



Approved November 16, 2017
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 10/19/2017](#)
Thursday, October 19, 2017

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

CALL TO ORDER

Chair Remke called the meeting to order at 10:00 am on October 19, 2017, at the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, CA 95811. Chair Remke and Commissioners Audero, Hatch and Hayward were present.

Welcome

Jodi Remke, FPPC Chair

03:05 Chair Remke: Okay. Good morning everyone. We're just going to go ahead and get started here.

Public Comment

1.Public Comment. This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed; request clarification; or refer the item to staff.

Chair Remke: I'll start with if there's any public comment regarding an item that's not on the agenda today. Okay, hearing -

Commissioner Audero: (Overlapping) Question; I have a question. This letter that came in - that came in a little bit, like, two minutes after or whatever. This is gonna become part of our discussion, correct?

Chair Remke: It's a public comment to item -

Commissioner Audero: (Overlapping) sixteen or whatever it is.

Chair Remke: Right, it –

Commissioner Audero: (Overlapping) It's gonna become part of this discussion?

Chair Remke: Well, it can be if you choose but it is definitely public comment to item 31.

Commissioner Audero: Yeah. I was just making sure that the few minutes late weren't going to keep it off. Okay.

Chair Remke: Okay. Any other public comment? Hearing none, the first item is approval of the Commission minutes.

Approval of Commission Minutes

2. Approval of September 2017 Commission Hearing Minutes.

04:00 Chair Remke: Any corrections or comments on the minutes?

Commissioner Audero: I do, yes.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, I just want to say, thank you. I don't know if it's to you, or to you Chair Remke, for the very detailed minutes. I'm not sure that's exactly what I meant but if that's how we get accuracy then I'll take that over what we had so I - you know - for however it is that it happened. I do ask, did we do that or is that something that we pay for?

Chair Remke: This time we paid for it because we do have a computer program and we wanted to be able to compare the program to see how well the program will work against a true transcript so we in the future will be using a program.

Commissioner Audero: Oh, that's great. So, can the program also tie - tie the transcript to like minute 1, minute 5, minute whatever? So, that we know how to find things because I've seen in depositions that happens.

Chair Remke: I'm not sure. I didn't - I didn't work with the program. But if -

Sasha Linker, Commission Assistant: It does have timestamps, yes.

Commissioner Audero: Oh, great so we'll see timestamps every once in a while.

Sasha Linker: If you'd like them.

Commissioner Audero: I think that would be great and then the only other thing is as to that transcript I think there's a typo on page 76 with respect to something that Mr. Woodside said

and we were talking about Bagley-Keene and, hold on, let me see if it was page 76 so it's - it's near the bottom of 76. 1, 2, 3, 4, 5 speakers up. So, it started with me saying - it was where Mr. Woodside, you were saying that you didn't see in - oh here it is - it's the third - the second from the bottom where it says 'Jack Woodside nobody answers ok then see any problem with that'. I think what you said was 'then I don't see any problem', I thought, right?

Jack Woodside, General Counsel: That's correct, I did.

Commissioner Audero: Okay so can you just correct that, and then with respect to the agendas that are - that are now posted and - and the meeting minutes that are posted. So, I went on to just kind of look around and I noticed that there are missing months. Is there a reason that we have missing months?

Sasha Linker: The approved minutes are for months that had meetings. So, there were months without meetings.

Commissioner Audero: Can you look at that just for next time because I think that there –

Sasha Linker: Absolutely.

- yeah if you could do that and then the only other thing that I like the fact that we now have the - the corrected agendas – sorry – minutes, it was there a way to say to flag for the public when a correction was made? So, that if they look at the agenda they don't know if a correction was made and then they have to kind of go find it is there a way to flag it like this the minutes that were - you know - part of this agenda were corrected and posted elsewhere.

Chair Remke: I think we can look to Robert's Rules and, because it does say note changes directly on the minutes, I believe. But we can do it according to the rules, which of course we're not following with this proposal but, so we could make that the notation so that the final minutes are kind of more of a redlined version - that shows where the changes were made.

Commissioner Audero: Yeah, yeah, I think that would make sense. That would help people because otherwise you have to read everything to figure out where the change was made.

Chair Remke: Anything else on the minutes? Is there a motion?

Commissioner Hatch: I move the minutes as corrected.

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

General Item 3

3. The Bagley-Keene Open Meeting Act, Presentation by the Office of the Attorney General. Staff: John Feser, Senior Counsel, Legal Division. Deputies Attorney General Ted Prim and Julia Zuffelato will present an overview of the Act and its major provisions that cover all state boards and Commissions, including notice and agenda requirements, public participation, closed session and meetings.

08:45

Chair Remke: Okay, and next we're going to have some training on the Bagley-Keene and – Jack, you want to introduce our guests?

Jack Woodside, General Counsel: Yeah, I'd like to introduce and welcome Ted Prim and Julia Zuffelato from the Office of the Attorney General both, by the way, former employees of the Commission. They're here to give us a presentation on the Bagley-Keene Open Meeting Act.

Chair Remke: And I understand that they've been gracious enough to allot an hour, thinking the presentations gonna be about 45 minutes I think give or take with time for questions that's thank you

Commissioner Audero: Hold on. I thought that –

Chair Remke: (Overlapping) Excuse me. If you could be recognized, please.

Commissioner Audero: Yeah, I have something to say.

Chair Remke: Okay. Commissioner Audero.

Commissioner Audero: So, in the last minutes, I'm sure I can find it because now we have the full-text I think you had said that the meeting - that the Bagley Keene discussion was going to go an hour or more. Are we now limiting it to an hour?

Chair Remke: I'm limiting and according to as the speakers have told me it would be 45 minutes with time for questions.

Commissioner Audero: So, what happens if we don't have all our questions answered?

Chair Remke: I guess we'll –

Commissioner Audero: Will they come back?

Chair Remke: Yeah, we can ask them back if it's not enough time.

Commissioner Audero: That would be great.

Chair Remke: Okay. Any other questions before we get started from the Commissioners? Okay, hearing none.

10:53

Ted Prim, Deputy Attorney General: Good morning. And, we're here as long as you want us today. I understand you've got a full agenda and so we'll do the best we can to - to get through things. The - the format that we'll work on is that we present the training in segments and we'll take questions and also try to answer the questions that were submitted in advance at the end of each of those segments. If we haven't covered it in in the middle so that way you don't have to remember all your questions to the end of the of the training.

So, first thing, which is something I think you've all probably figured out by now, which is that the Bagley-Keene Act can be frustrating, and it sometimes deprives you of your natural communication pattern. And, compliance with the Bagley Keene is not intuitive. So, what we want to do is to try to impart an understanding of the Bagley-Keene and how it works and, also, of the underlying philosophy. Because if you understand the way it was built, then I think it makes it a lot easier to embrace what otherwise seemed like pretty clunky provisions in operation. Probably the single biggest complaint that we get about the Bagley-Keene is that it's not efficient. It's not surprising because it was - it was the purpose of it is not necessarily to be efficient.

There were other values that underlay the whole process so the thing is that when the legislature, or in your case, the people, decided to put together a multi-member body they were opting for a value other than efficiency. If - if you had wanted efficiency, what you would do is build a pyramidal structure with a department head at the top and a staff below that and the person at the top would make the decisions and that would be expected then to run efficiently. But when you opt for consensus building as your top value, what you do when you put together a multi-member body, then you're opera asking for a whole series of - of different things such as: Different backgrounds amongst your Commissioners, different viewpoints, and different experiences. And you want all those things to play out in the course of a debate and deliberation and a give-and-take process to help you get to the best answer and all of that takes time and - and so that is a process which inherently then is not necessarily efficient.

Now, the legislature made a still, a further decision, towards inefficiency when it adopted the Bagley-Keene Act because the primary value for the Bagley-Keene Act was to make sure that when you sit down to do your consensus building that we have public participation. That the public has a seat at the table with you as you are going through your consensus building process. So, open meetings, advance notices, the right to testify, and the right to get records. All of these things are things that promote public participation in the process and it some of those things are the things that, then, slow the process down and make it more difficult from efficiency standpoint.

Now, whenever you have a closed meeting or when you have, and we'll spend a lot of time talking about serial meetings along the way here, a serial meeting process, then what happens in that situation is that the public is deprived of its ability to participate.

We actually take their Chair and we move it outside and - and so that defeats the purpose of public process of public participation. So, obviously, then you want to try to minimize the situations where you take the public's seat away from it. So, if you can remember those two things; that it's a consensus building process and that the participation of the public is almost as important as your participation in the process, then I think that that helps to - it just makes it easier to accept the difficulties that you run into with having to do advance notice and some of the rules that had come around the public meeting process.

So, we're going to now get into more specifics about agendas, and what are meetings, and what kind of serial communications and public participation, and all that kind of stuff. But is there anything that you want to talk about right now at this introductory stage of kind of laying the philosophical foundation of the of the Act before we move on? Okay.

Julia Zuffelato, Deputy Attorney General: Good Morning. I think you can hear me okay. Closer? I'm going to talk about the definition of state body. There are five types of state bodies that are subject to the Bagley-Keene requirements. The first type is a state body created by statute the Commission is created by statute and is subject to Bagley-Keene. This would apply to any advisory body that would be created by statute even if it doesn't have decision-making authority. The second type of state body is any body created by an executive order of the Governor. The third type of state body would be called a delegated body and that would be a body created by a state body and it has two or more members and it exercises discretionary authority in between meetings of a state body. A fourth type of state body or advisory bodies of state bodies and this type of state body is advisory in nature. It does not exercise decision-making authority and must have three or more members and the three of our members may be members of the state body but it doesn't have to be. This - advisory bodies can take the name task force, subcommittee, really any type of title and must be created by formal action of a state body. A formal action, though, doesn't necessarily mean a formal resolution. The courts have been - have interpreted formal action broadly and - and what it means is really any action taken by a state body to create an advisory body. So, for example if you direct your Executive Director to create an advisory body you have created an advisory body subject to Bagley-Keene. Advisory bodies can also be created by state body members and this could happen where you have three or more members who regularly meet outside of a public meeting. Even on larger boards where the three members are less than a majority. If over time they meet on a regular basis they may inadvertently create an advisory body that, well, after several meetings could become subject to Bagley-Keene requirements. The fifth type of state body are can include private governing bodies or - or local bodies where a member of a state body serves on the governing body as official representative of the state body and that local or private body receives funding from a state body. Now the Act applies as

soon as a member is appointed to a board or Commission. It's not after they take oath or it's not after they attend their first meeting it's immediately upon appointment. And, do you have any questions about state bodies? Yes?

Commissioner Hatch: Yes, you were saying - that I missed something there but you got to advisory bodies of three or more. A subcommittee of a body becomes subject to Bagley-Keene if there are three or more of the subcommittee. Is that what you're saying?
20:06

Julia Zuffelato: Yes.

Commissioner Hatch: Right, so, it's not you can't have it - say a two-person subcommittee, it's just that this if it's three or more it's subject to Bagley-Keene.

Julia Zuffelato: So, if you have a two-person subcommittee, but they exercise decision-making authority, then they are a delegated body but if they are only advisory then they do not.

Commissioner Hatch: They would make recommendations back to the full body.

Julia Zuffelato: Okay, then they are not subject to Bagley-Keene if it's just two members.

20:33 Commissioner Hatch: Right, but they could still be created and carry out a purpose? Okay.

Julia Zuffelato: Yes.

Commissioner Hatch: Thank you.

Ted Prim: Okay. So, now we'll go on to exactly what is a meeting. The basic kind of meeting is the one we're having here today where we have a majority of the body all gathered together deliberating on items that are under the jurisdiction of the body. And that is the - the basic definition of a meeting. It's a majority of a body discussing deliberating or taking action on items under its jurisdiction. It can also include situations where you're just receiving information, and we had a question on that, so, we'll talk more about that in a little bit. There are several different types of meetings the one that you mostly deal with is - is the regular meeting with the 10-day notice and the agenda that gives a brief general description of what you're going to be discussing. There's also a provision for a special meeting that can be held on a 48-hour notice but it's limited to certain subject matter and the Commission has to make a finding prior to that meeting. There are emergency meetings which rarely come up, but, in the case of a threat to an election perhaps emergency meeting would be appropriate for - for this Commission it doesn't apply to most state bodies and then we have telephone - teleconference meetings where people from remote locations are actually included as part of the meeting and that's if you have Commissioner events off-site we have certain rules and regulations that surround that that Julia will talk more about later. The other thing that it covers and the

one that is the subject of a lot of conversation or what we call serial meetings which is where we have a series of communications which - which when taken together involve a majority of the body that are discussing or deliberating on items under the jurisdiction of the body and more likely related to an agenda item in front of the Commission. And those - those can happen through what we call a chain and so in each of these examples I'll be talking about a five-member Commission where A talks to B and then B talks to C on the on the same topic. So, we then have at the end of those two conversations we now have three members of the Commission that are involved in that communication you could also have a hub-and-spoke where A talks to B and then A talks to C and you have the same thing that way. It can happen through intermediaries. That's not as likely for a Commission like this as it is for one where each Commissioner has their own staff person and then the staff people get together and talk you - you have a general staff that represents all of you and there is a staff briefing exception that I'll get to in a moment. So, meetings can occur face-to-face but they also can occur through email, telephone, text messaging, and then of host of things that a man of my age has no idea how to do, but I understand that there are many other ways to communicate on the phone and on the web and - and all of those things again if you bring a majority of the body into the communication then those things would constitute serial meetings. And coming back to what I started off with, again, the reason for those things being viewed as meetings is that the business of the Commission is being advanced through conversations and ideas that are developing and things and the public is not there. They have no ability to hear what's happening or to question it or to make their own contribution to it and so when we have a serial meeting, then we are taking the public out of the equation. Our office wrote an opinion some years ago - it's - it's - it's dated but I think it helps to explain some things. It was basically a chat room type of format and the question was asked that if there were open access to this chat room, was there a reason why Commissioners couldn't get together in the chat room? The transcript would be made of what was said in the chat room so anybody could come in later and see what had been said and anybody could come in and participate and wouldn't that be okay as a way of Commissioners exchanging ideas? The opinion from the attorney general's office said no but that's not adequate on several levels. First of all, you don't have specific times noticed where everybody knows that that's when business is going to be done so you may show up in the chat room and the business has already occurred. Secondly, not everybody has access to a computer and the ability to get into a chat room. And so, primarily for those reasons about for some others they concluded that that that was not an adequate means of communicating but that was an illegal serial meeting. So, I mentioned the pre-meeting briefing exception. For a long time there was a discussion as to whether or not it was a serial meeting if the Executive Director for a Commission were to - to touch base with each of the Commissioners prior to a meeting primarily to say: Okay we've got we've got these three main items on the agenda, you got the - the packet, have you had a chance to read it, is there anything that that you need, any basic questions that I can answer to get you ready so that that you'll be prepared to - to attend the Commission meeting. And those were often viewed as serial meetings. So, the briefing exception was put into the statute and it says that a staff person can make these individual contacts but they have to be in separate conversations so if the Executive Director were to contact Commissioner A

that has to be done separately. Commissioner B can't be there at the same time and the second requirement is that when the conversation with Commissioner A is completed and the Executive Director talks to Commissioner B they can't pass on to B what A said. So, you in it's a way of the legislature saying you know we don't want you acting as the hub in a serial meeting amongst the Commissioners because you'll talk to each one and pass along to each of them what the others had to say so in the - the meeting exception - briefing exception you can't do that. Now the purpose of this is - is not to conduct a meeting it is as I indicated it's basically just to be able to - to touch base and make sure that the Commissioners have the information that they need in order to do the meeting it should not be viewed as a way of getting around the open meeting provisions.

I feel pretty confident that if that kind of facts and area were to come up before the courts or before an opinion that the Attorney General's office, that those would be viewed as being outside of the statute so the serial meeting process is really frequently where the rubber meets the road for boards and Commissions. Everybody understands why people want to have these meetings because it's how we operate as human beings. We - we want to get to know what our fellow decision-makers are thinking what they're reacting to what they're seeing is problems and try to figure out how to surmount those things so with - without the requirements of the Bagley-Keene that's how we'd all do business and - and it's a fine way of doing business but as I discuss the problem is when you when you do it that way here then it takes the - the public out of the process and the legislature is determined that that's - that's not an acceptable situation, so. That's - that's kind of where we are with serial meetings. So, two things that we wanted to come back and focus on because there were questions asked about it. One has to do with the concept of the mere transmittal of information as being a meeting. There's - there's this this thought that if all I'm doing is receiving information and I'm not talking that that shouldn't be a meeting. So, let me tell you about one attorney general opinion and then I'm going to turn it over to Julia to add some additional comments this particular question that was posed to the Attorney General's office probably thirty years ago - probably more actually - had to do with a Planning Commission and a developer who was going to be coming before the Planning Commission and so what was agreed was that Commissioner A and Commissioner B would sit down with the Planning Commission - would sit down with the developer, and the developer would go through and make his presentation at that point B would leave and C would come in and we'd do it again. Then C would leave D would come in and we'd do it again. And then E. So, we reached the full five members. None of the members say a word it was all just a presentation of information to them and the Attorney General opinion concludes that that's a violation of the serial meeting provisions. Even though there weren't any questions being asked and no discussion made by the Commissioners, that they were receiving information about decisions that were going to be forthcoming and that that was part of the decision-making and deliberation process and so it - it counts as a meeting despite the fact it's passive receipt of information

32:00

Julia Zuffelato: Right, the courts have taken the view that the Bagley-Keene Act applies to all phases of deliberations. Which starts with information gathering, analysis, debate, negotiation, and decision making. One court has said that deliberations include not only collective decision making but also collective acquisition and exchange of facts preliminary - preliminary to the ultimate decision. There are AG opinions and cases that have held that facility tours, investigations, fact by sessions, all of these types of majority gatherings are subject to Bagley-Keene requirements even if a decisions not going to be made at that particular gathering.

Chair Remke: Can I ask a question on the information issue?

Ted Prim: You bet.

Chair Remke: So, as I'm sure in a lot of Commissions and boards, we receive public comment. Sometimes for ideas and proposals and so I'm just how do we respond or is it a concern when a third-party emails all the Commissioners directly with a request, or an idea, or an issue?

Ted Prim: So, and is this on an agenda item or not on an agenda item?

Chair Remke: Let's go with both. Let's say it is on an agenda item and then let's say it's on a proposed agenda item.

Ted Prim: Well, to the to the extent you - you can it seems to me that it is - is best for the public not to be sending you direct emails. Especially to all five of you on the same email. That - that is an accident waiting to happen. So, it's a matter that's scheduled for your agenda the best thing to happen is for that communication to go into your agenda package. And then you get it in connection with the meeting, where you can study it along with the other things and - and deal with it accordingly. So, that would be the - the best way from a process standpoint. If it's - if it's an item that's not on the agenda, and it's somebody who wants to get something on the agenda or whatever, it's not it's not quite the same problem because the - the process of deciding on a date for a meeting or a time for a meeting or a place for a meeting - All those things are not really covered by the Bagley-Keene. There's a - there's a understanding that that those are kind of preliminary too. So, if you stay out of a substantive aspects of it you're just doing the procedural deal of when and to meet that that's - that's not prohibited under the Bagley Keene and the decision to put an item on the agenda is much the same way again staying out of the substance of it. So, the decision to put an item on the agenda should not involve a discussion of the substantive merits of that item, but merely the question of whether this is something that the Commission is going to put on its November agenda or - or not. You can do that out of public meeting that's - that's a great way to do it obviously because then everybody gets to communicate but the idea of putting an item on the agenda doesn't have to be done at a public meeting so long as you watch the boundaries as you go. So, but overall, we would we would counsel against emails that are sent to all of you. Especially if they're sent to you in the To line or the CC line. It's at least better if you're in

the BCC line so that you don't respond to each other. You're not tempted to do that because it's so easy to fall across the line when you get something in that and that you know it - it really calls to you to make some response or something and you hit that reply all button and now we have a violation on our hands. So, anything you can do to protect yourself from that we would encourage as a good thing

Commissioner Audero: I have a follow-up question.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, your answer on: If it's on the agenda or not on the agenda. But let's talk of on the agenda emailing all of the Commissioners. And your answer was, that's an accident waiting to happen. But I think the question is - is it a violation of Bagley Keene to simply receive an email from the regulated community, from the public, from whoever. All five of us, or, one day five of us. I - I don't find anything as I read Bagley Keene but you're the expert that says we can't simply receive as long as we don't respond.

Ted Prim: You probably - nobody's probably going to bring any kind of an enforcement action against it. What - what we would say is what - what you wanted to try to make sure of is that in some way that the Commission is not facilitating a serial meeting. So, the members of the public they - they can come for example and talk to each of you and there are, I guess what I would say is, that there are disagreements in the legal community about what happens if a member of the public shares information from one to the other of you. We know the staff can't do - can't do that under the briefing exception. If the public does it, I think there are some that say that's not a problem necessarily and there are others who will say it is. It certainly is if the Commission is doing anything to kind of encourage or enable the member of the public in facilitating this serial communication amongst you then that - that gets into being a serial meeting. So, my - my answer is that just receiving it, and we'll find out Julia agrees or not, probably in and of itself is probably not a violation but it's - it's not a great practice and it's one that then may lead you into violations. And so, best practices would say try to find a way to avoid standing so close to the edge.

