



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Ortiz, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Brian Lau, Asst. General Counsel

Subject: Possible Regulation Projects for 2024

Date: November 6, 2023

The following are summaries of possible regulation projects for 2024. After receiving input from the Commission regarding topics and the timing of the projects, staff will bring back a regulation calendar for Commission approval in January, 2024. We also welcome suggestions from the Commission and the public for regulation ideas not on the list below that would further the purposes of the Political Reform Act.

Honorarium ban – Elected officials cannot receive honorarium unless it is part of a bona fide business, trade, or profession. However, if the sole or predominant activity of the business, trade, or profession is making speeches, it is not considered “bona fide” and is subject to the honorarium ban. This regulation proposal would revise the definition of “predominant activity” in current regulations to permit elected officials to receive payment for public speaking engagements when the official had a business that preceded their election to public office. Source: Commission direction as a result of the Winuk Advice Letter I-23-009.

Transfers to interest-bearing accounts – Candidate committees are permitted to transfer committee funds to an interest-bearing account without violating the one bank account rule so long as the funds are transferred back to the committee bank account before the committee spends the funds. This proposal would amend Regulation 18534 to explicitly permit general purpose committees and political party committees to transfer “all purpose” funds to an interest-bearing account as is permitted for candidate accounts under Regulation 18524. Source: Legal Division staff suggestion based on an advice letter. (See Titus Advice Letter A-23-028.)

Committee jurisdiction determination – Under Regulation 18227.5(c)(1), a committee that makes more than 70% of its contributions or expenditure to support or oppose candidates or measures voted on in one city or county is considered a city or county general purpose committee. This designation determines where the committee files its campaign statements. This proposed amendment would revise Regulation 18227.5(c)(1) to clarify that the 70% threshold is calculated by counting contributions or expenditures to support or oppose candidates or measures, not all expenditures of the committee. Source: Legal Division staff suggestion based on email advice provided to LA Ethics and SF Ethics.

84308 Regulations – SB 1439 went into effect on January 1, 2023. It significantly broadened the scope of the Levine Act (Section 84308) resulting in the Commission extensively overhauling its regulations interpreting Section 84308. Since the amended statute and regulations have gone into effect, staff has identified additional questions and issues to clarify in the regulations. Source: Legal Division staff suggestion based on advice requests received and drafting of educational materials.

Audits performed by the FPPC– The Franchise Tax Board (FTB) and the FPPC’s Audits and Assistance Division share responsibilities for performing audits under the Act. While most of the statutes establishing the auditing requirements refer to both the FTB and FPPC, a few provisions refer only to the FTB but are also applicable to the FPPC when it is conducting audits. This proposal would clarify in regulation those provisions omitting specific reference to the FPPC apply to the FPPC in conducting audits as well. This proposal would also bring back a prior regulatory provision which permitted the FPPC to exclude from audit draws jurisdictions where its candidates were already subject to audit by the FPPC or a local agency. This provision was inadvertently repealed when a portion of a prior regulation was codified into statute. Source: Audit and Assistance Division staff suggestion.

COI Public Generally Exception – The current regulation governing the public generally exception to the conflict of interest prohibition does not adequately consider circumstances involving members of boards governing publicly-available infrastructure such as airports and harbors. This is because, while few people typically have a permit or lease to make use of the facilities, the jurisdiction for these boards are generally large (e.g. a county) and therefore its unlikely the “significant segment” thresholds in Regulation 18703 will apply. This proposal would add a specific public generally exception for members of districts primarily responsible for the management of airport, harbor, or similar publicly available infrastructure, if the member has a permit or lease for use of the facilities and the decision will affect all existing permit or lease holders in a similar manner without a unique effect on the board member. Source: Legal Division staff suggestion.

Carryover of Contributions – Under Section 85317, a candidate may carryover contributions raised in connection with one election to pay campaign expenditures incurred in connection with a subsequent election for the same office. Current Regulation 18537.1(c) defines “subsequent election” for the same office as (1) the election to the next term of office immediately following the election/term of office for which the funds were raised (2) the general election, which is subsequent to and for the same term of office as the primary election for which the funds were raised; or (3) The special general election, which is subsequent to and for the same term of office as the special primary election for which the funds were raised. The Commission may consider whether it wants to revise this definition of “subsequent election.” This definition was a matter of significant debate when the regulation was originally adopted in 2002. Staff will provide a summary of the prior rule making process at the January Commissioner meeting. Source: Commissioner request.

Paid Social Media Posts –Senate Bill 678, effective January 1, 2024, adopts Section 84513, which provides a disclaimer requirement for content posted on an internet website, web application, or digital application by a person whom a committee paid in connection with the post. The disclaimer indicates the person was paid by the committee to post the content. Similarly, current Regulation 18450.9(b) requires third parties paid by a committee to post on social media to include a tag or link to the committee’s social media account, which must contain a committee disclosure. This proposal would amend or repeal the existing regulation in light of SB 678 and adopt new regulatory language clarifying the application of SB 678. Source: Staff recommendation because of the new law.