



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Germond and Commissioners Cardenas, Hatch and Hayward  
**From:** Brian G. Lau, Acting General Counsel  
**Subject:** Advice Letter Report and Commission Review  
**Date:** September 10, 2018

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The following advice letters have been issued since the August Advice Letter Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. 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**

**Stephen J. Kaufman** [A-18-163](#)

Under the Act, a local elected official may maintain a campaign committee and the bank account from the official's most recent election to use for officeholder expenses. Barring restrictions imposed by the official's local jurisdiction, an official may use a campaign account formed for the election to the official's current office to raise and spend unlimited funds for officeholder expenses that are reasonably related to a legislative or governmental purpose.

### **Conflict of Interest**

**Andrew Morris, Esq.** [A-18-117](#)

While Councilmember has a potentially disqualifying interest in governmental decisions related to the construction of a multiuse facility due to the foreseeable and material effect that the decisions would have on his ski rental business, the Councilmember may take part in the decisions under the public generally exception because the decisions will affect at least 25 percent of the businesses in the jurisdiction and will not uniquely affect the Councilmember's interests.

**Gary Edwards** [A-18-136](#)

The Act does not prohibit a Councilmember from taking part in governmental decisions relating to a hotel development project located nearby a commercial rental property owned by the Councilmember's family trust. The trust property is within an historic area of the City characterized by thriving businesses, including at least five existing hotels within 1,050 feet of the trust property. The project's parking impacts would be mitigated, and the businesses associated with the commercial rental property are not dependent on foot or vehicle traffic to attract additional business.

**Ryan R. Jones, Esq.**[I-18-148](#)

The Act does not prohibit a Councilmember from simultaneously becoming a volunteer firefighter with the Fire Department. The Act's conflict of interest provisions only prohibits the Councilmember from taking part in governmental decisions in which he has a financial interest.

**Thomas Watson**[A-18-150](#)

Planning Commissioner, who previously provided legal services to a former client in connection with a cannabis distribution business located in another city, is not prohibited from taking part in a decision related to a draft ordinance for the City that would establish locational and development application requirements for medical cannabis delivery businesses because the decision will not have a reasonably foreseeable material financial effect on the Commissioner's interest in his law practice or his former client.

**Michael Torres**[A-18-154](#)

The Act prohibits Planning Commissioner from taking part in governmental decisions relating to a large residential development comprised of three 13-story condominium buildings, because the decisions would have a reasonably foreseeable material financial effect on the Planning Commissioner's interest in the owner of a business entity who is a source of income to the Planning Commissioner.

**Barbara Harmon**[A-18-172](#)

The Act does not prohibit Councilmember from taking part in decisions relating to the Road Interchange Project because those decisions would not have a reasonably foreseeable material financial effect on the Councilmember's real property interest in her residence. The decisions involve construction of or improvements to streets or similar facilities but would not confer a disproportionate benefit or detriment on the Councilmember.

**Gifts****Sarah Couch, Chair**[I-18-090](#)

Food, entertainment, and any other items offered to public officials who attend events held by an organization that is an affiliate of a nonprofit organization, which are geared towards a very narrow and discreet segment of the public that includes mostly public officials, are gifts to the officials absent an applicable gift exception. Additionally, if the events are sponsored by outside entities or individuals, those individuals may be considered the source of the gift under some circumstances.

**Whitney Barazoto**[I-18-125](#)

City Ethics Commission requested informal assistance regarding multiple questions concerning agency provided tickets or passes under Regulation 18944.1.

**Linda D. Schiltgen**[A-18-135](#)

The gift provisions of the Act do not require the County to report grant funds received from local nonprofit agencies and a local Native American tribe for purposes of gathering public input and surveying public priorities to assist the County's Parks Department in presenting

recommendations to the County Board of Supervisors because the payments strictly benefit the agency as a whole and result in no personal benefit to a public official.

**Theresa Fuentes**[A-18-170](#)

Travel, meal, and lodging payments by a 501(c)(3) organization for the Vice Mayor to participate in a multicultural leadership Korea travel program that is reasonably related to a governmental purpose are reportable gifts that are not subject to the gift limits pursuant to Section 89506(a)(2).

**James R. Williams**[A-18-178](#)

Travel, meal, and lodging payments from a 501(c)(3) organization for a County Supervisor to participate in an “educational seminar in Israel” are reportable gifts that are not subject to the gift limits pursuant to Section 89506(a)(2).

**Revolving Door****Earl D. Nelson**[A-18-121](#)

The Act’s permanent ban precludes former state employees, who participated in proceedings related to the implementation of a contract during their tenure, from participating in future implementation proceedings arising out of the same contract on behalf of a private employer.

**Anthony Fortenberry**[I-18-132](#)

Under the Act’s one-year ban, a former project director is prohibited from appearing or communicating with his former agency, for compensation, for the purpose of influencing certain actions for one year after his employment. The one-year ban does not restrict appearances before agencies whose budget, personnel, or operations are not under the direction and control of the official’s former agency. However, the Act’s permanent ban prohibits the official from participating in certain proceedings involving the State of California or assisting others in the proceedings, if he previously participated in the proceedings while employed by the state.

**Charles Sikorsky**[I-18-143](#)

Nothing in the Act prohibits a former state agency employee from pursuing a professional opportunity with a university. However, the Act’s post-employment restrictions place limits on specific types of activities.

**Jerome E. Horton**[I-18-151](#)

For elected state officials, the Act’s permanent ban applies and the one-year ban commences when the official permanently leaves offices as defined in Regulation 18746.4. Additionally, the Act’s one-year ban prohibits appearances and communications by a member of the Board of Equalization, for the purpose of influencing certain actions, before *any* court or state administrative agency. Prior to leaving office, the Act’s conflict of interest provisions (Section 87100 *et seq.*) apply to determine whether a board member may take part in any particular governmental decision.

## Section 1090

### **Kristi J. Smith**

[A-18-126](#)

The remote interest exception in Section 1091.1 exempts contracts in which a public official has a financial interest from the prohibition in Section 1090 if the contract is affected by the Subdivision Map Act or a local ordinance related to land subdivision, the official discloses the nature of his or her interest to the applicable legislative body, and the official does not participate in any matter pertaining to the subdivision.

### **Tom Schroeter**

[A-18-141](#)

Under Section 1090, Councilmember who is a real estate broker may not assist his parents in negotiating the purchase of his parents' land by the City for well-contamination remediation. However, if the Councilmember does not advise or assist his parents in the transaction, and the facts do not indicate any other financial relationship with his parents, his participation in the decision as a city councilmember is not prohibited under the Act or Section 1090.

### **Elizabeth Calciano**

[A-18-152](#)

Councilmember may not make, participate in making, or use his position to influence any decisions regarding a City contract with his employer. However, Under Section 1091(b)(2), the Councilmember's interest is remote and, so long as he abstains from making or participating in the making of the City's contract with his employer, the City Council may execute the contract.

### **Jose M. Sanchez**

[A-18-157](#)

Section 1090 does not prohibit City from contracting with private engineering firm to provide engineering design services during construction of a project because the firm did not participate in the making of the engineering design services contract through its performance of the pre-construction design services required by the initial contract.