Commissioner Audero: Can I just - I understand best practice. I get all of that. But if you have a situation where the public wants to make sure that we all hear something. Just - I just want to be very, very clear. Just sending us an email is not a violation of Bagley Keene, correct? Yeah, as long as we don't respond, we don't create, we - we do everything we were supposed to do to not create a serial meeting in response. If we just receive it. Just read it. It's - I don't see anything in Bagley Keene that says it's a violation.

39:57

Ted Prim: I - I would say that it is probably not a violation. I think there are colleagues of mine who say it - who would say that it well might be. So, that's why I'm saying, you know, there are there are some disagreements in the community and I would also say that

you're standing close to the edge. And - and a lot of it may you know depend on other factual things that that surround it that are not in our naked hypo here. So, you know, the public - the public does that they do it from time to time and you can't stop them and obviously, that's - that's not going to end up making you culpable for something that you had no control over. On the other hand, to the extent that you have the ability to redirect it and avoid that situation I think that's a healthier situation.

Commissioner Hatch: I have a question about the: Not on the agenda aspects. Say for instance one of the Commissioners wants to get something on a future agenda and I think our - our internal rules say, you know, you asked the Chair but is there anything, any violation of the Bagley Keene, to inform the entire Commission of your desire to have a manner on the ballot - I mean on the agenda in a future date?

Ted Prim: So, here's how we reason that. The Brown Act in particular talks about special meetings. They're special meetings little provisional provision a little bit different than the Bagley Keene Act but it talks about how the - the I believe it talks about how the Chair or the majority of the Commissioners can place an item on an agenda - as a can call a special meeting and so from that we infer that the legislature understands that somehow you've got to get this process started of - we're gonna have a meeting, what are we going to have it, where are we going to have it, what are we going to talk about?

And there's - there's nothing that says that that's always in control of the Chairperson I mean I think frequently where that emanates from as a Chairperson and the Executive Director because they're kind of the administrative engine for boards and Commissions. But a majority of the body can place on an item on an agenda and it would be a kind of a catch-22 thing if you could only do that if that were on the agenda. So, the answer is that I believe that you any - any Commissioner can start that conversation, about let's put this on the agenda, and if there's a majority of a - of the Commissioners that want to put it on there - it goes on there or if there's, you may have an internal process that, you know, makes for more lenient rules in that. So, the big caution on that though, is not to discuss the substance, it's you know the - the reason - the reasons that it ought to be on here because we - we need to we need to do this because it's a good thing or whatever. You got to stay away from that part of the conversation

Commissioner Hatch: (inaudible)

Ted Prim: Pardon me?

Commissioner Hatch: Sort of pre-selling the issue.

Ted Prim: Right. So, you need to stay out of substance but the decision that the issue - of put it on are not put it on without discussion of substance is something that that you can do different.

Commissioner Hatch: (inaudible) question earlier about all the new modern ways that you can violate the Bagley Keene, you know, with electronic equipment. The old-fashioned note passing is also covered, correct?

Ted Prim: Yep.

Commissioner Hatch: I had somebody - confronted me about note passing since the last meeting and I'm over here at the end so I don't see a lot of what's going on but they claimed that they could see people up here passing notes back and forth (inaudible).

Chair Remke: That was about Ted not being able to stay. That was the note, but, just go on.

Commissioner Hatch: (inaudible)

Commissioner Audero: And, unless you knew, you could see how the public might not appreciate it.

Ted Prim: Okay. shall we move to the next segment?

Commissioner Audero: Actually, I have a question about types of meetings.

Ted Prim: Okay.

Commissioner Audero: So, under Bagley Keene, I think, there's the special emergency and this other one, that has no name, but that I think I've read in some cases that it's called like an urgency. Right? It's the -

Julia Zuffelato: I'm actually gonna talk more about that -

Commissioner Audero: - Okay -

Julia Zuffelato: - a little bit later

Commissioner Audero: Okay. So, that's good. Then - then I have another further question before we get off the subject. On - does Bagley Keene in any way govern, other than serial meetings, okay, so let's take that off the table the a discussion, even if it's substantive, even if it's a about an item on the agenda, between a non-majority of Commissioners?

Julia Zuffelato: For you, no.

Commissioner Audero: Okay.

Julia Zuffelato: But, if it was a larger board and there were three or more members then it could be potentially an advisory body.

Commissioner Audero: So, and then how do you calculate the majority. I mean, in our board I get right now we only have four, so, well I guess it would be three no matter what, right? Because you don't get to majority out of four.

Ted Prim: Right.

Commissioner Audero: Okay, but okay, and then does Bagley Keene cover, in any way, cover, other than serial meetings which were taking off the table for now, a discussion between a Commissioner and a member of the public on a substantive issue?

Julia Zuffelato: I will get to that one too.

Commissioner Audero: Okay, that's good. That's good. Then I'll wait. Thank you.

Julia Zuffelato: So, moving on I'm going to talk about gatherings that involve a majority of the Commission that doesn't implicate open meeting requirements and there's some express exemptions. The reason why it's so difficult to answer the question that you had about the email to all Commissioners from a member of the public is there actually isn't an express exemption for that. So, it's not as easy to say 'oh that's fine'. I mean, it really is kind of a factual question. But, I'm going to go ahead and go over the express exemptions a majority of you can attend a conference that is open to the public and covers matters of general interest and it won't be considered a meeting of the Commission as long as you are not discussing Commission business at the conference.

Another exception, you could - a majority of you could attend a public meeting of another government body or even a private organization as long as it's open to the public and concerns a matter a topic of state interest. Again, it's not a meeting the Commission as long as you guys aren't discussing Commission business at this public meeting some boards and Commissions -

Commissioner Hatch: (Overlapping) can you give me (inaudible)

Julia Zuffelato: Anything under the jurisdiction of - a conversation about anything that falls under your jurisdiction. Whether it's personnel, or the Political Reform Act, regulations, enforcement cases...

Commissioner Audero: Would - would a discussion among the members of our body about the Bagley Keene Act be a violation of the Bagley Keene Act? Since that's really not under our jurisdiction.

Julia Zuffelato: Well, but, complying with it would be under your jurisdiction. So, we would say yes. So, because it governs your internal procedures, which is under your jurisdiction.

Commissioner Audero: So, jurisdiction is super broad. It's beyond what we can actually affect.

Julia Zuffelato: Well it's - it's anything where you're making decisions regarding - And so, internal process is something that you can vote on in terms of how you're going to govern - how what rules will govern your internal organizational processes.

49:28

Commissioner Audero: But, okay, so like, if we're having a discussion about a committee that may be formed or the process of that – I - is that what you're talking about?

Julia Zuffelato: Yeah, I think that would be something that would come under your jurisdiction. You know, sometimes there's a question about best practice of complying with Bagley Keene that will affect what your internal process might be and that is something that would fall under your jurisdiction. That should be something that you shouldn't be discussing outside of a public meeting.

Commissioner Hatch: (Inaudible)

Ted Prim: Let's see if we can let - let Julia get through this part of the segment and then - then try to see if there are questions that are unasked at that point, if we can. I think our experience is it tends to work a little better that way, if we can.

Julia Zuffelato: Another exception is if - if you've created a standing committee and it it's a subcommittee, that has a regularly scheduled meeting, a majority of you could attend the standing committee and it wouldn't be considered a meeting of the entire Commission as long as the Commissioners who are not members of that standing committee attend only as observers. This isn't one that comes up for you, but it is one of the express exemptions. Social gatherings or ceremonial gatherings; a majority of you could attend a social gathering, even go out to lunch, as long as you are not discussing Commission business or matters that fall under the jurisdiction of the Commission. Another exception recognized in case law is that sometimes you want to receive legal advice that's protected by the attorney-client privilege so you don't want to receive it at a public meeting. Case law allows your attorney to give you one way written legal advice outside of a public meeting and that's not subject to open meeting requirements as long as you're not discussing the letter among yourselves outside of a public meeting. This is - the final exception is what we've been talking about there's an express exception that allows each Commissioner to talk to another person and what this means is that a member of the public can talk to each of you and there is some tension there because while collective acquisition of facts is - is something that would -should be subject to open meeting requirements the public also, and members of the Commission also can meet and - and

talk with each other. There's a couple of caveats of course. So, the first caveat would be what was discussed earlier these one-on-one meetings with members of the public cannot be used by Commissioners to orchestrate a serial communication amongst each other. And, the second caveat is that there are other laws outside of Bagley Keene which may limit the ability of Commissioners to have one-on-one conversations. For example, the APA has some restrictions on ex parte communications and certain quasi-judicial proceedings. So, any questions on - on gathering not subject to open meeting requirements?

Commissioner Hayward: Yeah, I - in both the exception regarding attendees of a member of a conference and attendings majority of a member at an open and publicized meeting, it's - you were saying, well you can't talk amongst yourselves about a matter under our jurisdiction other than as part of the scheduled program.

Julia Zuffelato: Yes. Thank you. So, if you're on a panel and - and a matter comes up that does involve the political reform act and you're discussing it as a member of the panel to the audience, that's - that's actually - that's fine. It's - we're concerned about the members, you know, in the corner discussing something that's not as part of the scheduled program.

Commissioner Hayward: Right, but I mean - I mean my plain reading of this is that the California Groupies for Political Law, or whatever you want to call them, have a panel and put all of us on the panel and we could talk about pretty much anything we want, true?

Julia Zuffelato: I - yes - I mean except for I mean to the extent you're gonna start taking votes - I'm going to say heavily...

Commissioner Hayward: (Overlapping) Then I don't think I'll take an effective vote though because it's not noticed and stuff.

Ted Prim: And, it does - does have to be open to the public.

Commissioner Hayward: Yeah, right. But, I just want to make sure that my very plain reading doesn't have some other judicial gloss on it that I was missing. Okay, thanks.

Commissioner Hatch: I had a question. (Inaudible) which one it was but you're talking about a two-person ...

Ted Prim: Advisory committee?

Commissioner Hatch: (Inaudible) label that you put on it but that other Commissioners could come in observe but not participate?

Julia Zuffelato: Yes, if you had a standing committee.

Commissioner Hatch: A standing committee.

Julia Zuffelato: Of - that is open and noticed and it's a meeting that's - that's already complies with the open meeting requirements. If you wanted to attend one of those without it being a meeting of the entire Commission, you could attend as an observer if you aren't on that particular committee.

Commissioner Hatch: What about an ad hoc committee that's set for one purpose?

Julia Zuffelato: I don't know. I have to research that.

Commissioner Hatch: (inaudible)

Julia Zuffelato: Right.

Commissioner Hatch: (inaudible) like a sub-group of us.

Julia Zuffelato: I don't know at what point a committee stops - becomes a standing committee. I will have to get back to you on that question.

Commissioner Hatch: Earlier, you said that three or more would be under Bagley-Keene.

Julia Zuffelato: Yes, so it would be a standing committee of three or more members.

Commissioner Hatch: A committee of two members because if there were three it would be the majority (inaudible). So obviously, it can't be three.

Julia Zuffelato: Right.

Commissioner Hatch: (inaudible)

Julia Zuffelato: So, if you wanted to have a two-member committee - stay a two-member committee then you couldn't have this exception where anyone from else from the Commission attends your meeting.

Commissioner Hatch: I'm sorry, (inaudible)–

Julia Zuffelato: Have any other Commissioners attend your meeting beyond the two Commissioners.

Commissioner Hatch: Even in that observation role you described before?

Julia Zuffelato: And – well, if you wanted to go ahead and have it be an open and noticed public meeting.

Commissioner Hatch: Okay.

Julia Zuffelato: Then ...

Commissioner Hatch: (Overlapping) Voluntarily ...

Julia Zuffelato: Yes, and then you - the other Commissioners could attend but they could not participate in any way. Not even as a member of the public they could only just observe.

Ted Prim: Right, so observer means you can't sit on the dais and it means you can't talk.

Chair Remke: Two-person ad hoc committee is not subject to Bagley Keene, is not subject to notice rules, and can meet with third parties.

Julia Zuffelato: Yeah, it kind of depends on how that would be structured. Because the - the committee doesn't necessarily have to be made up of Commissioners and so it depends on if your - if you - like, for example many boards and Commissions have two members who will meet with members of the legislature and that's - that's it's fine. But, if but, generally to say you can meet with third parties if the third party is kind of integrally involved in formulating recommendation with the two other members then that may be a problem.

Ted Prim: I'm not sure exactly what you're thinking of there, Julia. I mean that as I understand it, correct me if I'm wrong, if you have five-member body if you have a two-person Advisory Committee, so they don't have decision-making authority, they haven't been delegated the power to do anything. It's just a two-person Advisory Committee, they're just off the grid, right?

Commissioner Hatch: You're gathering facts to bring back to the full body.

58:36

Ted Prim: And so, in doing so, they can meet with people, they can meet with themselves, they can talk on the phone, they can talk to staff, they can, you know, because it's only two of them.

Julia Zuffelato: Right.

Ted Prim: And, they can't share with any of the other members.

Julia Zuffelato: It's just a - if it's the - if there are third parties that are attending every single meeting, I think there could be a potential -

Commissioner Hatch: (Overlapping) I wasn't thinking of that.

Julia Zuffelato: Okay.

Commissioner Hatch: (inaudible) that they could for instance invite special, what do you call people who have unique knowledge that could be shared with them on. So, they can maybe, a different person, other times, you know, just trying to gather facts.

Ted Prim: They could call on different experts.

Julia Zuffelato: Yes.

Ted Prim: Come and talk to them for purposes of gathering information and reporting back to the full Commission. That would be correct.

Commissioner Hatch: And they could still voluntarily notice – (inaudible) - trying to gather – (inaudible).

Ted Prim: Yes, that's correct, they could do that.

Commissioner Hatch: But, if Commission members who are not a part of this body wanted to come, they could - they could not come unless it's a noticed ...

Ted Prim: If, once the third person comes, then you have a meeting of the Commission, and the only exception to that is if it's a standing committee and they attend as observers.

Commissioner Hatch: Okay.

Ted Prim: Okay. Otherwise, third member blows it up.

1:00:10 Chair Remke: They're back on the grid.

Ted Prim: Right.

Commissioner Audero: But, that's a third member of the Commission, not a third party. I'm thinking third party as like ...

Julia Zuffelato: (Overlapping) Right.

Commissioner Audero: Everybody. Not us. So, that's okay.

Ted Prim: Correct.

Commissioner Audero: Two plus one third - two plus one non-Commission member or two plus ten or two plus 20.

Julia Zuffelato: I didn't mean to make it complicated but, I - to the extent that the Commission may say 'hey you two board members go meet with Expert A and have a

bunch of meetings and come back with a recommendation,' that might be a problem. That could be an advisory body not a two-member body because an advisory body doesn't have to be made up of just Commissioners.

Commissioner Hatch: But it may be. There's nothing that prevents that.

Julia Zuffelato: Right.

Ted Prim: I mean, generally, you can have a two-person Advisory Committee that goes off and meets with experts and collect stuff and -

Julia Zuffelato: (Overlapping) Yes.

Ted Prim: Comes back. I think you're - you're just trying to make sure that you don't give advice that crosses the line in the sense that I think - I think what Julie is concerned about is that you can have members of the committee that are not members of the Commission. So, for example, you could create a committee of two Commissioners plus a member of the Political Attorneys Association to go out and gather information on a particular topic so now one of those people is not a member of your Commission but because they've been appointed to this subcommittee they are a member of the subcommittee. You follow what I'm saying? So, she's trying to avoid the situation where somehow you get into a situation where these members of the public somehow actually become members of the committee but so long as you don't get into that issue of them becoming members of the committee if we only have members of the committee that are members of the Commission then you can have two members of the Commission and they can meet basically with anybody and talk about anything without being covered. So long as it's an advisory committee.

Commissioner Hatch: (inaudible) If this body is delegated to go find facts on a framework of issues and, other Commissioners would like to give input as to what things that they should be investigating, can they, like we did here with the questions, submit them to Chief Counsel and then they inform or - I'm talking about avoiding doing something inappropriate here.

Julia Zuffelato: Yeah

Ted Prim: Yeah, we think we think you better do that at an open meeting.

Commissioner Hatch: Okay.

Ted Prim: Yeah. Right, of the Commission.

Commissioner Hatch: The full Commission.

Ted Prim: With an agenda.

Commissioner Hatch: Okay, good.

Commissioner Audero: And, if you're on that committee and you're one of the two members, you can go out and talk to anybody, right? It's not just an expert. You keep talking about an expert but I'm thinking you - you don't mean an expert, per se, you mean just sort if you can provide facts.

Ted Prim: You can talk to anybody but you can't talk to other Commission.

Commissioner Audero: Correct, correct and can - we can - can one or two - can that committee, either one person alone or the two people, can they talk to a group of people who are - none of whom is a committee member - a Commission member?

Ted Prim: Yeah. Yes, generally so. I mean it's always a little nerve-wracking to answer things in the abstract, but, well generally speaking, the answer, absent some specific facts, the answer would be yes. You can - you can go off and those two members, or one of the two members acting on behalf of the two of them, could go off and meet with some - some interest group. If that's what you're asking?

Commissioner Audero: Yeah.

Commissioner Hatch: (Inaudible) advisory to the main body would like to hold a public hearing, to seek broad input on the subject matter that they're investigating, as long as they voluntarily applied Bagley Keene to that meeting, that would be all right?

Julia Zuffelato: Under Bagley Keene there's no prohibition.

Ted Prim: Yeah. So, the answer I think - the answer is, you wouldn't have to apply Bagley Keene but you certainly could.

Commissioner Hatch: If we want to seek opinions from other Commissioners then we should try to schedule a report at the full meeting where that interchange could take place as noticed.

Ted Prim: Correct.

Commissioner Hatch: Agenda item of the full Commission.

Ted Prim: Right.

Commissioner Hatch: To seek input – (inaudible) – okay.

Ted Prim: Okay, ready for the next?

Julia Zuffelato: So, I'm going to go over the meeting and notice requirements. So, you're going to have a meeting. The notice must be posted on the website ten calendar days before the meeting, must be provided in writing upon request, and must be provided in alternative formats upon request. The notice must include a specific agenda of each of the matters to be discussed at the meeting. The Act says about 20 words. The test that is in our AG opinions is - is it - it should give the average person enough information to make an informed decision whether to attend the meeting. We generally discourage generic agenda descriptions, such as Executive Directors report, might be generic depending on a topic that might be discussed under that heading. And also, the agenda description should convey the whole scope of the decision. The - the AG opinion says that it - the public should not have to be clairvoyant or resort to collateral information to understand the Commission's intended action.

There's a couple of cases, there was a case involving a school district and the agenda description was Continuation School Site Change. And the court there held that it did not provide adequate information that the school district intended to close a program, a continuation program at a high school and a second program at an elementary school. Another case involved a decision where the agenda description was subdividing a parcel and the court said that was not adequate information that the body also intended to adopt a negative mitigated declaration. A mitigated negative declaration.

So, it's how do you - informed the public of the whole scope of the decision and - and that the public knows what's going to be discussed at the meeting. Generally, for - for say a loan or grant we encourage that the amount of the loan or grant be on the agenda if it's going to involve contracts or say enforcement actions we encourage that the party be listed on the agenda. These are material items that the public would be interested to know and may inform their decision whether to attend a meeting. If the matter is not on the agenda Commissioners may not discuss the merits of the item even if they don't take any action.

Items may not be added to the agenda after the 10-day notice period but there are two exceptions. One is if it qualifies for an emergency meeting, which Ted discussed earlier. And the second would be if a matter came to the attention of the Commission after the 10-day notice period and the Commission determines that there is need to take immediate action. This would allow the Commission to give 48-hour notice of the this added agenda item. This has come up where, an example, there was a financing where certain terms of that I where we I was working on it with my client and the board had approved of financing and then it was supposed to close right before the next meeting. But then the market turned and the terms of the financing were - had to be changed. And it was, you know, eight days before the meeting and we decided that because of the change in the market that was something that came to the attention of the board after the 10-day notice period but that immediate action was required. And the Commission needs to make a finding before the start of the meeting with two thirds vote that immediate action is required

1:10:22

Commissioner Hatch: (Inaudible) - whole thing is framed around issues that we intend to take some sort of action on, correct? – (inaudible)

Julia Zuffelato: Yes.

Commissioner Hatch: Just –

Ted Prim: (Overlapping) Well no they don't have to be action matters.

Commissioner Hatch: (Inaudible)

Julia Zuffelato: For the exception to the 10-day notice?

Commissioner Hatch: I'm sorry. I wasn't talking about the exception.

