needs.

Dorine Martirosian

[A-17-260](#)

Councilmembers, who each own stock in General Electric ("GE"), did not have a conflict of interest under the Act in a power plant contract, where GE was listed only as a potential acceptable vendor of parts for the project. Because GE was not explicitly involved, it was not foreseeable that the contract decisions would result in a material change in GE's stock value, considering GE's size and the amount of GE products that may be purchased under the contract.

Moreover, under Section 1090, each councilmember owns less than 3 percent of the outstanding shares of GE stock, and each member's annual income from GE dividends or other payments does not exceed 5 percent of their total annual income. Thus, each member has a "noninterest" for purposes of Section 1090 and is not prohibited from participating in the power plant contract.

E. Miscellaneous Decisions

None to report.

F. Potential Upcoming Regulations

February 2018:

- Revolving Door Regulation Packet (Adoption) – Proposed 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.
- Regulation 18901 (Adoption) – Proposed regulatory amendments to the implement S.B. 45, which banned certain publicly funded mass mailings permitted under Regulation 18901 in the 90 days preceding an election.
- Regulation 18450.1 (Adoption) – Proposed regulatory amendments to Regulation 18450.1 to maintain or eliminate minimum thresholds for advertisements requiring disclosure statements under AB 249, and to specify yard sign dimension limitations if minimum thresholds are maintained.

March 2018:

- Prenotice discussion of possible amendments to conflict of interest rules as applied to small shareholders and related business entities.

G. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes

- Earthquake Authority
- Food and Agriculture Department
- Housing Finance Agency
- Justice Department
- Water Resources Department

Multi-County Agency Conflict of Interest Codes

- Compass Charter Schools
- Peninsula Corridor Joint Powers Board
- Schools Risk and Insurance Management Group
- Southern California Coastal Water Research Project Authority
- Tulare Joint Union High School District

Exemptions

None to report.

Extensions

None to report.

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.

1. *In the Matter of Overturn Citizens United, Yes on 59, Case No. 16/19685.*

On December 19, 2017, after hearing, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee's advertising disclosure statement on its website failed to list its top contributor of \$50,000 or more and failed to appear with sufficient color contrast as to be legible in violation of Sections 84503, subdivision (a), subdivision (c), and Regulation 18450.4(b)(3)(G).

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

2. *In the Matter of Al Bairos and Committee to Re-Elect Al D. Bairos OID Director District #4 2015, FPPC No. 15/1876.*

On December 8, 2017, probable cause was found to believe that Respondents committed seven violations of the Act, as follows:

Count 1: Bairos and the Committee failed to timely file a Statement of Organization upon qualifying as a committee in violation of section 84101, subdivision (a).

Count 2: Bairos and the Committee failed to disclose on a campaign statement nonmonetary contributions from John Brichetto and Marci Bairos totaling \$990.20, and an expenditure of \$1,799.20 to Signature Signs in violation of section 84211, subdivisions (a)(b)(c)(f)(i) and (k).

- Count 3: Bairos and the Committee failed to timely file a semi-annual statement for the period ending December 31, 2015 in violation of section 84200, subdivision (a).
- Count 4: Bairos and the Committee failed to timely file a semi-annual statement for the period ending June 30, 2016 in violation of section 84200, subdivision (a).
- Count 5: Bairos and the Committee failed to timely file a semi-annual statement for the period ending December 31, 2016 in violation of section 84200, subdivision (a).
- Count 6: Bairos and the Committee failed to timely file a semi-annual statement for the period ending June 30, 2017 in violation of section 84200, subdivision (a).
- Count 7: Bairos and the Committee failed to include proper disclosure on a mass mailing in violation of section 84305, subdivision (a), and regulation 18435, subdivision (d).
3. ***In the Matter of Dan Roundtree for Thousand Oaks City Council 2015, Dan Roundtree, and Darby Levin, Case No. 15/701.*** On December 11, 2017, probable cause was found to believe Respondents committed the following violations of the Act:
- Count 1: Failure to Include Proper Sender Identification on Mass Mailers. Respondents Committee, Roundtree, and Levin, failed to include the proper sender identification on one mass mailer sent out in connection with the campaign on or about May 18, 2015, in violation of Government Code Section 84305, subdivision (a) and Regulation 18435 subdivision (d).
- Count 2: Failure to Include Proper Sender Identification on Mass Mailers. Respondents Committee, Roundtree, and Levin, failed to include the proper sender identification on one mass mailer sent out in connection with the campaign on or about May 20, 2015, in violation of Government Code Section 84305, subdivision (a) and Regulation 18435 subdivision (d).
- Count 3: Failure to Include Proper Sender Identification on Mass Mailers. Respondents Committee, Roundtree, and Levin, failed to include the proper sender identification on one mass mailer sent out in connection with the campaign on or about May 21, 2015, in violation of Government Code Section 84305, subdivision (a) and Regulation 18435 subdivision (d).
- Count 4: Failure to Include Proper Sender Identification on Mass Mailers. Respondents Committee, Roundtree, and Levin, failed to include the proper sender identification on one mass mailer sent out in connection with the campaign on or about May 27, 2015, in violation of Government Code Section 84305, subdivision (a) and Regulation 18435 subdivision (d).

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: COURTNEY MILLER, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 363 requests for technical assistance via phone in December.

Training & Outreach

Political Reform Consultants conducted the following workshops and outreach activities:

Deborah Hanephin participated as a panelist at the “Reporting Gifts and Other Sources of Income: Know What They Are and Report Them With Certainty” session at the CA School Board Association Conference. Approximately 30 people attended the presentation which covered the definition and examples of gifts, and the instructions on the proper way to report them.

Glen Bailey conducted a Candidate/Treasurer workshop in Sutter County. Approximately 40 people attended the workshop.

Deborah Hanephin conducted a SEI Filing Officer workshop for Sonoma County. Approximately 25 people attended the workshop.

The following recorded instructional webinars were posted to the FPPC website:

Form 700: Cover Page
Form 700: Schedule A-1
Form 700: Schedule A-2
Form 700: Schedule B

IV. LEGISLATIVE UPDATE

STAFF: PHILLIP UNG, DIRECTOR, LEGISLATIVE AND EXTERNAL AFFAIRS

The Legislature has reconvened for the second half of the 2017-2018 Session. Legislation from 2017 that is still in the house of origin must be approved by that legislative house by January 31, 2018. There is one bill that amends the Political Reform Act moving through this process. Staff is not recommending any position.

Legislation currently being tracked by Commission staff and other related documents can be found on the [Commission's Pending Legislation](#) page.

Political Reform Act or Related Bills (#1)

1. AB 664 (Steinorth): Campaign fund expenditures; fair market value; family members

FPPC Position: *None currently*

Status: Assembly Elections Committee

Fiscal Estimate: Not requested.

Last Amended: January 3, 2018

Summary:

Existing law prohibits the spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation from campaign funds controlled by the elected officer or candidate.

Under the *Harden* (A-90-498) and *Tierney* (A-04-094) Advice Letters, the Commission staff has advised that the compensation from campaign funds must be fair market value or a gift may result, so long as the duties performed by a non-spouse relative are directly related to a political, legislative, or governmental purpose.

This bill would prohibit compensation above fair market value to a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate or elective office from a controlled committee of the elected officer or candidate for elective office. The bill would additionally prohibit compensation above fair market value to any business majority-owned or controlled by any spouse, domestic partners, or above named relatives.