Ted Prim: (Overlapping) Yeah, he's talking about the agenda in general.

Julia Zuffelato: +Information and action items.

Commissioner Hatch: Needs to be fully formed – (inaudible)

Julia Zuffelato: The scope of the decision.

Commissioner Hatch: (inaudible)

Julia Zuffelato: There are special rules that apply to teleconference meetings ...

Commissioner Audero: (Overlapping) Before you go to that, can I - this is the urgent meeting that I was asking about. Can I just ask that question real quick?

Julia Zuffelato: Yes.

Commissioner Audero: So, as I read Bagley Keene, there are three types, well other than the regular meeting, there's something that has been called in the case law an urgent meeting, an emergency meeting, and then a special meeting, right? But as I read the rules for the urgent meeting, I keep coming back to it - it says it has to be according there has to be an emergency as defined in the emergency meeting regulation, so -

1:11:53

Ted Prim: We don't know what you mean by urgent meeting.

Commissioner Audero: Okay. Well, forget that. I'll tell you the section of PRA is, whatever you want to call it, I don't care what we call it, but so, section 11125.3 Condition for Taking Action on Items Not Appearing on the Posted Agenda Notice

Requirements. I called it an urgent meeting because I saw that in a case. but that's okay. we can call it whatever you'd like.

Ted Prim: So, that's adding something to the agenda of an already existing meeting, I believe.

(Both voices overlapping)

Commissioner Audero: Yes.

Ted Prim: Okay.

Commissioner Audero: So, it – so, my question ...

Ted Prim: It could be at any kind of kind of a meeting theoretically. Okay.

Commissioner Audero: But my question is, this says, in order to do this, it has to be upon a determination by a majority vote of the state body that an emergency situation exists as defined in 11125.5.

(Both voices overlapping)

Julia Zuffelato: That's one option.

Ted Prim: One option.

Commissioner Audero: Okay, and the other option is?

Julia Zuffelato: There's a need to take immediate action and the board was not aware of that before the 10-day period started.

Commissioner Audero: So, okay. So, now we have - so forget the emergency. So, if we have that kind of a situation, and – and - and something comes up that didn't make it on the agenda, for whatever reason, and but - but there it is, and it came up, let's say, after the ten-day period one of our options is to, by two-thirds vote, put that onto the agenda and discuss it and even take action on it.

Julia Zuffelato: And you will have to - make a finding that there's a need for immediate action and that it didn't come to your attention prior to the – the - before the ten-day period started.

Commissioner Audero: Right, and so, what is the need for immediate action? Can you put some parameters?

Julia Zuffelato: Well, so there isn't a lot of case law on it. That's why I kind of gave the example, in my situation where we had - we had approved a financing, and they have month-to-month, you know, meetings every month and I was supposed to close before the next meeting but then the market turned. And so, all the terms of the financing - the board had a revote on changing the terms of the financing to, because of the change in the market, and the market changed after that 10-day period. So, that was a situation there was a need to take immediate action because of a circumstance that happened outside of the control of the - the board and it affected the financing that was scheduled to close and there was a lot of financial interests involved in the in the timing of that.

Ted Prim: One way -

Julia Zuffelato: (Overlapping) But it's just an example. I mean it -

Commissioner Audero: Sure, sure. I'm just trying to kind of understand because I - I don't know if, I don't want to put you guys at a disadvantage, because, without giving you all the facts, but I also understand you probably don't want to make a comment on specific things. So, I'll give you a hypothetical if you'd prefer but you have something that comes up after the 10-day agenda, our choice would have been three meetings not two right we could have called an emergency meeting if we fit the definition of emergency we could have called a special meeting if we fit the definition of special meeting or we could have called this other third type of meeting. If we could fall within -

Ted Prim: You could have added it to the agenda.

Commissioner Audero: Correct. Yes -.

Ted Prim: There is a fourth option which is - which is to call another 10-day meeting. Okay, so one way of looking at whether or not there's an immediate need is that where we stand now when this information comes up let's say - say the information comes up and we're five days away from our scheduled meeting, right? Okay, so it would certainly be convenient if we could add it to that meeting but to determine if it's if there's - what's the words?

Julia Zuffelato: Need to take immediate action.

Ted Prim: Need to take immediate action. Is there any harm that would result if we called another 10-day meeting and met 10 days from now instead of met five days from now?

Commissioner Audero: Right:

Ted Prim: Okay and if the answer to that is, no there's - there's, the only problem with that is that it would be inconvenient for the Commission, then there's a good chance that you don't have immediate need to take action because you could schedule either to bring everybody back into town ten days from now or to do a teleconference meeting from

your remote locations ten days from now and nothing would happen. But, for example, if you were going to this - this item that came up if - if you don't act on it between now and five days from now it's not, you know, it doesn't matter what you do after that because whatever the concern is will have already happened by then. That's a need for immediate action, for sure.

Commissioner Hatch: Is an element of that not knowing about it prior to the ten-day notice?

Julia Zuffelato: Yes.

Ted Prim: Yes, there was a concern by one of the parties when this legislation went through about the press being sandbagged in some fashion. In which people knew about this need but they didn't want to give it too much advance notice so they were we wanted to let it run down and then just a few days before the meeting then they'd pop up and put it on the agenda. And so, they specifically put that provision in there to prevent that. Okay?

Commissioner Audero: Yeah. Thank you.

Julia Zuffelato: Teleconference meetings are subject to additional requirements. The location of a teleconference meeting must be in the agenda. A teleconference location is one at which Commissioner will be participating in the meeting. It must be accessible to all members of the public including those with disabilities, so it must be ADA compliant. We have advised that personal residences probably are not ideal a teleconference location because most homes probably are not ADA compliant. The agenda must be posted at a teleconference location and – oh, the teleconference the - the meeting has to be audible at all teleconference locations. So, we had the question where someone went to a bus station with their cell phone and they said well I'm in a public place but if - if it's noisy and all you have is a cell phone that's not really - even if you put on speakerphone. It's a teleconference location for members of the public to be able to hear the meeting or participate in the meeting. The public must also have an opportunity to speak at the teleconference location and all votes should be by roll call vote. And -

Ted Prim: So, I go one step further than Julia I would say we strongly discourage use of personal residence as, one, you probably don't want to invite any member of the public in. But secondly, you've got the ADA requirement. You've got the agenda post requirement and you've - you've got the need for people to be able to listen to and participate in the meeting from the location and all of those things make a personal residence not a very good choice.

1:19:50

Commissioner Hayward: I have a question about that. What sorts of sites make good choices any of your experience?

Julia Zuffelato: Any public building. There are some board members who may have a business, a place of business, that they know is ADA compliant, and we've been okay with those locations as well.

Commissioner Hayward: So, you say public building in terms of, public access, not a government owned building? You didn't mean just government owned buildings.

Julia Zuffelato: Well, that's the example that we usually give our government on the building's.

Ted Prim: Government buildings where there is a public meeting room are probably the best option for doing that.

Commissioner Hatch: But that's not the only option?

Ted Prim: No, it's not the only option but it's - it's one that will generally meet those requirements.

Commissioner Hatch: (Inaudible) accessible directly by the public ...

Ted Prim: And with a facility to prevent public participation.

Julia Zuffelato: Chairs, speaker.

Commissioner Audero: So, I've done it twice, as I recall. One time I did it from my business office, and it's ADA compliant. I posted the thing, oh well, one time I was at a conference and I had the conference management people set aside a tiny little conference room where I went and I slipped in during the meeting, I did everything. I was ADA compliant. The question that I always had was do we have to pay, do, does it have to be free parking? Because like, in downtown LA, nobody showed up so no harm, no foul, but what do we do about very expensive parking? Or parking at all? Is there a continuum?

Julia Zuffelato: It's not really relevant. As long as it's accessible to the public, they -

Commissioner Audero: Even if it costs a lot?

Julia Zuffelato: Well, I mean, I guess they could take a bus and walk.

Commissioner Audero: Okay - okay so parking is not an issue.

Julia Zuffelato: I mean, sometimes the question comes out, well I'm on vacation in China and it's an ADA accessible building. I should be able to participate by teleconference. There's a difference of opinion because, I mean, it's really not accessible to the public unless you have a passport and you can afford the cost to travel there. So, you know, some of these hypotheticals, you just need to be - So, that might be closer to being

acceptable if say it's Nevada versus China, but, and maybe if they, it just, we'd have to kind of look at the specific facts.

Commissioner Hatch: Like what they call it black letters (inaudible) sounds like this is -

Julia Zuffelato: Right.

Commissioner Hatch: (Inaudible).

Julia Zuffelato: You can make arguments for why it's okay and why it's not okay.

Commissioner Audero: So, who do you have to make it - what public do you have to make it accessible to? A California public, if we're a California Commission, or just anybody who's there? Because – because, if I'm in China and I go and I and I meet all of the requirements, ADA accessible, I posted the agenda, there's a - there's a telephone and we can all hear. Why isn't it enough to make it accessible to whoever is in China in that city at the time?

Julia Zuffelato: Well, that is the difference. That is the argument that we have. I mean, is it members of the public? That they can practice reasonably get there? Any member of the public or is it just those who happen to be in China? I mean it's a we - we do have a disagreement on whether that's an acceptable place.

Commissioner Hatch: (Inaudible)

Julia Zuffelato: And other practitioners in the area.

Commissioner Hatch: Any history on neighboring states?

Julia Zuffelato: I think when that question came up, it was more, here's best practice. Here's something we wouldn't recommend and that kind of fell somewhere on the continuum. A lot of times that's the answer to a question. Whether it's the best practice. And the amount of risk a Commission might want to take on when applying these rules.

Ted Prim: Do you have any more?

Julia Zuffelato: No.

Ted Prim: Shall I move on?

Commissioner Audero: Are we done with notice? Because I have a question about it.

Julia Zuffelato: Yes.

Commissioner Audero: So, I'm trying to, I - I went home after our meeting last month and I was very confused. Because, we had an item that came up that there was public comment and then we were asked for a motion and my question in and then Commissioner Hatch brought up the issue of, right, of a point of order. Of this isn't properly on the agenda and the answer was, oh, yes, it is. And so, I went home and I'm trying to I'm trying to figure out, it was - the only way that this was on the agenda was as a legislative report, and then it wasn't even on the agenda, it was a link, and so I'm trying to figure out how we square what we did with, defend our waterfront versus State Lands Commission, which expressly states that that is not sufficient notice. How do we how do we get around this issue?

Julia Zuffelato: Well, the best practice is to provide enough information to give the public, you know, and what they need to know to make an informed decision whether to attend. And then we give advice on best practice. We do discourage these generic agenda descriptions and we have advice that links to other documents are not sufficient information. That - that it has to be on the face of the agenda it's hard to go back and say well, we think you this was okay or that's not okay. We try to give advice on best practice what a court might do could be different and there's also a defense of substantial compliance and so why - we might give an advice on - on what's best practice for an agenda item description a court may say, well you substantially complied by you know with your sort of short agenda description. It just it's - it's really a factional based inquiry.

Commissioner Hatch: Is it okay to give a little context here?

Julia Zuffelato: I mean it's hard for us to go back and -

Ted Prim: We kind of understand the context and I think we don't necessarily want to revisit those facts and thumbs-up, thumbs-down, let me - let me say this. One way to certainly avoid the problem would be to list the legislation and indicate that there will be reports on some or all of these and that depending on you know what's happening in the legislative process the Commission maybe - may choose to vote its support or opposition to these - these bills now there may be reasons not to do that. Maybe - maybe you're following five hundred bills and listing them all is there's a big problem. On the other hand, maybe you're following fifteen bills and it's not a big problem but that that is one way of making sure that you don't have a problem which is to list them and to notify the public that all of these are on the table for review and discussion and a potential vote then then you're for sure covered if you just put legislative report and a link you know I think there are many, many people who conclude that that's probably not enough and so -

Commissioner Hatch: (Inaudible) the Commission had going back quite some time period. Commission had been doing what I would consider to be a best practice in that if there was a staff recommendation to take a position or change a position on a bill, the legislative report was taken out of that omnibus staff report and put as a separate item

Ted Prim: That would certainly be a good idea.

Chair Remke: And then still label it?

Commissioner Hatch: (Overlapping) it was, in this case I think everybody just got surprised. The Commission itself, got surprised because nearly a hundred-people showed up to want to talk about one of those, you know, bills in the report and it wasn't agendized as - as a separate item.

Ted Prim: Right, and you had all of these people here and all of this public participation.

Commissioner Hatch: (Inaudible) looking like now what are you going to do? So, I understand.

Commissioner Audero: Can I ask a follow-up question to something you just said? So, I read the substantial compliance cases and correct me if I'm wrong but isn't substantial compliance really a defense that comes up when you actually have notice and it's improper notice? Like, there's a little mistake or there's like a time difference or that's what all those cases are about I haven't seen, and point me to one because I'd love to read it, but a substantial compliance case that actually involves a circumstance where a court would preliminary find no notice and this was just a defense to the no notice

1:29:59

Julia Zuffelato: I don't know if it's limited to notice cases and there may not be cases involving agenda descriptions there are certainly cases where agenda descriptions were not adequate and they didn't discuss substantial compliance but I can't say with certainty that a court wouldn't use that defense in a case involving an agenda description

Commissioner Audero: So, but, have you seen a case, because I can't find it.

Julia Zuffelato: I'm not aware of a case -

Commissioner Audero: (Overlapping) I even looked in Brown I just couldn't find it because all of the cases that I find are where there actually was an agenda item and there was like a technical error and then and so the courts have said oh well substantial compliance I just don't see that that's fit squarely here so

Ted Prim: I think we agree it doesn't it does not fit squarely here that doesn't mean that it might the court might not somehow find a way to get there that's I think all

Commissioner Audero: (Overlapping) Yeah.

Ted Prim: Julia was saying

Commissioner Audero: Fair enough and then and then the other question that I have that you haven't raised the issue you haven't raised yet is waiver so one of the one of the this

point of discussions was that was confusing to me so I actually had to go look it up is the whole well but everybody was here and so it was waived the - the inadequate notice was waived yeah that's what I thought because I thought well okay it may have been waived by the people who were here but I can't imagine that it was waved by people who weren't here

Julia Zuffelato: I'm not talking about waiver per se but in those cases where they and look at substantial compliance they look at whether there's prejudice to the there has to be a finding of prejudice and sometimes if their people had an opportunity to give their feedback on something that might be enough for court to say well there's no prejudice everybody was there they got to say what they wanted to say so maybe it's not waiver but maybe it's just part of the substantial compliance

Commissioner Audero: Fair enough but doesn't that presume that people had an opportunity that the notice was clear enough so that somebody read it and said oh I think there's a mistake here I'm - I'm gonna raise it or I'm not gonna raise it right I mean that presumes that the person was even here and didn't address it right the prejudice comes the prejudice actually comes to the person who says oh I read this there was no way that I would just that I would determine that for something that is on that's listed as a legislative report and is like on page 14 of the legislative report and it's not mentioned anywhere else in the agenda that triggered my notice that I should attend and go make the argument that I want to make right I mean if the person says there's no way for me to know that that's what they were gonna discuss and had I known I would have gone and made X argument I think that person is prejudiced right

Ted Prim: We understand the argument

Commissioner Audero: You're the experts. come on that's what you're here

Julia Zuffelato: Well I mean I - I think we're here for training and we kind of want to be forward-thinking as opposed to kind of examining everything that happened

Commissioner Audero: Fair enough I just want to make sure it doesn't happen again and so forward thinking does that argument work

(Both voices overlapping)

Julia Zuffelato: Forward thinking –

Ted Prim: Forward thinking to us again arguing that you we're suggesting that you do a more thorough job of noticing things to give yourself the ability to do that without raising a question

Julia Zuffelato: Yes.

Commissioner Audero: Okay.

Ted Prim: No that would be our recommendation that make sense

Commissioner Audero: Yeah thank you

Ted Prim: All right anything else on Julius part otherwise I'll talk about public rights at meetings I'll start off talking about the rights attending a meeting the act is explicit that people didn't do not have to give their name in order to attend a public meeting we would also conclude I'll get to this a little bit but that the same kind of thing should probably be carried over to testimony as well and I'll talk about that a little bit people are entitled to record meetings unless the recording would constitute a persistent disruption of the meeting so even if somebody's trying to set their stuff up and they're banging things around a little bit and it's annoying if that lasts for three or four or five minutes that's not a reason to tell them hey you can't do that it would have to be a persistent disruption of the meeting before you could actually use that as a justification for telling them that they can't record it at all people have a right to testify before or during consideration of an item now I think that the practice that's followed by this Commission is the exemplary one which as I understand from time I was here in meetings that I've watched an item comes up there's a there's a staff presentation there may be some discussion on it by the Commissioners the public has asked for its input and then the Commission starts actually deliberate and we would recommend that that is the best way to go and that that really satisfies the intent of that provision there are people who do it in a way however that it provides less when I guess it's the best way to say it. So, the Brown Act says that every agenda must contain an item for people to comment on items that are not on the agenda what we shorthand referred to as a public mic. The Bagley Keene does not say that the Bagley Keene says that nothing prevents you from allowing a period for people to comment on items that are not on the agenda we would say that the Brown acts way of doing it where you always put it on the agenda and you always allow it is - is the best practice but that is one step beyond the way that the Bagley Keene Act actually requires now there's this issue about whether or not you can limit the public and if so how and the language is not real satisfying what it says is that the body can adopt reasonable regulations and as you know usually what we think of with when we see language like that is we have an APA reg. adopted and it might come out saying something like each member of the public has the opportunity to speak for no more than three minutes or something like that the problem is that that's not real helpful in certain situations you chose the last time that you had this big public outpouring to let each person speak although I gathered that there was some self-limitation amongst the members of the public who showed up to cut it off at some point arguably there are other ways that that could have been approached to try to see if we could get this group of people to designate a couple of people to make a presentation that represented a whole bunch of them so instead of hearing me too from 35 people you might hear from two or three people that took a lot more than three minutes who expressed the views of those 35 people in depth I think the key here is to make sure that you have a you set it up so that there is a reasonable opportunity to hear from the public and from the public to get its views out

there and I think that there are you know a number of ways to do that but it - it takes some - some personal diplomacy skills to be able to accomplish that with - with a group and - and so some people might get behind a couple of spokespersons and a lot of other people won't they want to hear and so what you can do at that point is say we're gonna hear from the rest of you and ask you not to be duplicate 'iv and then from time to time you may have to remind them that you're restating what we've heard before so we'd like to - to move on then you say that and then you may be picking a fight and so it's it becomes - becomes a difficult item I think that the ultimate goal is to make sure that you're acting reasonably in making sure that you get that that public participation because that is the heart of the matter but there are a number of ways to accomplish that depending on the issue and depending on your group and - and what you can you know what you can work out so

1:39:58 Commissioner Hatch: (Inaudible)

Ted Prim: Pardon me?

Commissioner Hatch: (Inaudible) use the term regulation –

Ted Prim: That's what the statute says statute says reasonable regulation but I don't you know if you if you do a regulation it's - it's probably not gonna be very helpful it's not gonna be helpful to the audience and it's not gonna be helpful to you in the final analysis because the situations frequently need to be tailored to the issue and the audience and the - the mood of the audience and the - the level of contentiousness and - and things like that so I mean if you have 500 people show up and you give each up in three minutes you're gonna be here for a long time hearing the same thing over and over and over again in you know and - and that's really not going to help them the public very much and it's not going to help you develop wisdom in the matter and so I it ultimately comes down to you adopting a - a reasonable approach to getting that public input sometimes asking people to start out by saying you know let's have a show of hands here how many people are here for this position how many here for this and then you - you know you record that more or less okay it looks like about eighty percent of the people here believe that we should do this and 20 percent have reservations so that may be one - one way of doing it there are several alternatives here before us let's - let's get public input on that how many of us how many of that again if you have ten people here you don't need to resort to those kind of things give them their three minutes and be done with it but if you've got several hundred people there may be ways to make it more meaningful for you and more meaningful for them other than just going by some rote little time limit item plus for certain people of course there you don't want three minutes from certain people you want 20 minutes from certain people because they've got a lot of information and they've got a lot of stuff that can help you so you don't want to fit everybody into a three minute box necessarily either so like I said just statute does say that you can adopt reasonable regulations and that's all it says there - there does need to be a way to have some control in some limits over public testimony but ultimately your goal is to make that process one

that's satisfying to both the public and to you as a as a Commission in terms of making sure that you get their participation on the item in question

Commissioner Audero: How do you with within those parameters that you're setting forth how do you deal with the idea that part of free speech is allowing people to show that there's a strength in numbers

Ted Prim: Well I'm not exactly sure what you're saying but I thought I gave some examples of that

Commissioner Audero: So – so, if the idea so the cases on this are - are you can't silence speech for multiple reasons but one of them is you can't silence it just because it's duplicative because there is a value to the testimony because it shows that their strengths and numbers

Ted Prim: Sure

Commissioner Audero: You're anti I guess your answer is we'll take a head count

Ted Prim: Well I'm that is a suggestion of a way of thinking of the problem and how you want to solve it it's I'm saying you all as you know living breathing thinking human beings need to look at your situation and try to figure out how is the best way to get this public participation on the record in a way that is good for the public and good for you as a Commission

Commissioner Audero: How do you how do you work with the - the idea that it obviously can't be capriciously done right it can't just be whenever I feel like it or whenever I Maria Commissioner Audero don't feel like hearing something then I then I impose some kind of limitation how do you how do you keep that flexibility that you're suggesting but protect against this other capricious type of application of how does that work what do other Commission's do how to how do you do that

Ted Prim: I think I have solicited input on this from other folks and - and there's no path answer it - it comes down to that particular Commission to the diplomatic skills of the people involved to fashion an approach that works and there are lots of different ways that work and you are right the things can be done in a capricious fashion the only guidance the statute gives you is you can adopt reasonable regulations

Commissioner Hatch: So, if you don't have them –

Ted Prim: And so if - if you if you adopt regulations that give you full flexibility I'm not sure how helpful that is and if you adopt ones that give you no flexibility you'll probably regret it so I think what you want to do is you want to behave in a fashion that if you're standing in front of a Superior Court judge you can justify why the behavior that you took was good solid and reasonable under the facts and circumstances

Commissioner Audero: What if there's disagreement among the Commissioners about what to do in a particular situation if you don't have a regulation right I mean if you have a regulation you follow the regulator for good or for bad right because it has good points and it has bad points but

Ted Prim: (Overlapping) I can't answer that –

Commissioner Audero: But I think that's the point that I was trying to get to there's no rule on this right this is just how the Commission is going to deal among the Commissioners and then toward the public

Ted Prim: If you if you limit the public input my advice to you would be that you should limit it in a way that is reasonable that you can present to a court as to why this was a good way of getting public participation in their input before you as a Commission and you know a court's not going to be impressed with oneness as well you know we only had 20 minutes and so we told these 500 people that they had 20 minutes and then we're done with them that's that kind of approach probably not gonna work you know so it's the public has a seat at the table you need to make sure that they that their voice is - is heard and if you want to limit it you need to be reasonable and that that's the best I can do for you

Commissioner Audero: One just may be kind of a little bit more of a parameter or guidance from you on this so the cases I've read about it are really about cases that where things go to an extreme right it goes into late into the evening but what is what is the right amount of time to say well we can't hear this within what within a two hour meeting within a four-hour meeting with an all-day meeting what is the what's the - the I guess the denominator if you will of this percentage

Ted Prim: There's no, I have no guidance for you, there are no court cases and there's nothing in the statute is just the - the - the two things that come out of it are the public participation and reasonable in terms of any limitation so that's the standard you'll be measured against okay so almost done here in terms of records when records for a meeting are provided to a majority of the members of the Commission they need to also be available to any member of the public who requests them records that are presented at the meeting should probably also be here at the meeting if a third person brings a record to a meeting then that needs to be made available to the public as soon as practicable posting things on the web is a best practice the more information you can put out on the web the better it is in terms of allowing public access to it and taking the pressure off of you to provide records in other ways the Public Records Act does apply to the Commission and does apply to the meetings of Commissions the exceptions to the Public Records Act also apply to the Commission except for the 6255 balancing test does not apply to you the members of the Commission in your deliberations the rest of the exemptions do for example attorney-client privilege although that that's also modified by

this specific statute but not the balancing test so and with that that completes my portion on public participation at meetings

1:50:28

Commissioner Hatch: (Inaudible) What is the balancing test?

Ted Prim: The balancing test is a provision in the Public Records Act that allows a government agency to determine that based on the specific circumstances the societal interest in non-disclosure clearly outweighs the societal interest in disclosure and the reason I phrase it that way the statute actually says the public interest in non-disclosure clearly outweighs a public interest in disclosure but it's - it's not the agency's interest in disclosure or non-disclosure it's the public interest in non-disclosure in public with a capital P so if you use the balancing test you have to be able so the court says that there has to be a clear over balance in favor of non-disclosure that's the way that the test is set up and frequently it is used to protect certain deliberations of agencies in coming to their viewpoints but your deliberations as a Commission are supposed to be in the open that's you know you're a you're a body that deliberates and develops your viewpoints by consensus so that should be and be done in the open unless you have a closed session exemption

Julia Zuffelato: So I'm going to close with closed sessions the general rule is that meetings have to be open to the public but there are some express closed session exceptions in the act actually there's a whole laundry list thirty-some-odd exceptions some apply to all state agencies where others are more specific to one or two state agencies I'm not going to go over all of them generally they the Constitution requires that they be narrowly construed and what they do is they seek to balance competing public policy considerations regarding certain types of decisions the two of the closed session exceptions I'll go over today are personnel the personnel exception and the pending litigation exception despite its name the personnel exception doesn't permit closed sessions for any type of personnel decision is limited certain types such as hiring firing performance evaluation or any type of complaint or charge against an employee. if you are going to meet in closed session to consider a complaint or charge against an employee the employee must get 24-hour written notice of their right to have the matter heard publicly the second exception is the pending litigation exception and what this exception allows you to do is meet in closed session to discuss litigation strategy again it's not an exception where you can receive any legal advice it is limited - limited to litigation strategy and this comes up when the Commission is involved in pending litigation and litigation is pending when the Commission wishes to initiate litigation is a party to litigation or has substantial exposure to litigation. substantial exposure it's not enough that a Commission thinks it might be sued because it's about to make a controversial decision if the substantial exposure has to be based on specific facts and circumstances here reference to the Brown Act is helpful because they actually have a list of the specific facts and circumstances that can give rise to substantial exposure to litigation such as a demand letter or someone is standing up at a meeting and threatening to bring litigation these types of things are the facts and circumstances that that can be enough for you to

meet in closed session to discuss your substantial exposure to litigation if you do meet in closed session under one of the exceptions there are certain procedures that have to be followed the agenda has to notice it as a closed session has to identify the specific statute that is giving authority for the closed session and again reference to the Brown Act is helpful because it actually has specific agenda language that that we advise state agencies to use when they're meeting in closed session when you do meet in closed session you need a staff member there who will take minutes and record the items discussed and except that only staff that have an essential role may attend a closed session meeting although it can come up often times litigation may be related to another decision that the Commission will be making it's you have to be really careful when you're meeting in closed session not to go beyond what's in the agenda and not to stray into other topics even if reasonably related any information that you receive during a closed session meeting is confidential and can't be disclosed by you or staff to anyone who was not in that meeting there's some reporting out requirements so with personnel decisions if there's a decision made under the personnel exception that must be reported when you kind of come back in open session and right and then one thing I forgot is before you convene in closed session you have to announce that you're going to in closed session and you actually do have to give the public an opportunity to provide comment on the closed session item they can't do it at closed session but they do have the opportunity they do have the right to comment before you go into closed session and then after the closed session you must come back and meet in open session and with that I think that concludes our

Commissioner Hatch: (Inaudible) make sure I got this so we have it on the agenda we're gonna have a closed session and what it's about and so before we get up and leave were to offer the public a chance to give in unsolicited input on that matter.

Julia Zuffelato: Yes.

Commissioner Hatch: Okay, I didn't know that.

Commissioner Audero: I have a question so isn't there also a requirement that counsel prepare a memo giving the specific and legal authority and that has to be submitted to the Commission no later than 10 days after

Julia Zuffelato: That's right there is a requirement that they provide a memorandum explaining the authority for meeting in closed session

Commissioner Audero: Yeah. I don't think we've ever gotten that. Okay. Thank you.

Chair Remke: Was that the end of the presentation.

(Both voices overlapping)

Ted Prim: That's it.

Julia Zuffelato: Yes.

Chair Remke: And so, questions I'm sure there's probably still some did you Commissioner Hayward do you want to start?

Commissioner Hayward: Yeah I thank you very much for this this has been very helpful first of all you know I'd like to think that I had an idea of how this worked going into this job and I'm learning things every day I offered some - some questions in advance and just for the benefit of everybody I thought I would tag a couple of those that I'm not sure I - I now know the answer to and hopefully you can you can help me is there a handy guide to Bagley Keene the dates from a date later than 2004

Ted Prim: Sadly, there is not

Commissioner Hayward: Oh, that's a pity yeah

Ted Prim: There is a draft

Commissioner Hayward: Okay. Awesome.

Ted Prim: And we are all in prayer it will be issued soon

Commissioner Hayward: That's wonderful news I found a Department of Consumer Affairs guidance on Bagley Keene through that department and one of the things they recommended it was adding an agenda item styled agenda item for future meetings so that we could talk in open meeting about an agenda item about subsequent agenda items and - and kind of get past some of the sort of well we can't all talk together about what we might like to see as an agenda but if we have an agenda item about it then that solves that issue what do you think of that practice

Ted Prim: I think that's a fine idea (inaudible) it on the agenda it makes it easy to talk about and everything's out front

Commissioner Hayward: Okay, good.

Julia Zuffelato: But that doesn't preclude you from doing it if it's not on the agenda.

Ted Prim: Right.

Commissioner Hayward: Oh, understood. It's just I think um as an exercise and sort of you know Commission dynamics I think it would be an insight for us to have to add that and let's see

Commissioner Audero: Can I just follow up on that question real quick?

Commissioner Hayward: Sure.

Commissioner Audero: So, you were saying even if you don't have this other future agenda you can ask for things to be put on the agenda correct that's it does that take a particular form or do we just get to ask

2:00:48

Julia Zuffelato: It's kind of an explanation or exception to you can't discuss anything that's not on the agenda what we're saying is under Bagley Keene you can say can we put this matter on the agenda especially say after public comment someone has given public comment on an item not on the agenda you can as a Commission say yes we should put this on the next agenda without it being considered a violation that you've discussed something that was not on the agenda

Commissioner Hatch: (Inaudible) the agenda as like a placeholder? (Inaudible)

Commissioner Hayward: That was my suggestion but - but she's saying that's not necessary it's a fine practice but you don't have to do it that way –

Commissioner Hatch: So, we can just bring up at some point (inaudible)

Commissioner Hayward: And then the one other question I had that may be one of those sorts of existential questions that none of us can answer but I just as I was reading through Bagley Keene 11130 states that the AG, the DA, or any interested person may commence an action to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws

Ted Prim: Right. Well, I came out of an amendment to the Brown Act some years ago in which there were several board members with different local bodies around the state that complained to some of the media interest groups I guess you'd call them about the fact that they were they were being squelched by their board majorities and they were not being allowed to present their views or to talk about different things and so the Brown Act and subsequently the Bagley Keene Act was amended so you could kind of view this as a minority rights provision for members of the Commission to find themselves in a board minority and oh you know it protects their rights to raise issues and

Commissioner Hayward: Have there been any such actions commenced under this?

Ted Prim: I don't think so.

Commissioner Hayward: Okay and you that's all I have Thanks

Ted Prim: Right. Julia, I think we better run.

Chair Remke: There's a moment of silence. Get out.

Commissioner Audero: Thank you very much. This was very helpful.

Consent Calendar 4-25

Chair Remke: Okay. We'll move to the enforcement consent calendar and that items 4 through 25. And before we begin do the Commissioners have any items they'd like to remove from consent?

Commissioner Hatch: Yes.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: I wanted to remove items four and six.

Chair Remke: Four and six?

Commissioner Hatch: Yes.

Chair Remke: Okay. Any other items? Okay, so, as to the remaining items on consent, are there any questions from the Commissioners for Miss West? Questions as for the remaining items on consent?

Commissioner Hatch: Maybe I misspoke. I think I really just wanted ask some questions on four so I doesn't have to come off.

Chair Remke: Did you say you wanted four off though?

Commissioner Hatch: (Inaudible)

Chair Remke: I know. I think Commissioner Audero agreed.

Commissioner Hatch: Okay, I'm sorry.

Commissioner Audero: I'm fine. I'm fine with four and six being off.

Commissioner Hatch: Okay.

Chair Remke: So, any of the remaining items on consent. No public comment on the remaining items on consent?

Commissioner Audero: (Inaudible).

Chair Remke: Yeah, that's for the statement of governance principles.

2:09:36

Galena West, Chief of Enforcement: And, I just like to make comment on number five, just - Chief of Enforcement, I just wanted to comment that we wanted to give some credit to the Santa Clara County Registrar of Voters because, although it's been reported that the John Linder case came out before an SOS referral, what actually happened was it was an SOS referral on his candidate committee and then he went to go close this committee and the Registrar voter said "Hey, this looks really hinky. Can you guys take a look at it?" So, they were actually the ones that brought it to our attention and I just wanted to give them some credit for a job well done.

Chair Remke: Okay and Commissioner Audero just reminded me that there is a public comment letter on item 16 but, other than that and the any other items that were posted online, is there anyone here would like to speak from the public regarding the remaining items on consent? Okay. Seeing or hearing none, is there a motion for the items on consent?

Commissioner Hatch: I move the items on consent.

Commissioner Audero: (Inaudible).

Commissioner Hatch: Yeah other than four and six.

Chair Remke: Okay, so the motion for -

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

Controlled Committee

- 4. In the Matter of Art Chacon, Art Chacon for Water Board 2014, and Californians for Clean Water; FPCC No. 14/1236.** Staff: Senior Commission Counsel Neal Bucknell and Special Investigator George Aradi. Art Chacon is a member of the Central Basin Municipal Water District Board of Directors. In 2014, Art Chacon for Water Board 2014 was his controlled committee. Californians for Clean Water was a general purpose committee. In this case, Chacon, Art Chacon for Water Board 2014, and the Clean Water committee failed to disclose that the Clean Water committee was Chacon's controlled committee, in violation of Government Code Sections 84102, subdivisions (e) and (g); 84211, subdivision (p); 84213, subdivision (a); and California Code of Regulations, title 2, Section 18402, subdivision (c)(1) (1 count). Also, the Clean Water committee sent three mass mailings in opposition to Chacon's opponents without identifying Chacon as controlling the committee, in violation of Government Code Section 84305, subdivision (c) (3 counts). Additionally, Chacon and the Clean Water committee failed to deposit all contributions into and make all expenditures from a single, designated campaign bank account, in violation of Government Code Section 85201 (1 count). **Total Proposed Penalty: \$25,000.**

Chair Remke: Okay, so, we'll take item four first. Commissioner Hatch would you like to start?

Commissioner Hatch: I just a question there was a phrase within this stip that's trying I get partially here it says "although Chacon did not control every action and decision of the clean water committee the influence of his agents..." and then I didn't copy the rest of it my question is did you establish that agency or is that just you know

Galena West, Chief of Enforcement: Certainly, yeah Galena West, chief of enforcement that is actually defined under the Act and the regulations so we applied the regulation to the relationship in the footnote it says that Mr. Jones worked for Art Chacon, Hector Chacon and the clean water campaign during the time which is what the requirement of the regulation is

Commissioner Hatch: That was the person who was the treasurer right

Galena West: Campaign consultant

Commissioner Hatch: Consultant okay but I think that reference was about the brothers

Galena West: It actually says including Carrie Jones and Chacon's brothers yeah Hector and Fernando

Commissioner Hatch: Right so

Galena West: They acted on his behalf under the definition

Commissioner Hatch: So, they had taken specific acts his request is that

Galena West: Correct

Commissioner Hatch: Okay that's what I wanted to know

Chair Remke: Okay any further questions from the Commissioners

Commissioner Hayward: Um yeah, an item for yeah, I believe that the person in this matter has made public statements that might appear to be contrary to what has been agreed to in the stip are there consequences when that occurs

Galena West: Generally not there this has happened a couple of times in the past and the Commission has obviously not been pleased about it and neither is enforcement but these are public officials that feel that they have to be able to spin these enforcement actions and - and so when it's something that is a material fact that they have agreed to that is then going to untie the case then we look into it but when it's just a general denial of anything wrong when they have signed a stipulation admitting fault which is why this Commission and decided

many years ago to make respond and submit fault in writing and sign these documents so - so we do feel that it Trump's statements that have been made in the newspaper and we stand we always stand by it

Commissioner Hayward: Thank you

Chair Remke: Okay any public comment or questions regarding item four okay is there a motion

Commissioner Hatch: (Inaudible).

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Isn't this the item that there was a letter from the public about their past practices

Galena West: Certainly

Commissioner Hatch: On a different matter entirely, I was asking you know how your whether or not you were able to track that kind of stuff when we're talking about first offenders versus others did in your system did you know this was a he'd had previous actions against I'm just trying to get a sense of

Galena West: Yes, and we noted it in the stipulation as well we're aware of all his past practices and - and then some of the things that bothered the person that wrote in is his other activities beyond the act so

Commissioner Hatch: Yeah but it wasn't clear to me in the stip that it was just came to your attention or whether you actually had it inaccessible

Galena West: No, we had it yes

Commissioner Hatch: Good that's what I wouldn't know

Chair Remke: And you can look it up on our website and most of the information you'd be able to see priors there as well

Galena West: Certainly, we have an enforcement section of the website that has the prior cases as well as - as any eventually we will have portal that is in the last testing phase that will have a searchable portal for the public so

Commissioner Hatch: Okay

Galena West: Fingers crossed

Commissioner Hatch: Thank you

Galena West: Only five years in the making

Chair Remke: Okay and still no public comment so is there a motion on item four

Commissioner Hayward: I move approval

Commissioner Hatch: Second

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

The Motion passed 4-0.

Personal Use of Campaign Funds

- 4. In the Matter of John Lindner and Franklin-McKinley for Our Kids—Yes on Measure J 2010; FPPC No. 16/286.** Staff: Senior Commission Counsel Bridgette Castillo and Special Investigator Ann Flaherty. John Lindner was a successful incumbent candidate for Franklin-McKinley School District Member in the November 8, 2016 General Election. Franklin-McKinley for our Kids—Yes on Measure J 2010 was a ballot measure committee primarily formed to support Measure J, a successful school bond measure, in the November 2, 2010 General Election. Lindner was the Committee's treasurer. The Committee was terminated on or about December 31, 2015. The Committee and Lindner failed to disclose and itemize expenditures of \$100 or more on campaign statements, in violation of Government Code Section 84211, subdivisions (k) (1 count). In addition, Lindner used campaign funds which conferred a substantial personal benefit to him for purposes not directly related to a political, legislative or governmental purpose, in violation of Government Code Section 89512.5 (3 counts). **Proposed Penalty Against Lindner individually: \$15,000. Proposed Penalty Against the Committee and Lindner: \$3,500. Total Proposed Penalty: \$18,500.**

Conflict of Interests

- 5. In the Matter of Kathrin Sears; FPPC No. 17/453.** Staff: Senior Commission Counsel Bridgette Castillo, Special Investigator Marshall Miller and Political Reform Consultant Chloe Hackert. Kathrin Sears is a Marin County Supervisor and the Chair of the MCE Clean Energy Board. In November 2014, Sears signed a contract on behalf of MCE Clean Energy Board with Shell Energy North America for hydroelectric power while she owned stock in Royal Dutch Shell, a parent company to Shell Energy North America, in violation of Government Code Section 87100 (1 count). **Total Proposed Penalty: \$3,000.**

Chair Remke: Okay item six Commissioner Hatch did you want to start with questions

Commissioner Hatch: There's more I think the war to a question I appreciate your patience here on this it's a kind of a complicated issue and I was troubled by it I have a long history of being an individual investor and so although I've never met this person I read this pretty closely and I think last month was ready to express some concerns about it this is this is a case where you have an official who was charged with conflict of interest not disclosed and the holding in the it's all this is all pretty much in the stip the holding was shares of Royal Dutch/shell which is a company resident in the Netherlands but who owns countless you know subsidiaries and companies that aren't even subsidiaries I went to Wikipedia for Royal Dutch Shell subsidiaries and there were 30 pages of subsidiaries listed in Wikipedia of Royal Dutch/Shell but none of those was this company that is mentioned in the step that's shale energy North America commonly known and referred to in their documents as SENA an acronym SENA it's not any of those and then I went to the annual reports of Royal Dutch/shell trying to find this company and it's not even listed as a subsidiary in their annual report and it's not listed as a city area of the division shell us which itself is a subsistence subsidiary of Royal Dutch Shell shale energy North America SENA is actually not owned or controlled by Royal Dutch Shell

Shell Energy North America (SENA) is actually not owned or controlled by Royal Dutch Shell. SENA is in fact a limited partnership controlled by its general partner, Tejas Coral GP, LLC. In 2015, Tejas Coral GP, LLC was controlled by Tejas Coral Holdings, another small Texas based company that is also not owned or controlled by Royal Dutch Shell. How Royal Dutch Shell exercises control over Shell Energy North America is certainly not readily apparent, if at all.

Tejas Coral GP, LLC is a small Texas based company formerly known as Coral Energy Holdings it's listed as the General partner of SENA. Shell Coral Resources Company was previously listed as the GP, but is no longer an active company, according to the Secretary of State. Of Texas.

Royal Dutch Shell is required to prepare its financial statements in accordance with the International Financial Reporting Standards Bueroa and the Financial Accounting Standards Board Standards otherwise known to us here as FASB. According to both standards boards, a subsidiary is a company that is owned or controlled by another company. Control in their vernacular is voting control. Control can be direct or indirect. In the most recent 229 page Royal Dutch Shell annual report, it appears that SENA limited partner units were bought by an undisclosed company that may be somehow controlled by Shell but it's not it is not obtainable by a certainty.

2:20:12

Having said all of that, I should point out that we here at the FPPC don't give a flying fig about what FASB or IFRS says about what constitutes a subsidiary, because we have regulation 18703.1, which defies all of that. If we apply our own regulation in the same manner as FPPC enforcement staff has in the Sears case, it would also lead us conclude that the China National Offshore Oil Corporation commonly known as CNOOC is also subsidiary of Royal Dutch Shell for the purposes of the Act. For those of us who don't

follow oil companies, CNOOC is a gigantic government enterprise sponsored by the Peoples Republic of China.

Also, last night when I was checking over my stock portfolio to see how much money I lost, I noticed that Crestwood Equity Partners, a New York stock listed company that I own shares in, had just announced the closing of a deal with an equity option agreement with Shell Stream Partners which is an owned subsidiary of Royal Dutch Shell. This master limited partnership formed by the Royal Dutch Shell was to purchase a 50% equity interest in Crestwood's Permian Basin LLC which owns the Nautilus gathering sister gas gathering system the other 50% equity interest continues to be owned by Crestwood. So, the Nautilus system gathers the majority of shells operating Delaware gas basin under 20-year tiered fixed fee contract so they like try to buy back some of the expenses that they're paying the Crestwood but again

Under this arrangement, applying our regulation, both of those companies would be considered to be subsidiaries of each other now I would posit to you that's an absurd result and that if nothing else is done today we should consider entering a reg proposal to bring our regulation into the real world I as an investor should be able to call my investment advisor or my stock broker as the case may be and say is this company related any of my investments is it a subsidiary of something I own and I should be able to rely on that and instead I'm not sure who I'd go to - to find out this and I'm sure that the enforcement staff spent a lot of time on it figuring it out but this is not this is not an inviting world for someone to volunteer to be on a local government or a Commission or whatnot to have this kind of thing happen

I just tell you that under this Enforcement staff has in my view misdirected our attention in the stip when they point out that the "decision had a reasonably foreseeable material financial effect on Shell Energy North America" or SENA, when in fact the measure of materiality should be on the actual investment that Kathrin Sears held in stock of Royal Dutch Shell, it is a global behemoth, which has earned \$4.8 billion on revenue of \$233.6 billion in 2016.

Even if SENA was filed for bankruptcy it wouldn't affect the value of that stock but going further even if you accept the staff assertion that Sear's action could result in Shell Energy North America receiving a contract to provide energy with a maximum annual amount of approximately 5 million, it could not possibly have had a material financial effect to her investment in Royal Dutch Shell.

I did a little web searching and I found that a fellow named Greg Brehm, is Director of Power Resources which is the entity that this power purchase agreement triggered a violation, has been directing MCE's, that's the acronym for the utility that's operated by the county and a joint partnership with several cities, his job is: Electric load and resource planning and procurement efforts since 2012 so he was there at the time of this which I think was in 2014. His responsibilities include due diligence for local project development,

and negotiation of power purchase agreements with developers and wholesale power marketers.

The CEO of MCE has been delegated oversight responsibility for Power Purchasing Agreements negotiated by Greg, who applies a 62-page template of the Power Purchasing Agreement that has been developed for his use. So even he doesn't dictate the details of what - what remedies are in case of violations and so on those are all pre-programmed and he just plugs in the negotiated rates how much per kilowatt and whether it's standby or whether it's guaranteed and things of that nature

It seems clear to me that Kathrin Sears when she signed that agreement that power purchasing agreement that she was merely performing a ministerial act, within the meaning of regulation 18704(d)(1) when she signed the power purchase agreement that was in question. She had no authority to change the terms of the CENA agreement, nor could she reject the agreement in favor of any other competing energy company.

In light of the aforementioned circumstances, I feel that we should not even be pursuing this case, but it is here before us, so I would ask that we that that she I think there's one of the lists of the remedies the enforcement has us to write a warning letter and I think that that's the appropriate action in this case and if when it's appropriate I'd like to make a motion to that effect

Chair Remke: Further questions or comments from Commissioners? Commissioner Audero.

Commissioner Audero: So first of all, Sasha aren't you glad you don't have to take notes

Commissioner Hatch: (Inaudible).

Commissioner Audero: So was any of that new to you guys you knew all of that

Commissioner Hatch: I think they probably did you yeah

Commissioner Audero: Okay

Galena West: Yes

Commissioner Audero: And so, that doesn't change see that that to me would have changed it

Galena West: Well we disagree on a couple of facts so what the Enforcement Division relied on besides the - the obvious indicator of shell being in both names was the - the filings with the SEC so we went to the SEC filings and for that year and a lot of times the problem with doing current research about past decisions is finding the things that were in effect at the time of the decision so we got the annual report and the form 20 F which is what you file with the SEC that lists your subsidiaries for a Royal Dutch/shell and on exhibiting of that

which I do have copies of if the Commission would like them under significant subsidiaries shell Energy North America us was a hundred percent subsidiary of Royal Dutch Shell during this time and - and they do note that it is a partnership and also having spoken and research the skin

Commissioner Hatch: Excuse me I read those same documents and it's not named as a subsidiary if you read the notes in there it's very clear that it's another relationship

Chair Remke: I'm just gonna ask that the Commissioners please wait to be recognized thank you

Galena West: So in addition with the law at the time this was a direct conflict which would make it presumed which would make the - the standard to be they have to refute that five million dollar contract has any effect at all including one penny and since that standard wasn't met applying the law at the time and I understand the frustration with the conflicts regs as they were at the time I mean we apply conflicts regs from different time periods and it is challenging when things have changed and - and so we - we do understand all that and - and I think that in looking at this and in looking at the terms in comparison to the other cases we applied the law to the facts as we do we looked at whether or not she made a decision which she did and if the Commission wants to look into the definitions of intermediate and ministerial decision and expand those definitions that's one thing but in order for us to be fair and equitable to everybody that had conflicts in 2014 that we've already prosecuted and applied these standards to because it was the law at the time we handle these cases as we would any other case that we received during that time period so for us for consistency and looking at the public documents and in agreement with Miss Sears who agrees of this relationship, of parent-subsiary applying the rules that are in effect at the time this is how we come to this conclusion

2:30:55

Chair Remke: Commissioner Hatch did you have a follow up

Commissioner Hatch: Yes I do the annual report in the listing that you're speaking to lists not only subsidiaries but any company that they've had any kind of business relationship there's a joint venture or limited partnership participations joint exploration agreements and the like and in the footnotes it shows this not as a subsidiary matter of fact it says that the subsidiaries are highlighted and there's about a dozen or so of those there's no way that you now accept that but by international standards and also by FASB this is not a subsidiary okay but your regulation treats other relationships as though it applies to it to be a subsidiary and that's how you get to call it a subsidiaries but it is ridiculous and it's - it's going over time it's going to snag more and more people as big companies gobble up more other companies or buy pieces and shield themselves from liability by putting some small company nominally in charge when you know there really the - the whole purpose is to shield them from lawsuits I just think that this this is absolutely wrong its indefensible and we should not just do it just because that's what we've been doing

Galena West: And

Commissioner Hatch: Just wrong at the very most you should just issue a warning letter and then let's proceed to try and fix our regulation because there is nothing in the statute that would lead you to believe that a subsidiary of any kind constitutes a conflict it's a creation of a regulation now it's not the current Commission long - long standing

Galena West: I'm sorry also in the statute

Commissioner Hatch: No, it's not

Galena West: Okay well I can find that for you but

Commissioner Hatch: I - I read it this morning again

Galena West: I understand it's under the disclosure sections but I can find it for you in a minute did you

Chair Remke: Would you like to take a moment ever find the section

Commissioner Hatch: I'm done.

Chair Remke: Okay

Galena West: Okay

Chair Remke: Okay well we're not done yet thank you we're gonna have –

Galena West: (Overlapping) All right.

Chair Remke: - a discussion.

Galena West: I understand your frustration and - and as Brian Lao is sitting next to me I assume that a reg discussion will - will follow but I would just read for the record since I didn't hand this out from exhibit 8 it does say this is a significant subsidiaries at December 31st 2014 and shells percentage of share capital to the nearest whole all of these subsidiaries have been included in the consolidated financial statements on pages 106 to 141 those held directly by the company are marked with an asterisk a complete list of investments in subsidiaries incorporated joint arrangements and association so we attached a company's annual return made to the registrar companies and the notations that you mentioned are in the 2014 annual report whereas this is the to the 2016 annual report whereas this refers to the 2014 holdings of the company and there's even a notation for when they hold and non-voting shares and neither of those notations are made for Cena so I don't know what else to say beyond that but if we are going to change the regulation then we will change the

regulation but as to how we apply enforcement cases fair fairly and equitably this would be my recommendation

Chair Remke: Any other questions from Commissioners? Commissioner Audero.

Commissioner Audero: So, you're applying the - the conflict of interest regulation that was in effect in 2014 which later was changed in 2015 and so I guess it's your position, because I think I know it, that the 2015 regulation is not retroactive Lee should not be retroactively applied

Galena West: Well parent-subsiary is the rule and - Yeah, so –

Commissioner Audero: I'm talking about the - the conflict of interest I'm going to where you were talking about is it ministerial or I'm going to that

Galena West: No ministerial has not changed there is no minister I'm said I was suggesting in the future if the Commission would like to change ministerial or in our intermediate decision that would be something they could look at

Commissioner Audero: But isn't part of the issue here whether what she did was ministerial

Galena West: True but I don't I don't know if the - the regulation has changed significantly I'm not sure I don't believe so

Commissioner Audero: So, my understanding from reading other things is that there is a there was a change in a conflict of interest regulation sometime in 2005 and the question is does that become retroactive and so my question

Galena West: Sorry I'm just trying to concentrate

Commissioner Audero: No - no, that's fine I do the same thing you know when I'm not getting what you're saying so I get it I get it and I appreciate it because you're signaling me without interrupting which I very much appreciate but so is it I know that there's something else going on in another case I'm not trying to bring that other case into this but it seems like if - if there's an issue as to whether it was ministerial or not ministerial right if it's ministerial you're done right so if it's an issue as to whether it was ministerial as Commissioner Hatch said or not ministerial and then you pointed us to the other two terms that I can't remember no tell me what they are so we can keep the records

Galena West: Intermediate decisions

Commissioner Audero: That had a change right in 2000 2015

Galena West: No I don't believe those sections actually changed I think that they changed order and number and where they are in the steps but I don't believe that they changed very much

Brian Lau, Senior Commission Counsel: The making I'm sorry making participating and influencing were moved in the regulations but the majority the subtest absentee they were not attend to be changed whatsoever so those are very much consistent over the course of this period

Chair Remke: And it's Brian Lau from the legal division who is our resident expert on conflicts of interest and has worked on the conflicts of interest packages so he's here to answer questions

Commissioner Audero: So, I'm interested in what Mr. Woodside has to say about this change in the regulations in 2015 and whether it was it should be retroactively applied

Jack Woodside, General Counsel: I don't know the basis for retroactive applying it but as we sit here

Chair Remke: Can I just get clarification for a point of information which and maybe change are we talking about

Commissioner Audero: I'm talking about the issue of is it ministerial versus

Galena West: And that section was not changed it was renumbered

Commissioner Audero: Hold on.

Galena West: Because it went from a six-step process to a four-step process with the exception being in step three for some reason

Commissioner Audero: So, I could be totally confused so just kind of bear with me and educate me if you will

Galena West: Oh, it was a - it was a trying time so I'll relive it

Commissioner Audero: I get it. I get it. I'm trying to find - we're talking about 18 a regulation 18 700 ed SEC

Brian Lau: 18 700 would be (Inaudible).

Commissioner Audero: So is it then legal's position that 18 700 at SEC should be applied as it existed at the time of the - the act whenever it is where you guys are talking about 2014 right or should be applied as the as the regulation the set of regulations existed as of 2015

Brian Lau: I think I can say there's substantive issues within those that we would not want to report apply retroactively these so if you thought if you're looking at something like the materiality standard which were changed we would not want to apply the new materiality standards to an a prior case so we would not want to apply new materiality standards retro actively but something like the ministerial Rule there's really I mean it's really there's no harm or foul that and we and either one that you want to apply so - so ultimately it wouldn't matter this analysis wouldn't matter if you applied the new rule or the old rule so

Commissioner Audero: That's what I want to know.

Brian Lau: So, for - for the purposes of ministerial no harm no foul for purposes of something like materiality standard which Jelena said at that time was a one penny rule then there's consequences of doing something retroactive so we would not be we couldn't university say yes just apply the new rules and to the retro actively to the prior situation

Commissioner Audero: So, there's no change in your result regardless of what years' regulation you applied to the ministerial versus the non-ministerial that's - that's

Galena West: That's correct

Commissioner Audero: That's where I was going the

Galena West: The language the language for both is actions the public official where they're solely ministerial secretarial manual or clerical and then the - the current regs say actions by public official that are solely ministerial secretarial or clerical so manual was the only word removed

Commissioner Audero: Okay so that's if you swap them out you're in the same place

Galena West: Right

Commissioner Audero: That's what I wanted to know. thank you

Chair Remke: Any further questions from the Commissioners on item six okay is there any public comment on item six okay is there a motion

Commissioner Hatch: Thank you Madam Chair

Chair Remke: Commissioner Hatch

Commissioner Hatch: I move that we instruct the Enforcement Division to issue a warning letter on this and that I'll make a separate motion on the second part that's good that's my motion

Chair Remke: I just for

Commissioner Hatch: In lieu of the proposed action

Chair Remke: Right I believe and I'll ask one of these two to help me as a point of clarification or information because the issue up is the Commission's approval or rejection of the stipulation so would you like to move to reject the stipulation

Commissioner Hatch: Okay I'll start with that I move to reject the stipulation

Chair Remke: Is there a second

Commissioner Hayward: I'll second

Ayes: Commissioners Audero, Hatch, and Hayward.

Nays: Chair Remke.

The motion passed 3-1.

Chair Remke: Okay so the stipulation has been rejected and did you had a follow-up I'm not sure if it's on this item or a statement regarding the regulation

Commissioner Hatch: My intention was just then ask that we take action (Inaudible)

Chair Remke: Which regulation? at the ministerial one? I'm just

Commissioner Hatch: No, no, it's the other –

Chair Remke: Parent subsidiary?

Commissioner Hatch: Parent subsidiary.

Chair Remke: Brian, what reg are we talking about?

Commissioner Hatch: (Inaudible).

Brian Lau: 18700.2.

Chair Remke: 18700.2.

Commissioner Audero: No.

Commissioner Hatch: No, the one I -

Brian Lau: That's the definition of parent subsidiary

Commissioner Hatch: That also has to be revisited but there's also section 18703.1. (Inaudible).
terms of what we're talking about

Brian Lau: Well you're looking I think you're just citing the prior version of the regulation

Commissioner Hatch: Right but -

Chair Remke: I think it's safe to say -

Commissioner Hatch: I apologize.

Brian Lau: Yeah, I think you're looking at the prior version.

Commissioner Hatch: Alright. I apologize.

Brian Lau: 18700.2 would be the definition of parent subsidiary at this point

Commissioner Hatch: Now that okay so I - I would like to work with legal to develop an
alternative regulation proposal that could be then brought to the Commission if that's alright

Chair Remke: Sure, we'll bring it

Commissioner Hatch: (Inaudible).

Chair Remke: No, we'll bring it back to the Commission and I've been previously asked to put
things on as pre-notice regulations and this seems like a good one since we're opening up a very
contentious area so we'll put it back on as a pre-notice regulation for just further discussion with
the proposal and then go from there

Commissioner Hatch: Thank you

Chair Remke: Okay good

Galena West: Can I asked for clarification if we're done with the enforcement matters just on the
matter is it a general direction for enforcement to apply the conflict of interest rules as they occur
now to past practices or is this just a rejection of this stipulation alone

Chair Remke: I don't think legally we could do that

Galena West: Just trying -

Chair Remke: I think that would be a legal hurdle which we would have

Galena West: If they're more lenient

Chair Remke: I still don't think that's legally permissible I think we have to apply the laws that applied at the time of the conduct

Commissioner Audero: Well may I be recognized?

Chair Remke: Commissioner Audero.

Commissioner Audero: So is that actually right Mr. Woodside because if - if there's a change in a regulation that's not substantive right we go to the new regulation right regardless it is a place retro actively right

Jack Woodside: There's a change in the regulation that's not substantive

Commissioner Audero: Yeah if some might say it's not some sentence might argue otherwise right I mean there is the rub but - but if there is a change in a regulation or a law that isn't a substantive it's not a black-and-white rule that you must always apply the law at the time of the conduct right

Jack Woodside: That's my understanding yeah okay so

Galena West: So, I think my question is just more general is it a factor in mitigation if the law has changed to make it less strict

Commissioner Hayward: I believe it is

Galena West: Okay that's the direction I'm trying to understand

Commissioner Audero: Well I don't know

Commissioner Hatch: (Overlapping) I get what you're saying let me put a different way to the extent that our regulation that is at odds with FASB I think we shouldn't enforce against that kind of an attraction where it falls in between the two until we've had a chance to complete the regulation process and either adopt a new regulation or were not adopted as the case may be

Commissioner Audero: I have a question.

Chair Remke: Commissioner Audero.

Commissioner Audero: Is it possible to just kind of put off whatever you have pending on this issue until we resolve I just don't think that this question is being resolved right now right I mean I completely understand the legitimacy of your question especially wearing your shoes but I just don't know that we can just from here without actually giving it some due consideration and perhaps even hearing public comment on it give you that kind of an instruction so I guess my question is do you have a lot of these matters panda are they stacking up on this issue on this issue

Galena West: On conflicts in general they're not usually contemporaneous to the activity so we get very few that are they just voted last week we get a lot that are here's our activity from 2010 to 2017 could you take a look

Commissioner Audero: But what's the statute on that because I mean if it's 20

Galena West: It's five years.

Commissioner Audero: So, okay so you're gonna

Galena West: So, for me it's a perpetual problem so I'm just trying to figure out if the vote was specific to these facts or if there's a bigger message you're trying to send to me and I'm trying to understand what

Commissioner Hatch: I'm kind of out there on it but that would be my intent was that you know you until we've resolved this kind of thing work I think fall in between FASB and or even the in this case it's actually not a US company it's - it's under IFRS standards but they're pretty you know they're pretty close I just think it's asking way too much of somebody to try and figure all this stuff out you know and the alternate I guess some people would say well you can get your peace of mind by just buying a bunch of mutual funds but that's not the same it affects your ability you know to maintain your capital

Galena West: Right

Commissioner Hatch: You know it's just not it's this is not an answer that satisfies me they want to ask you a question now in this action we took does this trigger it going to - to a

2:50:23

Galena West: Probable cause conference and then eight well it depends if the instruction is to write a warning letter you have 10 days to disagree with the warning letter saying that you don't think it's a violation the Act and I want a probable cause conference so unfortunately this could

Commissioner Hatch: So, I only did half of it right with the motion that was just passed I'd like perhaps if you think this is a responsive if I do nothing further then this is going to kick it to potentially going to an ALJ

Galena West: Possibly

Commissioner Hatch: Yeah so what I would like to do is then make a follow-up motion that on this matter that the Enforcement Division issue a warning letter to Catherine Sears and close whatever is pending

Galena West: Right it'll be up to her if she disputes the warning on her

Commissioner Hatch: Oh, yeah, she could dispute that I get that but I but that's whatever the level I would like to take this and I would like to make that motion if I could Madam Chair.

Commissioner Audero: I'm sure can I just move the bushes on the floor that's fine oh we can -

Chair Remke: Commissioner Audero

Commissioner Audero: Or we could just dismiss it

Galena West: That's true we generally don't dismiss violations without a warning letter but

Commissioner Audero: Well because if we go to a warning letter and you're saying then she could dispute that right then the easy fix is let it go right

Chair Remke: All right. Are you through? I know I just want to quick comment

Commissioner Audero: Yeah

Chair Remke: Thank you I guess if would have first of all I have trouble directing the prosecutor's office as to what action to take based on your discretion

Galena West: I know it actually not to take I think I got that part.

Chair Remke: That's different but second of all I guess I would just say as to the concern of Miss Sears seeking an ALJ hearing on a warning letter when she was already prepared to stipulate and pay well she stipulated to the violation and the misconduct and was prepared to pay a three thousand dollar fine I'm guessing she's gonna be quite comfortable with a warning letter so I don't think the fear is as good

Commissioner Hatch: I would agree with the Chair on that

Commissioner Audero: I – I -

Chair Remke: Commissioner Audero.

Commissioner Audero: So being on the other side of you in the employment side right I defend my clients against enforcement by that by the agencies I don't think that we should read very much into or much more into a willingness to stipulate to a fine then I don't want to spend any more money whether I agree with this or not so I don't I don't think that's the right standard I think that if you know clearly stipulations are reached to bring things to an end on both sides fair enough right but to then make the leap that well she'll just be thankful that she's just getting a warning letter and she's not going to dispute this is I don't think is a fair number one it's not the standard but - but number two I don't think it's the right thing to do so I don't know why we would give someone a warning letter if we think that this was wrongly decided right or -or in agreement what it was not decided but

Galena West: It's painful yes

Commissioner Audero: I know sorry but either - either we believe what we're doing or we don't believe what we're doing and I get that you bring it to us but then we have to decide do we believe or do we not believe and if we don't believe then I don't think the answer is well let's just put them off on a lesser offense I think the answer is let it go let it go just dismiss in legal jargon

Galena West: Okay so who gets the second

Commissioner Hatch: Obviously, I'd be happy with that. I'm just not sure

Chair Remke: Did you have a motion pending Commissioner Hatch I've lost track

Commissioner Hatch: Well I was the process of making a motion but there's probably no precedent for this is it

Galena West: No sir

Commissioner Hatch: Okay

Commissioner Audero: Well no wait hold on remember may I speak

Chair Remke: Once recognize Commissioner Audero

Commissioner Audero: So how do I do this

Chair Remke: You say Chair

Commissioner Audero: Okay I'll remember that so remember a few months

Galena West: I remember but you didn't direct me what to do

Commissioner Audero: Right - right so you're just holding every so

Galena West: Yeah

Commissioner Audero: So okay so to be clear I don't remember what month it was it was one of the earlier months of these two Commissioners so and - and the issue was the \$50 fine that had become some gargantuan fine right and - and we were saying that's just that's just not the right thing to do and so there was no direction but you did say I'm just not bringing anything until this is resolved right

Galena West: Right

Commissioner Audero: And so there it's - it's so we so we do have a precedent for this we can just let them all sit

Galena West: Great

Commissioner Audero: But it doesn't solve the problem of is this one

Galena West: Right

Commissioner Audero: Yeah, this one of Miss Sears.

Commissioner Hatch: It doesn't yet provide finality for this -

Commissioner Audero: (Overlapping) Yeah.

Commissioner Hatch: - person that's hanging out there

Galena West: Or you - you could just leave it as is and I can take it from here for you because I've gotten the direction I think I know what to do so I don't know if a motion to direct us to write weather or no action closure or warning letter is needed at this point but if that makes you more comfortable I think

Commissioner Hatch: Is it the direction that's a problem could I just urge

Galena West: Yeah urge me I think urging would be good

Commissioner Hatch: I move that we urge enforcement issue a warning letter in this case in lieu of its proposed action

Chair Remke: I'll ask my I would think you should just if you're gonna make a motion just make the motion to have her issue no to close it is that what you said to close the case

Commissioner Hatch: I thought I heard some sensitivity on that issue earlier

Chair Remke: Well again I'm not and I'll just let it go on this one I think it's something we need to look into us directing the closure of a letter I mean a closure of a case so I will just say do you do you want to your motion is to close the case no warning letter is that correct that one looking at him

Commissioner Hatch: (Inaudible) a warning letter, myself. I just, because -

Chair Remke: Well I'm happy to have a warning letter too so I don't know if there's even gonna be a motion that's I mean maybe that's where miss West is saying perhaps we leave it to her discretion at this point understand the direction of closure or a warning letter

Commissioner Audero: What's the different winking (inaudible) It's like wink with your right means one thing wink with your left means the other. So, make your motion.

Commissioner Hatch: Just not to leave this hanging I would I would move that we instruct enforcement to withdraw this in favor of issuing a warning letter this proposed action

Chair Remke: I second.

Ayes: Commissioners Hatch and Hayward, Chair Remke.

Nays: Commissioner Audero.

The motion passed 3-1.

Gifts Over the Limits

Gifts Over the Limits

- 5. In the Matter of Ronald Davis; FPPC No. 16/19819.** Staff: Commission Counsel Christopher Burton and Special Investigator Jeffrey Kamigaki. Ronald Davis is the warden at San Quentin State Prison. As warden, Davis is required to annually report his interests in real property, investments, business positions, and sources of income including gifts, on an Annual Statement of Economic Interests. Davis failed to timely disclose gifts amounting to \$1,550 in value that he received on his 2015 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count); and accepted gifts in excess of the annual gift limit by \$2,840 in 2015, in violation of Government Code Section 89503, subdivision (c) (1 count). **Total Proposed Penalty: \$4,000.**

Campaign Non-Filing

- 6. In the Matter of Chavez for Soledad City Council 2010 and Alejandro Chavez; FPPC No. 15/1425 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson and Staff Services Analyst Dominika Wojenska. Alejandro Chavez was the successful candidate for Soledad City Council in the November 2, 2010 and the November 4, 2014 General Elections. Chavez for Soledad City Council 2010 was the candidate controlled committee for both elections. The Committee and Chavez failed to timely file eight semiannual campaign statements and two pre-election statements covering the reporting periods of January 1, 2013 through December 31, 2016, in violation of Government Code Sections 84200 (8 counts) and 84200.5 (2 counts). **Total Proposed Penalty: \$4,008.**
- 7. In the Matter of Committee to Elect Debbi Rex and Deborah "Debbi" Rex; FPPC No. 16/328 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson and Staff Services Analyst Dominika Wojenska. Deborah Rex was the successful candidate for Trustee of the San Jacinto Unified School District Board of Trustees in the

November 4, 2014 General Election. Committee to Elect Debbi Rex is her candidate controlled committee. The Committee and Rex failed to timely file two pre-election statements and two semiannual statements covering the reporting period of January 1, 2014 through December 31, 2014, in violation of Government Code Sections 84200 (2 counts) and 84200.5 (2 counts). **Total Proposed Penalty: \$3,251.**

- 8. In the Matter of Committee to Improve Gonzales Schools – Yes on N and Rutilia Baltazar; FPPC No. 17/409 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Staff Services Analyst Dominika Wojenska. Committee to Improve Gonzales Schools – Yes on N is a local primarily formed ballot measure committee. Rutilia Baltazar is the Committee’s treasurer. The Committee and Baltazar failed to timely file six semiannual campaign statements for the reporting periods of May 18, 2014 through December 31, 2016, in violation of Government Code Section 84200 (6 counts), and two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$1,696.**
- 9. In the Matter of Elect David Chong LMSVSD Board 2014 and David Chong; FPPC No. 15/273 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson. David Chong was the successful candidate for Board Member of the La Mesa-Spring Valley School District Board of Education in the November 4, 2014 General Election. Elect David Chong LMSVSD Board 2014 is his candidate-controlled committee. The Committee and Chong failed to timely file one pre-election statement and one semiannual statement covering the reporting periods of October 1, 2014 through December 31, 2014, in violation of Government Code Sections 84200 (1 count) and 84200.5 (1 count). **Total Proposed Penalty: \$1,607.**
- 10. In the Matter of Voters for Good Government and Billie Martinez; FPPC No. 16/182.** Staff: Commission Counsel Theresa Gilbertson. Voters for Good Government is a general purpose committee. Billie Martinez is the Committee’s treasurer. The Committee and Martinez failed to disclose information concerning contributions received on a 24-Hour Independent Expenditure Report and failed to file an independent expenditure verification, in violation of Government Code Sections 84204 and 84213, subdivision (b) (1 count). **Total Proposed Penalty: \$1,500.**
- 11. In the Matter of Armenian National Committee Political Action Committee ANCPAC and Viken Pakradouni; FPPC No. 17/473 (Streamline Settlement).** Staff: Senior Commission Counsel Neal Bucknell, Special Investigator Jeffrey Kamigaki, and Intake Manager Tara Stock. Armenian National Committee Political Action Committee ANCPAC is a general purpose committee. Viken Pakradouni is the Committee’s treasurer. The Committee and Pakradouni failed to timely file three semiannual campaign statements covering the reporting periods of January 1, 2016 through June 30, 2017, in violation of Government Code Section 84200 (3 counts). **Total Proposed Penalty: \$602.**
- 12. In the Matter of Friends of Phil Anthony and Philip L. Anthony; FPPC No. 17/594 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Staff Services

Analyst Dominika Wojenska. Philip L. Anthony is a member of the Orange County Water District Board of Directors. Friends of Phil Anthony is his candidate-controlled committee. The Committee and Anthony failed to timely file one pre-election campaign statement covering the reporting period of July 1, 2016 through September 24, 2016, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$216.**

Campaign Non-Reporting

- 13. In the Matter of Family Farmers Working for a Better California with Major Support by Western Growers and Ward Kennedy; FPPC No. 16/0068.** Staff: Commission Counsel Michael W. Hamilton and Program Specialist Patricia Ballantyne. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Family Farmers Working for a Better California with Major Support by Western Growers is a general purpose committee. Ward Kennedy is the Committee's treasurer. In 2012, the Committee and Kennedy failed to timely report receiving in-kind contributions on the pre-election campaign statement covering the reporting period of July 1, 2012 through September 30, 2012; and failed to timely report receiving in-kind contributions on the semiannual campaign statement covering the reporting period of October 21, 2012 through December 31, 2012, in violation of Government Code Section 84211 subdivisions (a), (c), and (f) (2 counts). **Total Proposed Penalty: \$5,000.**
- 14. In the Matter of Todd Spitzer, Spitzer for Supervisor 2016, Spitzer for Central Committee 2016, and Lysa Ray; FPPC No. 17/0019 (Streamline Settlement).** Staff: Assistant Chief of Enforcement Dave Bainbridge and Investigator Marshall Miller. Todd Spitzer was a successful candidate for Orange County Supervisor and a successful candidate for County Central Committee 68th Assembly District – Republican Member in the June 7, 2016 Primary Election. Spitzer for Supervisor 2016 and Spitzer for Central Committee 2016 were his candidate-controlled committees. Lysa Ray is the Committees' treasurer. The Supervisor Committee, Spitzer, and Ray failed to timely report expenditures of \$100 or more on one pre-election campaign statement covering the reporting period of April 24, 2016 through May 21, 2016 and two semiannual campaign statements covering the reporting period of May 22, 2016 through December 31, 2016, in violation of Government Code Section 84211 (3 counts). The Central Committee, Spitzer and Ray failed to timely report expenditures of \$100 or more on two pre-election campaign statements covering the reporting period of January 1, 2016 through May 21, 2016 and one semiannual campaign statement covering the reporting period of July 1, 2016 through December 31, 2016, in violation of Government Code Section 84211 (3 counts). **Total Proposed Penalty: \$1,258**
- 15. In the Matter of Taxpayers for George Runner for Board of Equalization 2014, George Runner, and Kelly Lawler; FPPC No. 15/1556 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson and Program Specialist Patricia Ballantyne. George Runner was the successful candidate for Board of Equalization in the November 4, 2014 General Election. Taxpayers for George Runner for Board of

Equalization 2014 was his candidate-controlled committee. Kelly Lawler served as the Committee's treasurer. The Committee, Runner, and Lawler failed to report contributions on two semiannual campaign statements covering the reporting period of January 1, 2013 through December 31, 2013, in violation of Government Code Section 84211 (2 counts). **Total Proposed Penalty: \$606.**

- 16. In the Matter of Pandya for Mayor 2016 and Amit Pandya, FPPC: 16/19811 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson. Amit Pandya was an unsuccessful candidate for Mayor of City of Salinas in the November 8, 2016 General Election. Pandya for Mayor 2016 was his candidate-controlled committee. The Committee and Pandya failed to timely report contributions on the pre-election statement covering the reporting period of July 1, 2016 through September 24, 2016, and expenditures on the semiannual campaign statement covering the reporting period of October 23, 2016 through December 31, 2016, in violation of Government Code Section 84211 (2 counts). **Total Proposed Penalty: \$503.**

Statement of Economic Interests Non-Filer

- 17. In the Matter of Robert S. Jones; FPPC No. 17/520 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Robert S. Jones, Consultant for City of Monterey, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$400.**
- 18. In the Matter of Tom Greenwood; FPPC No. 17/650 (Streamline Settlement).** Staff: Chief of Enforcement Galena West, Intake Manager Tara Stock and Staff Services Analyst Katie Trumbly. Tom Greenwood is serving as President on the Orange Cove Police Protection District. Greenwood failed to timely file his 2016 Annual Statement of Economic Interests with the Fresno County Clerk, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$400.**
- 19. In the Matter of Greg Thompson; FPPC No. 17/712 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Greg Thompson, as a Planning Commissioner of the County of Merced, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87203 (1 count). **Total Proposed Penalty: \$200.**
- 20. In the Matter of Geoffrey Wheeler; FPPC No. 17/743 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Geoffrey Wheeler, Airport Consultant for City of San Jose, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**
- 21. In the Matter of Martin Arredondo; FPPC No. 17/912 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock.

Martin Arredondo, Piru Cemetery District Trustee, failed to timely file an Assuming Office Statement of Economic Interests with the County of Ventura, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200**

- 22. In the Matter of Todd Trotter; FPPC No. 17/934 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Todd Trotter, a Board Member of the Department of Veterans Affairs, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

Statement of Economic Interests Non-Reporter

- 23. In the Matter of Joseph Knight; FPPC No. 15/1496 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson. Joseph Knight, as a Commissioner for the Travel and Tourism Commission, failed to timely disclose his business position and income received from Fox Rent A Car, Inc. on his 2014 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$800.**

General Items 26-32

- 26. Adoption of Amendment to Regulation 18535.** Staff: Sukhi Brar, Senior Counsel, Legal Division. At the Commission's direction, staff proposes to amend Regulation 18535 to comply with the *Rios* Opinion, No. O-17-001, to permit a state candidate to contribute unlimited funds to a recall committee controlled by another state candidate to oppose his or her recall.

Staff Memo Proposed Amendments to Regulation 18535

Chair Remke: So now we have item 26 - item 26 proposed amendments to regulation 18535. Item 26.

Commissioner Hatch: I would move adoption.

Chair Remke: Before there's a second is there any discussion on the item actually like public comment as well so we could first questions or comments from

Commissioner Hatch: (Overlapping) withdraw.

Chair Remke: Okay questions or comments from the Commissioners first for - okay no questions are comments is there public comment on this item seeing or hearing none now is there a motion

Commissioner Audero: No, hold on I have a question I don't think you saw me and I didn't say it loud enough and it didn't proceed it with Chair

Chair Remke: Well that helps just so I can recognize you Thank You

Commissioner Audero: Chair

Chair Remke: Commissioner Audero.

3:00:00

Commissioner Audero: So, I don't know how we deal with this between item 26 and 27 because item 26 has this new paragraph B right in the in the regulation but then isn't it item 20 it's item 27 and forgive me if I'm wrong but that also has a recommendation that we add C and D

Sukhi Brar, Senior Commissioner Counsel: Correct yes item 26 is are just the amendments to regulation 18535 that are in line with the Rios opinion and with regard to recall elections and then item 27 are all of the requests made in the comment letter received from Mr. Richard Rios

Commissioner Audero: So, if we go if we adopt this then we still can do item 27 and revise further or not

Sukhi Brar: Correct. It's a separate item.

Commissioner Audero: Okay it's understood thank you

Jack Woodside: I just want to make sure it's got to be done noticed first the item 27 the amendments that were proposing so it wouldn't be change it changes at this meeting it would yeah

Commissioner Audero: Correct.

Commissioner Hatch: It's a 45 day notice right

Sukhi Brar: Correct.

Commissioner Audero: Correct yes sorry about that you're totally right yeah, I withdraw everything I just

Chair Remke: So again, just for right now we're looking at just the item 18535 that was notice pursuant to the motion at a prior meeting regarding adopting this regulation so that's what if it's noticed and I do I have a motion

Commissioner Hatch: Madam Chair I move this item

Chair Remke: Is there a second

Commissioner Hatch: (Overlapping) I move adoption. I'm sorry.

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward and Chair Remke.
The motion passed 4-0.

27. Requested Amendments to Regulations 18531.5 & 18535. Staff: Sukhi Brar, Senior Counsel, Legal Division. A comment letter was received in response to the proposed amendments to Regulation 18535, with a request for three additional amendments. With respect to the request to amend Regulation 18531.5, the proposal is consistent with the Rios Opinion, and at the direction of the Commission, it can be noticed for the November meeting. As to the other amendments (i.e., permit candidates to make unlimited contributions to candidate controlled legal defense funds and candidate controlled ballot measure committees), since the amendments are outside the scope of the holding in the Rios Opinion, the Commission may consider whether to pursue the proposals further.

Staff Memo
Comment Letter – Rios

Chair Remke: Okay now we're on item 27 which was a public comment to the last item as well as proposals for potential future items which were placed on the agenda so that they were properly noticed to be discussed as to how the Commission would like to proceed so with that

Sukhi Brar, Senior Commission Counsel: Okay

Chair Remke: Why don't you go ahead and introduce yourself as well Sukhi

Sukhi Brar: Sukhi Brar, Senior Commission Counsel with the legal division this item the purpose of this item is to address public comments received for Mr. Richard Rios on behalf of Olsen Hagel and Fishburne with regard to regulation 18535 and 18531.5 Mr. Rios has requested that the Commission make a minor amendment to regulation 18531.5 to help clarify the Rios opinion specifically that the limit in section 8 5 305 does not apply to confirmations made to a committee controlled by another state candidate to oppose the recall of that state candidate the suggested amendment is consistent with and within the scope of the Rios opinion therefore staff has noticed this amendment already and it can be presented to the Commission for adoption at our at our November meeting but we want to take direction from the Commission on whether we want to do that or not it can be heard at the next meeting though and then the other requests there are two more requests and they are two further amend regulation 18535 to exempt candidate controlled legal defense funds and

candidate controlled ballot measure committees from the contribution limit and section 85305 and staff is seeking direction from the Commission on - on whether to move forward with those requests and we've provided a few options in the memo for how to do that one of them includes directing staff to prepare a memo briefing the issues related to those two items the second one is to just move forward with noticing that regulation move forward with the suggested amendments and the third is to leave the regulation as is

Chair Remke: Questions from the Commissioners

Commissioner Audero: Chair

Chair Remke: Commissioner Audero.

Commissioner Audero: So, I understood everything you said but I have a request a separate question because Mr. Rios says letter actually requested some other stuff

Sukhi Brar: Okay

Commissioner Audero: So, and I don't see that addressed other than the fact that his - his email of September 22nd as part of the record so what - what are we doing about all the other things that are part of this request

Sukhi Brar: So, I believe you're talking about updating all of our materials that were impacted by the Rios opinion correct

Commissioner Audero: Yeah

Sukhi Brar: Okay so with those items we have already begun updating everything we've updated the website with notations on there for items that will be updated with links to the Rios opinion we've noticed our recall fact sheet there's a 30 day notice period for that that had that interested persons notice we've done that we've also noticed the campaign manual that's out of date now because of the Rios opinion for that 30 day notice that's also required and we have superseded the Johnson advise letter so we have addressed these concerns

Commissioner Hatch: So those are

Chair Remke: Commissioner Hatch

Commissioner Hatch: Okay so those are noticed for a future meeting that

Sukhi Brar: Yes.

Commissioner Hatch: Those items you talked about

Sukhi Brar: Yes, the manual and the FAQ sheet

Commissioner Audero: Have you identified everything that needs to be revised

Sukhi Brar: I believe so yes

Commissioner Audero: Okay and so with the exception of what we're gonna do here today then everything else will be brought to us I guess in November

Jack Woodside: Actually, December that if you'd like us to proceed with two amendments to 18535 that'd be December meeting

Chair Remke: But are you just referencing the manuals and the fact sheets?

Jack Woodside: Yeah, November.

Commissioner Audero: Okay so I think that's fine that's okay you and I've had a conversation about this but I just want to put it on the record that I think that we've been talking about this since May and so it's just I don't understand how it is and I'm hoping you can explain I don't understand how it is that as soon as the in Re Rios opinion or in Rios whatever it's called the Rios opinion was issued we didn't have everything done together with the regulation and I - I know that the comment the - the answer that you provided was earlier was well we have to see what the regulation is going to say and I have to say that we can do more than one I'd like to believe we can do more than one thing at once right I mean we have had Mr. Woodside has provided us at times alternative right we talked about having alternative opinions and so I don't there's nothing we can do about this now but I bring it up for another reason which I'll get to in a second but I know I would be more satisfied and feel that the process is working better and feel better about what I can say to the public about our internal processes if I could say yeah we've knew since May that if this happened then we were gonna have to change this and this and this and this and we as soon as that happened we moved quickly it's because it's - it's not - it's hard for me to believe that we didn't know what had to be changed and so there's a very long-winded way of saying and I apologize for the long-winded Ness but if very long-winded way of saying why don't we just have everything in front of us today

Sukhi Brar: I'm just gonna say that we have you know very small staff and we move forward on things this is we know that they are accomplished so and we have lots of things to do we try our best to accomplish all of those things as fast as we can so

Commissioner Audero: So okay and I can appreciate that I would I would encourage us to find ways around that because there's no mass confusion right and I - I know that I raised the confusion issue before and the answer was well but the public isn't confused this doesn't affect the public don't worry about that it's just the state you know elected officers which I just don't think is the right answer right I just I don't think it's appropriate just because it's a small group of people that might be confused that it's okay so and but I raise this again not because of today because there's nothing we can do about it other than Mr. Rios sorry but I raised it because I think it's important that we become proactive rather than just active but

also because you know and I know we had some discussion about this during the Bagley Keene discussion but I think one of the things that helps the Commission move things along is if we know what's happening right and so you know kudos to you Mr. Rios for sending the communication to all of us I know there's some - some might disagree that or might think that's a Bagley Keene violation I'm not sure that it is as long as there are no responses to you sending us an email and I guess that remains to be tested but thank you because it alerted me as I can't speak for anybody else but it alerted me that there's a lot to be done here and we need to move this along and allowed me to communicate with staff about it not with the other Commissioners but with staff and I think that that is a helpful thing for the public and for the regulated community and I raise this also because we're about to embark on AB249 the same issues right we're gonna have to change regulations there's gonna be advice sheets there's gonna be FAQ I don't know what all the things are you guys know best right but I would hope that somebody has already started the AB249 process so to the extent and you know correct me if I'm wrong Chair and this is not the appropriate place I'll just save it for the end but I will ask that with respect to AB249 for November we have a list of everything and a timeline of when it's going to be done because I think that that will help everybody it will allow the AB249 people to come in and say you know can we tweak this timeline because we think maybe this is better done sooner rather than later but I think that keeping everybody abreast of the progress is going to be very helpful and it allows the public and the regulated community to come in and make comments about the progress and I and I think that's very important so unfortunately that's not where we are with 85305 and 85315 but we'll try to do better going forward

3:11:29

Chair Remke: Ok I just want to comment on a couple things that I do believe staff has moved forward in a fairly expedited fashion in this since this was adopted August 17th the new reg was noticed September 5th the staff immediately went on to the website and made references to the opinion where appropriate to alert people if they were looking up any of the material related to recalls and again as we heard earlier the Bagley Keene can be frustrating but we do have to notice our manuals and fact sheets and then bring them back I do think there was a moment of pause on this should we wait to see the where the Commission was gonna go with this reg or any other regs and then you know as far as resources go we are probably now going to see the campaign manuals three times four times possibly in the next few months so there is some idea of can we get some information out on the website as soon as possible to let people know about changes and then do the more formal process in a consolidated fashion so that was some of the - the discussion and thoughts but again I believe we are moving forward and we're going to hear from Ms. Peth later about all the process that's going into a b2 49 which has been extensive so far internally coming up with it and when you're that we are going to report to you during the staff report section so that without you're going to hear all about that and we can provide more detail at the next meeting if still required but I just want to kind of point out that there are different phases of immediate action immediate information on the website manuals and fact sheets that need to be noticed and approved do take more time and sometimes I do think it's wise to consolidate so with that I Commissioned her Hatch did you have a comment

Commissioner Hatch: Well actually just I can't think it's a question you've already noticed the amendment to 18531.5 correct

Suki Brar: Yes, we did we move forward on that

Commissioner Hatch: You're looking for guidance then on the other two issues so that they could be noticed for December if that's our will

Sukhi Brar: Correct then we're also looking for guidance on 185 31.5 even though we've already noticed it we want to make sure that the Commission is okay with moving forward with that

Commissioner Hatch: I'm sorry which 18535

Sukhi Brar: 18531.5, five though we've already noticed it it's also in the memo think

Commissioner Hatch: Did something led with that yeah, I misheard you they got one of the numbers mixed up by those a different section

Sukhi Brar: Okay

Commissioner Hatch: Before I go forward on what I want to ask is - is - is putting those other two things in the same reg appropriate or do you already have existing regs that deal with the subject matter of the other two areas

Sukhi Brar: It could be placed into that reg we could also look at pit and get it in its own reg we haven't really

Commissioner Hatch: There's no existing old reg to amend though is there so it doesn't really

Sukhi Brar: Not that I'm aware of right now

Commissioner Hatch: All right so based on that if it's viable Chair Remke I'd like to move that we ask you to notice those two as an amendment to 18535 for consideration in December

Chair Remke: Sure, before there's a second though I want to ask if there's any public comment oh yes please any public comment

Richard Rios, Olson, Hagel, and Fishburn: Richard Rios on behalf of Olson Hagel and Fishburne just to commend the Commission on you know moving agreeing to move forward or making a decision or calendaring this item for - for future consideration it's my understanding that the amendments that were suggested 218 535 are not available for next Commission meetings because for the next Commission meeting because we're beyond the 30-day notice period for - for the November meeting so

Chair Remke: 45 days' notice for the OAL

Richard Rios: Well for the I mean my understanding that there's a 30 day notice

Chair Remke: It's 45 days you have to notice OAL 45 days that's the issue

Richard Rios: And that's under the Commission's

Chair Remke: The under Administrative Procedures Act which all regulations have to be adopted pursuant to

Richard Rios: Well but the Administrative Procedures Act that applies here is the 1974 version not the current Administrative Procedures Act the Commission regulations specifically provide for a 30 day notice period and the 1974 version of the APA is consistent with that I don't think that's relevant here because we're beyond the 30 day period and the 45 day period but I wanted to bring that issue to the Commission's attention because I think it's something that merits further consideration or at least information for - for the Commission to consider I don't I'm here to answer questions so if you have anything any questions on the proposed amendments to 18 535 be happy to hear those

Chair Remke: Thank you for bringing that issue we'll definitely look into that ever since I've been here we've pursuant to OAL we've been giving forty-five days' notice with the IP in between there and I think that's been a long-standing practice but we'll look into that

Richard Rios: Thank you

Chair Remke: Thank you any questions for Mr. Rios

Commissioner Audero: So, what was gonna change if we go 45 days where I said versus 30 days because I know we're past the 45 days

Richard Rios: I don't think anything will change with respect to this amendment but I heard Commissioner Hatch reference the 45 day I just thought you know we ought to just look at that to confirm that that is the actual law because I do know that there are there is a Commission regulation that provides for 30 days and the - the same regulation refers to the 1974 version of the APA being applicable and in that provision I believe has a 30 day notice period so for the benefit of the public and the Commissioners I just thought that might be something you want to take a look at

Commissioner Audero: So, if we go with 30 days if we go with 30 days could we get this on the November agenda

Richard Rios: Believe the meetings calendared for the 16

Sukhi Brar: I so there's not

Richard Rios: We're just a couple days outside

Commissioner Audero: Wait oh it's December that's the 21st yeah

Chair Remke: Commissioner Hatch

Commissioner Hatch: This opened a Pandora's box say you said that we're not subject to the current APA this is that what you said this must assume be one of many issues that might we might be differing with them on or is it just this

Richard Rios: Well you general counsel may be able to answer that better Commissioner but in 18312 there governs the rulemaking procedure for the Commission and it says that all references to the Administrative Procedures Act are references to the 1974 version of the Administrative Procedures Act and so therefore at least my understanding is based on the case law that was a case on this a number of years ago which said that it's the 1974 version of the APA which applies I did just a touch of research this morning on it and I felt I discovered that I thought it was a 30-day notice period that applied but I think it merits further evaluation by the Commission I've just heard a number of references to 45 days and I'm not it's not 100% clear to me that that's the correct standard

Commissioner Hatch: Thank you for bringing it I did I ask our chief counsel is there a reason why we have the Commission has objected itself to a 1974 version of the APA

3:20:04

Brian Lau: I can handle this we are under a 30-day there's an unpublished decision we found a lawsuit a while back as a long time ago actually a decision that we are subject to the 1974 APA which only requires a 30-day notice there is the confusion with the 45 days is we frequently just advise about 45 days because it does take about two weeks or fourteen or another 14 to 16 days to get into the AO into the registered notice to be published it takes about there's a 10 day turnaround with OAL to get it published and you have to turn it in on a Friday so there's another 14 to 16 days built in there that kind of works out on 45 days so that's where there's sometimes confusion on whether or not is 45 or 30 days which is also the reason we would not be able to get this up again in November based on even a 30 day schedule because it would require the 10 day turnaround time period and interning and the extra couple days to get it turned in

Commissioner Hatch: So why (Inaudible) are we just subject to (inaudible)

Brian Lau: It actually allows us to be much more responsive the modern APA requires fiscal analysis now this is on - on small business owners the other - other agencies cannot do not respond through regulations as quickly or as efficiently as we can because we are operating under the seventy-four APA

Commissioner Hatch: Is that something that was in Prop. 9 (inaudible).

Brian Lau: We know that was actually a lawsuit based on the fact that the Political Reform Act required a 3/4 vote of the legend of the legislature for any amendment so when the AP was adopted it was not a 3/4 vote and they thought it went to the spirit of being able to amend the political reform act you know quickly expeditious fashion so that's why so that's why we ultimately won or a 1 in court when we when we challenged being subject to the modern APA

Commissioner Hatch: So, the who brought the lawsuit

Brian Lau: OAL? Was it us?

Commissioner Audero: Versus us?

Richard Rios: The case is captioned Fair Political Practices Commission versus the OAL

Commissioner Hatch: (Inaudible).

Brian Lau: Correct.

Commissioner Audero: Chair.

Chair Remke: Commissioner Audero.

Commissioner Audero: But we've been saying 45 days and so I think there's a disconnect because from what I sensed Madam Chair saying and perhaps Madam Chair can clarify but was that there was that we thought it was a 45 day notice period and thank you for bringing it to our attention Mr. Rios but you're saying something different which so I think there's a disconnect you're saying no - no we've always known it was 30 days we just throw in an extra fifteen which I don't think that's what Madam Chair was saying

Brian Lau: I won't speak for -

Commissioner Audero: No - no I'm asking you

Brian Lau: It is a 30-day process it's a 30-day notice requirement but it does take about 45 days so there can be some confusion just too far as far as when somebody asked us well how long does it take to get something up and noticed we may save as a short version we might say it takes about 45 days or not when we say that we're not intending but it could be interpreted that way that were requiring a 45 day notice period is not that we're requiring a 45 day notice period it's just that we're building the time that it takes to get the regulation published

Commissioner Hatch: This sounds like the definition of a catch 22.

Richard Rios: If I may ask –

Commissioner Hatch: Orally you get 30 days but you can't get there from here if you don't allow 45 days is that

Brian Lau: Right it's not it's not our timelines it's only else timelines for actually

Commissioner Hatch: If you try to do it in the 30 days (inaudible).

Brian Lau: Right.

Chair Remke: Okay any other questions from the Commissioners

Commissioner Audero: No but I think Mr. Rios –

Richard Rios: Just a comment on - on the I mean what - what the what - what regulation 18312 says with respect to the - the notice requirement procedure is that a notice of the regulation has to be delivered to the Office of Administrative Hearings it doesn't for publication and the next issue of the administrative register so not sure that the publication requirement applies as much as the delivery of the of the notice applies at least that's what you know is the regulation says

Chair Remke: Okay so I guess we will be looking into this further for further clarification and to make sure we're complying with all notice and regulations at this point I think we've acknowledged that the 30 days even Mr. Rios concedes is it's not doable at this point so we will if and I think Mr. - Commissioner Hatch you were about to make a motion unless there's any other questions from the Commissioner

Commissioner Hatch: Yes, I was do you know

Commissioner Hayward: I'd like to question I really do wish the dais were curved to each other Mr. Rios the letter that got from max Kanin on behalf of West Hollywood City Councilman John Heilman did you have a chance to look at that

Richard Rios: I did yes

Commissioner Hayward: They he offers a markup of an amended one eight five three did you have a chance to look at that

Richard Rios: I did

Commissioner Hayward: Do you have any changes additions deletions

Richard Rios: The only point I would add is that there is an additional type of committee that's not mentioned by Mr. Kanin in his letter which is an officeholder committee that was

the only other type of committee I could think of outside of about measure committee a Legal Defense Fund or a candidate's election or re-election or recall committee that could be impacted by I think it was the last subdivision - subdivision D or E that that he added so I'd want to think further about how his language in that provision applies to officeholder committees because I'm not sure the intent the intent was to exempt officeholder committees from - from the limits but other than that I had no - no concerns about that

Commissioner Hayward: Well and office holder committees aren't treated exactly the same and they have their own little right okay fair enough so this might be an excellent start as far as noticing a new language

Richard Rios: I think it would if I might just add one other thing there is a regulation that specifically governs ballot measure committees there is no reference to the limits in that regulation you know it's up to the Commission as to whether it would like to put something specific about the limits in the ballot measure committee regulation but I think 18:5 an amendment to 18 535 would certainly be sufficient

Commissioner Hayward: Okay thanks that's all

Chair Remke: Any other questions or comments from the Commissioners is there a motion or a direction yes

Commissioner Hatch: Yeah, my motion was to give direction that we would like to have those other two items noticed for the December meeting

Chair Remke: So, for was it a motion as we said before for a pre-notice reg and it sounds like pursuant to the proposal in that subsequent letter

Commissioner Hatch: Right the staff asked one of three alternatives and I'm picking the middle one which is notice the proposed amendments for its December Commission meeting

Chair Remke: Right and I thought as a starting point it sounds like there's an additional possibly you could reject

Commissioner Hatch: Oh (Inaudible)

Chair Remke: No - no the actual language in that subsequent letter the second list starting with that that's pretty good direction

Commissioner Hayward: Yeah

Chair Remke: Is that acceptable point

Commissioner Hatch: That's fine.

Chair Remke: Okay is there a second

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, Chair Remke.
The motion passed 4-0.

Chair Remke: And then on the issue I'm assuming that the Commission wants to see the more minor amendment in November to the 18 is that correct is that the direction

Commissioner Hayward: I think that's the general direction.

Chair Remke: 18531.5 so we'll bring that back for – okay.

26. Adoption of Amendment to *Rios* Opinion, No. O-17-001. Staff: Jack Woodside, General Counsel, Legal Division. Commissioner Audero proposes to amend the *Rios* Opinion, No. O-17-001, to respond to the Dissent that was published with the Opinion on September 15, 2017, in accordance with Regulation 18324.

Staff Memo
Proposed Amended *Rios* Opinion

Chair Remke: Now item 28 proposed amendment to the *Rios* opinion Commissioner Audero would you like to start?

Commissioner Audero: Sure I mean there isn't much to say other than here's my proposed amendment but - but - but I will say that I it raises a whole other concern about the regulation and the - the method during it through which we issue an opinion and so maybe that's something to discuss at another time but I don't want to let it drop that I understand that the Commission was fought sorry the regulation as to how to issue the opinion and a dissent and concurring opinion that it was followed to the tee. I get it - it was very strategically followed to the T so that there wouldn't be an opportunity to do what judicial body is typically doing I get there were quasi-judicial bodies but I would think that the same courtesies would apply which is I'm gonna have a dissent here's my dissent take a look at it see if it changes your mind if it or do you want to respond to the dissent within the majority and it's just a give and take right then the response comes out then the dissent may also amend the dissent but there's a there's a courtesy that goes back and forth that clearly I guess because it's not written into the regulation it doesn't need to be followed so I'm thinking that maybe what we do is we discuss how to build that into the system so that if there is a response to a dissent it could just kind of be more easily brought into the process in the original opinion and it doesn't really matter here because there was lots of follow-up work and we have to bring Mr. Rios back way and we have to put other things on the agenda but if we didn't then what this process that is followed to the tee on the regulation would have required is that we notice this item yet again for public comment because now there's a revision or a proposed amendment to the opinion which I think is number one highly inefficient and two it affects the public I mean

I'm here I come here every month it doesn't affect me anymore but - but it does affect the public and I think that we should think about and put on the agenda a discussion about do we want to make a change to the regulation as to what the process is for dissents and - and whether we build in something new into that regulation so that's - that's the only thing that I would add for this other than it because there's nothing to add I wrote it so those are my points

3:31:50

Chair Remke: Any other questions or comments from Commissioners? Is there any public comment on item 28? Is there a motion?

Commissioner Hatch: I move the motion - excuse me - I move the adoption of the amendment.

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

Jack Woodside: Can I ask just for clarification?

Commissioner Audero: I know where you're going -

Jack Woodside: Yeah.

Commissioner Audero: The blanks.

Jack Woodside: Right.

Commissioner Audero: Yeah sorry forgot Thanks so there are - may I, Chair?

Chair Remke: Commissioner Audero.

Commissioner Audero: So, there are blanks and as to who joins this in that first paragraph and then and at the very end because I certainly submit it so that's a given but we need to decide what we're going to do as to the various choices in that first paragraph you can add my name to the blank okay

Chair Remke: Commissioner Hayward? So, it's -

Commissioner Hayward: I've had a lot of Rios in my life lately.

Chair Remke: So, it will read the majority feels and then in the second paragraph it will say we is that correct

Commissioner Audero: And then also so it will say nonetheless the majority feels compelled to do so because we disagree and then in the second paragraph it would say we take each of the dissents arguments and then and then on page 14 I don't know if the best way to do this is submitted by me and then joined by or I don't know what the best way to do it is I don't care one way or the other if we just all three sign it or we just add joined by

Jack Woodside: Just add your names to it

Commissioner Audero: Okay, so -

Jack Woodside: Without signing

Commissioner Audero: Right I know we're not signing but joined by Commissioners Hatch and Hayward I guess do you see what

Commissioner Hatch: Or – just – he said just put our three names down.

Commissioner Audero: I see I see right sorry

Jack Woodside: So, like the majority

26. Closed Session. Administrative Adjudication (Gov. Code § 11126(c)(3))

Consideration of Proposed Decision of Administrative Law Judge, In the Matter of George Alai, FPPC No. 13/1135, OAH No. 2016090791.

ALJ's Proposed Decision, July 19, 2017

Enforcement's Opening Brief

Respondent's Brief in Support of Proposed Decision

Enforcement's Reply Brief

Chair Remke: Okay item 29 is the closed session so we will we're going into closed session regarding an enforcement matter to decide a ALJ decision so we'll go off the record go into closed session and we'll be back thank you

Erin Peth, Executive Director: Did you want to ask for public comment?

Chair Remke: I did I really wanted to ask for public comment is there any public comment on item 29 the closed session matter okay seeing or hearing none will now go off the record and go in closed session thank you

Public Meeting concluded at 1:33pm.

Public Meeting reconvened at 2:03pm.

4:03:05

Chair Remke: Okay let's go back on the record so I will report out on item number 29 the closed session matter that the Commission has voted to adopt the proposed decision in its entirety.

28. Pre-notice Discussion of Proposed Amendments to Regulation 18450.1. Staff: Emelyn Rodriguez, Senior Counsel, Legal Division. Commission will consider proposed amendments to Regulation 18450.1, which are intended to provide more specific definitions of “advertisement” under subdivisions (a)(5) for yard signs and (a)(6) for large signs such as billboards.

Staff Memo
Proposed Amendments to Regulation 18450.1

Chair Remke: So, with that we'll move on to item 30 the pre-notice on the sign reg – as I'll call it for short.

Emelyn Rodriguez, Senior Commission Counsel: Good afternoon Chairman and Commissioners. I'm Emelyn Rodriguez -

Chair Remke: You might need to bring it closer to you if it's possible.

Emelyn Rodriguez: Senior Commission Counsel with the Legal Division. Is that any better?

Chair Remke: Can you put it on your it seemed better when someone had it like right on their - yeah there you go

Emelyn Rodriguez: Sorry I was afraid of feedback because I've had it too close before

Chair Remke: Let's try it okay let's try it

Emelyn Rodriguez: So I am presenting for pre notice discussion amendments to regulation 18450.1 dealing with the definition of advertisement that this regulation deals with the threshold question of what is an advertisement subject to regulation under the Act once something is deemed an advertisement then it must comply with relevant provisions of the acts disclosure rules the Commission at its April 20th meeting directed staff to review and propose regulatory amendments to more specifically identify the sizes of yard signs and billboards this was to provide clarity to the public and the regulated community. staff held an interested persons meeting on September 22nd and there was no public comment. the proposed amendments are based on common sizes for yard signs and these sizes are also consistent with informal advice that staff has previously provided. accordingly, staff proposes amending regulation 18450.1 to add the following to the definition of advertisement and under subdivision a five that would be posters door hangers flyers in yard signs no larger than six square feet produced in quantities of more than 200. subdivision (A)(6) large sign any sign larger than six square feet such as road signs and billboards and as stated in the memo before you the Commission has considered different approaches to defining an

advertisement such as having a laundry list of specific items to be regulated or specifically defining the term advertisement in 2002 the Commission opted to go with the current laundry list approach and it noted that it recognizes the advantages that it presents. so, it presents unambiguous guidelines regarding what the Commission was regulating but it also has its disadvantages namely that the list may not be all-inclusive and there may be permutations in political advertising that would not be covered at the time of adoption. so the proposed regulatory amendments before you attempt to strike a balance it's an approach that tries not to add complexity or reduce disclosure the proposed language was drafted prior to the passage of AB249 the DISCLOSE Act which was recently signed by Governor Brown so there will be some clean up language that will be necessary and this will be incorporated when the regulation comes up for an adoption at a future meeting it's also important to note that AB 249 maintains the definition of advertisement it takes portions of the Commission's existing regulation in 18450.1 and incorporates portions of it into the statute it doesn't make one change and it applies the definition only to committees and not persons that authorize or pay for a communication that supports or opposes candidates for elective office or ballot measures there are direct references in AB 249 to disclosures required on yard signs and billboards but those don't involve the definition of advertisement and they don't define yard signs or billboards those provisions of the DISCLOSE Act impact disclosure requirements on items that are already deemed advertisements under the Act and those involve other regulations in legal division is currently reviewing those other regulations as it moves to propose additional regulatory amendments that are consistent with the DISCLOSE Act provisions. so, staff respectfully submits these proposed amendments for pre-notice consideration and discussion

Chair Remke: Any questions from the Commissioners? Commissioner Hayward.

Commissioner Hayward: I looked around a little bit online just to sort of point myself with what six square feet looks like and realized that most of the political signs that I'm familiar with would fall within that did you said nobody came to the interested persons meeting but in the other informal advice that we've given in the past on what constitutes a yard sign and what the dimensions would be has there ever been something like a little larger than six square feet but not quite a billboard that's caused any heartburn with any one or a six square feet kind of as far as it's going to go

Emelyn Rodriguez: I believe there were some questions in informal advice about larger signs and our consistent advice has been that six square feet is - is what we consider to be the normal size there was a 4x4 size that we put in a fact sheet this was I think I believe last summer that is considered a yard sign but informal advice we've said that the size consistent with a political sign is about six four feet

4:10:42

Commissioner Hayward: Well I'm sure we'll hear from the people who buy signs or who are employed by people who buy signs as their counsel whether or not that's appropriate and yeah and then my only other question was about you know the impact of AB 249 I took a

quick look in as you've suggested it doesn't seem to affect the definition at all it affects what you have to disclose but not what it needs to be disclosed on

Emelyn Rodriguez: That's correct

Commissioner Hayward: So, you know thanks this is gonna be sort of a small victory for clarity and law and that's all

Chair Remke: Okay any other questions from Commissioners Commissioner Hatch

Commissioner Hatch: I had a question and then a comment. first on the question this changed this in AB 249 when they dropped the word person I noticed that as well do you think that has any practical impact on what we do there or

Emelyn Rodriguez: Practically no because from what I understand enforcement doesn't really enforce rules against persons that are not committees but it makes it clear in the law that it doesn't apply to persons that are not committees

Commissioner Hatch: And then I had a little concern about that sort of Inbetweeners I understand you know setting some kind of limit as to what you call a yard sign but there's another class of signs that are upwards of four by eight that are largely a function of grassroots do-it-yourselfers you know they go out they buy a sheet to put on a vacant lot someplace and if I understand the difference if it's in the category with a billboard then each and every, even if you only put up one, you'd be subject to the Billboard requirements

Emelyn Rodriguez: That's correct if you're a committee so if you are do it yourselfer and you don't qualify as a committee

Commissioner Hatch: Small organizations you know groups may or may not have to end up paying for this through a committee it's not something that you know that the pros do you know because this the campaign consultants they get paid the big bucks I don't think anybody reads any signs it just makes the candidates feel good but the folks (inaudible) and they do even you know if they had a high paid consultant they tell them not to waste their money so I'm it was a little concerned that by breaking it there that that we're in fact going to say that you're subject to the same requirements as billboards which is the very first one that goes up it's got to have the full disclosure not just (inaudible)

Chair Remke: Can I get clarification?

Commissioner Hatch: 100 signs but you know what I see in these the local level is I mean you put up ten fifteen signs you know in an election so I don't know exactly what the solution is but I'm describing the problem maybe there's needs to be another category (inaudible)

Chair Remke: Can I get a clarification on your issue so you're saying it's a small group of people who are in the committee working paid for by the committee the signs are paid for by the committee or if it's a grassroots effort because again that's the that's the exception right

Emelyn Rodriguez: That's correct it has to be a committee so they wouldn't fall under this at all

Commissioner Hatch: By taking the person's out you think that maybe this makes itself go away

Emelyn Rodriguez: Yeah persons that are not committees are not covered by the disclosure requirements

Commissioner Hatch: (Inaudible) thank you

Chair Remke: Any questions? Commissioner Audero.

Commissioner Audero: Just a couple things on the draft regulation and I know this is this has been around this is not something that you're proposing that I'm wondering if while we're at it we can fix a couple of one thing which is defining a word with a word right so where it says (a)(2)(A) you know an electronic media advertisement means an advertisement that's not helpful right so I'm just wondering if we can change that second one to what is in other places I've seen just a communication instead of advertisement

Emelyn Rodriguez: Okay

Commissioner Audero: And then I see the same issue in (B)(3) because (B) says in addition to the exempted communications none of the following are an advertisement and then it says an electronic media advertisement which I wonder if I wouldn't be clear if we just said communication

Emelyn Rodriguez: Yeah that's we can do that

Commissioner Audero: And then the only other thing that I wonder about and I am going back to AB 249 which are two things that we know are law now and they are two exemptions that don't appear here which is the wearing apparel and the skywriting well you're not gonna find it there right because it's an AB 249

Emelyn Rodriguez: Right it that but that appears in a different regulation and they incorporated that into the statute they take a lot of what we wrote in regulation and put it in the statute so I think

Commissioner Audero: Isn't 845 government code 84501 isn't that what's what this regulation is about

Emelyn Rodriguez: It's - it's interpreting that section it's interpreting that section

Commissioner Audero: Inter what ing

Emelyn Rodriguez: Interpreting that section

Commissioner Audero: Right so regulation 18450.1 interprets government code 84501

Emelyn Rodriguez: Right

Commissioner Audero: Which has been changed by a B to 49

Emelyn Rodriguez: Correct –

Commissioner Audero: Now exclude from the term advertisement wearing apparel and skywriting

Emelyn Rodriguez: Right

Commissioner Audero: So why don't we do that here I'm sorry

Emelyn Rodriguez: Right that's what we're saying that's incorporated in the statute now

Commissioner Audero: Oh, I see it oh my god I totally missed it you're right okay that's it that's all

Emelyn Rodriguez: So maybe we part of the cleanup would be to take it out of the regulation because it's already in the statute

Chair Remke: (Inaudible) from the Commissioners any more questions or comments from the Commissioners otherwise I'll ask for any public comment okay seeing none this so is the direction that this come back with these proposed amendments and any cleanup related to AB 249 non-substantive changes that are necessary as a result of AB 249

Commissioner Audero: Sounds good to me

Chair Remke: Okay thank you

31. The FPPC's Statement of Governance Principles. Staff: John Feser, Senior Counsel, Legal Division. The FPPC's Statement of Governance Principles was adopted in January 2001. It is on the agenda for the Commission to consider whether it should be reviewed for possible revision, and if so, to determine the most effective and efficient process for review.

Staff Memo

4:19:20

Chair Remke: Okay so item 31 is the statement of governance principles Commissioner Hatch did you want to start

Commissioner Hatch: Okay I have a motion to follow when it's appropriate but I just want to let you know that I tried to structure this in a manner that I would hope avoid clashing with the current Statement Of Governance Principles. I also intend the Commission to communication that any communication to or from the ad hoc committee from any other Commissioner be through the Chief Counsel, for as I now have learned there may be even a better way just simply schedule it at a full Commission meeting so that we can give our input I think that it's appropriate that it be done in a manner that would allow without taking a lot of the - the full Commission meetings time that we can dig into this and - and make sure that we've looked carefully at all the possible impacts that might be made by making taking back and making suggested changes if any at all and I would wait for the motion

Chair Remke: Are there questions or comments Commissioners

Commissioner Audero: Yeah

Chair Remke: Commissioner Audero.

Commissioner Audero: So is so we received a packet that has the minutes sorry that has them who am I talking to that we received a packet that has the minutes of back in 2000 whenever 2001 where there was lengthy discussion about the these - these governance principles and that was very helpful interestingly those Commissioners had the same concern some of the same concerns I think we're gonna hear about but that aside do we have in this packet every document there is about making revisions to the governance principles

Jack Woodside: I don't I think we gave you what we thought would help with this meeting and whether it is the entirety of all the documents I can't say I know John worked on this packet and I think you tried to find everything relevant that

John Feser: Yes as far as I know this is uh this is what we have from the meeting in 2001 with the Commission adopt this as policy

Commissioner Audero: And then you're saying nothing else was done

John Feser: Nothing subsequent that we have in our records

Commissioner Audero: Okay so here's the weird thing here's why I'm asking this because strangely enough in my packet when I became a Commissioner and I don't know if it was in yours it says so statement of governance right same but it says "the governance principles are currently in the process of being revised," so somebody else has done something here and I'm just wondering what else has happened here because somebody at least at one point

decided there must have been some Commission meeting that said let's revise or something because otherwise my document wouldn't say this I assume

John Feser: Commissioner Audero may I ask a question? is there a date on that?

Commissioner Audero: No that's another funny thing about these kind of documents they should have dates but no but I believe you don't have this and I don't know if Commissioner Hayward has that and I don't know if Chair Remke who just came a little bit before

Chair Remke: I don't have that if I did I may have when I came like you I could answer a little bit but this issue will have to be investigated further because I think we're gonna have to look from 2001 to every Commission meeting until now if it was ever put back on the agenda what did happen since I came is that document and several others were loose documents without dates or order or anything so what we did that's when we put the Commission manual together that you have now with an index and page numbers all in one location because it was never formalized as anything so we did do that in that process and I this is gonna sound like I'm throwing her under the bus I think Hyla reviewed that one but so I don't know if the purpose she thought well we never did amend it so I'm just taking that off if this was last adopted July 2001 I don't know where the change came from with that sentence and if anything has happened since it was adopted in 2001 I know I've asked before and I know you've looked into it and what you found what you could but we can do a more exhaustive search and see if we can find any time it came back to the Commission

Commissioner Audero: Yeah, I think that would be super helpful because you know we - we have a sense of what originally was discussed and I think it would be helpful to have a sense of what was discussed as the as it was being revised at some point we don't know when

Chair Remke: I don't know let's revised that's one yeah

John Feser: I'm sorry to interrupt if I made further clarify the finalizing governance principles after the 2001 adoption meet exactly the current at least the copy I have governance principles I came on in August so I'm new too I happened to get the one that says that the following principles have been in place since adoption by the Commission on January 12 2001 so nevertheless I will we'll look to see what other exists

Commissioner Audero: Yeah and I don't disagree that they are literally our word for word I don't disagree with that my question is more about what do you mean being revised and you know we don't know anything about it and maybe you can find something and let us know what that was about and what the issues were that were raised and not discussed or not adopted or anything you can find I think would be super helpful okay

Erin Peth: Commissioner Audero, could I make a suggestion? can Sasha make a copy of that document you have the version you have so we just have retain that are you copy here

Commissioner Audero: Sure, hold on not if I wrote something on it but it's squeaky clean yeah absolutely

Commissioner Hayward: I just want to interject that mine looks like the one that we got in our packet and is captioned very differently from yours

Commissioner Hayward: Again, I believe so

Chair Remke: I think that might be a preliminary kind of thing

Chair Remke: This I believe was again part of the loose packet of information which when it became part of our Commission manual there was trying to be a formatting I don't know why that sentence was lost other than all I can imagine is someone thought more knowledgeable than me who was here longer said that never happened but that's a speculation so again I'd like to verify that but I believe that that's all that happened and the - the difference as John has pointed out the one in our Commission manual the one in the packet is identical to what was adopted in 2001 the substance everything starting with to ensure okay that's just the heading

Commissioner Audero: Yeah, no I like I said I don't disagree I just want to know because if it was discussed one of two things could have happened what two things could have happened right it was discussed and no change was made or it was not discussed right and then like my is the statement here that's just a mystery you can solve it

Chair Remke: Okay so with that are there any public comments on item 31 seeing or hearing none is there a motion

Commissioner Hatch: I do have a motion and I'll furnish you a copy of this Sasha. I move that the Commission establish an ad hoc committee composed two members of the Commission other than the Chair; such members shall be appointed by the Chair on or before November 1st, after consulting with the intended appointees, as to their willingness to serve;

I further move that the charge of the ad hoc committee shall be to review the Statement Of Governance Principles and prepare a report recommending any revisions that the ad hoc committee deems appropriate, for consideration by the Commission at a subsequent Commission meeting;

I finally move that the Chair comply with the request, excuse me, I final move that the Chair comply with any request by the Chair, oh, the Chair of the ad hoc committee to schedule committee meetings, as well as to any request by the Chair of the ad hoc committee to schedule hearings of the Commission to consider each of the recommendations made in the ad hoc committee report.

Chair Remke: Is there a second?

Commissioner Audero: Second.

Chair Remke: Can I get a point of clarification so we're not naming the committee members now you want me to the consult and

Commissioner Hatch: This is

Chair Remke: But you don't want me to we don't want to decide that now you want me to do that after conferring with who wants to be membership

Commissioner Hatch: To invite make sure that they're willing to serve and then announce their appointment

4:30:08

Chair Remke: Okay will do

Commissioner Audero: How's that going to be communicated?

Commissioner Hayward: Under the provisions of Bagley Keene

Commissioner Audero: Well but therein lies the rub right because we have a whole disagreement on that but

Commissioner Hayward: I think it's procedural

Commissioner Audero: I would think so too but others might disagree

Chair Remke: Yes, if I am just consulting with members to see who agrees to be on it and then I can announce it and I'm even happy to post it on the website our ad hoc committee with your motion so that people know that's going on okay is there a second I'm sorry did you

Commissioner Hatch: Sorry talking to myself really

Commissioner Audero: I had seconded it

Chair Remke: Okay

Commissioner Audero: Confusion as you started talking after the second

Chair Remke: I was getting a point of information right so um take the roll please

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

The motion passed 4-0.

32. Executive Staff Reports.

Enforcement Division. Galena West, Enforcement Chief

Legal Division. Jack Woodside, General Counsel

External Affairs and Education. Courtney Miller, Manager

Legislative and External Affairs. Phillip Ung, Director

Chair Remke: Okay so the last item is item 32 regarding the staff reports and it's been mentioned several times so I'm just gonna jump to one issue that I want to make sure everyone's up-to-date on and that's with the leg report as you many of you may have heard all ten bills listed there have been signed by the Governor and that does require quite a bit of work and as I mentioned earlier staff has already been busy meeting to kind of put out a item list of everything that has to happen when we can have it happen and so Ms. Peth is going to tell us about bringing us up to speed on what all is gonna be taking place

Erin Peth, Executive Director: Thank you so as the Chair said the Governor signed the DISCLOSE Act on October 7th on a Saturday and we met our executive staff met that next Tuesday a couple days later to start working through the implementation issues that come with doing such a sweeping piece of legislation so we this is sort of the least working plan right now we'll be bringing back to the Commission two different packages of regulations that would implement the DISCLOSE Act one would be set for the December meeting and one for the January meeting and there's - there's I think at least fourteen regulations that need to be amended and so that's why we're dividing it up for two meetings just because they're quite a lengthy project and I think that will just help focus the discussion to have two meetings to do that on the website we've already put notations on all the relevant pages that the bill has been signed with links to the bill so on we have an entire page on our learn section of our website upon advertising disclosure so there's a big sort of warning there that they'll be any changes coming we're posting I believe this afternoon if it hasn't been posted already a very comprehensive chart that shows the differences between current law and the DISCLOSE Act I think it's almost 40 pages long and I think that's very helpful for the regulated community and people who are practitioners who already understand the status of the current law so that we wanted to get that up right away so that again political attorneys and regulated community could start learning the differences and then we're also going to be working on materials that will be helpful for people who don't necessarily have the benefit of understanding or needing to care about what the old law was and what the new law is so that we're going to be putting up excuse me material is that sort of in plain English so that what the new requirements are going to be we're updating and expanding all of our advertising disclosure charts which we already have I think for we probably need to have a few more added now because of the difference the way the Act kind of splits people up into different requirements and then we also have a local candidate toolkit on our website which is directed towards smaller types of local candidates we'll be updating that with the new advertising requirements as well and as we discussed earlier we're working on updating all the manuals that are impacted and hopefully those will be brought to the Commission as soon as they are available as the Chair mentioned earlier we are also looking at those manuals to see if there's

any other changes that need to be made at the same time because there are nine other bills that were signed as well and so staff is already working on that and then we're going to have internal staff trainings hopefully in December because our goal is obviously the bill goes into effect in January - January 1 it's an election area next year as we all know so we really want to make sure our staff is trained so that when we start getting advice requests and possibly enforcement actions and things like that in 2018 we're all up to speed as well and then as you all know we do a lot of outreach and education efforts so all of those materials will be updated so that when we're training people on campaign we're training them on the new rules and then as I mentioned there's nine other bills that were signed by the Governor and we're pursuing those are this don't make as sweeping of impact but those will all have to be implemented as well so we're still in the process of reviewing whether any other regulations need to be amended like I said the manuals will be updated accordingly so that's kind of a summary of where we're at on the DISCLOSE Act specifically and also just the legislation generally

Chair Remke: Thank You Commissioner Hatch

Commissioner Hatch: Is there any overlap on any of those bills (inaudible)

Erin Peth: No not that I'm aware of that there's no chapter an out or any of those kinds of things happening with this particular year

Chair Remke: Other questions. Commissioner Hayward.

Commissioner Hayward: Do you know which of the what the December packets can elect look like versus what the January packets gonna look like

Erin Peth: I could refer to legal division

Jack Woodside: Yes, so the December packets gonna have nine regulations that are mostly kind of the simpler fixes January will have seven regulations that we've identified so far that will maybe involve you know changes that are a little more difficult and

Commissioner Hayward: Because extensive or difficult because

Jack Woodside: Might have to look at the interplay with yeah, I mean that literally some of the changes are just deleting some words at regulations and - and we thought we'd get those out of the way first and give us more time to really look at the impact on the remaining regulations so excuse me I have a total of 16 regulations coming before the Commission in December and January but that might change I hope not

Chair Remke: And in the anticipation is that none of these will be substantive to the extent that laws the law we're just making sure that our regs are consistent with the act now and saying it as clear as possible what we need to add to the extent we need to add anything

Chair Remke: Right that's the hope any other questions or comments

Commissioner Audero: Chair

Chair Remke: Commissioner Audero.

Commissioner Audero: So is one of the ones in December going to be the ear marking one and the reason I asked

Jack Woodside: Which one

Commissioner Audero: I'm sure you're marking

Jack Woodside: Oh, the earmark

Commissioner Audero: The reason I ask is because isn't there a need for people to start tracking the earmarking sooner rather than later and so wouldn't it make sense for us to move quickly at least on that one I don't know what other ones have that kind of an effect

Jack Woodside: We can look into that and yeah, I mean now that you've brought it up and you want us to look into it sure but with this list with this list I can't really tell you because there's so many that but I believe the earmarking was January

Chair Remke: Because the record-keeping issue a little bit more complex

Commissioner Audero: So, but that's my point exactly right is because of the record-keeping don't we want to get it out there sooner rather than later because at the end of the day I mean I'm gonna start receiving money that they have to that may come your mark

Jack Woodside: Yeah there was there was a balance between you know getting it right and taking a little more time and - and so we made the initial decision to put it for Jen put it yeah delay it until January

Commissioner Hatch: (inaudible)

Chair Remke: Commissioner Hatch.

Commissioner Hatch: (Inaudible)

Chair Remke: Commissioner Hatch you're not being picked up on the mics.

Commissioner Hatch: I apologize if - if this are actually you know any of the provisions any of these bills now they think about it they're gonna all go in effect in January right

Erin Peth: Yes

Commissioner Hatch: So are we gonna end up in a situation where we're gonna take enforcement actions against people who violated this when we haven't even finished the regulations or should we take some kind of action to do some sort of safe harbor while we were doing these her wisdom.

4:40:12

Galena West: Hi, so glad to be back Galena West, Chief of Enforcement. um I - I don't want to steal from Jack if you'd like to answer it but - but generally we here's what happens when there's a new law so we start on education - education is the foremost that's done by the Commission for the first three to six months depending on how extensive it is when the cases start coming in at the beginning of the next cycle we send out warning letters and then we identified jurisdictions that are having problems and have the education division and go out and reach out to those so generally when you have new legislation that is we give warning letters in order to bring attention to the behavior and then as we get closer to the election and everyone's been warned the education spent out the regulations of an in effect that's when enforcement actions will begin

Commissioner Hatch (Inaudible)

Galena West: No not - not this year maybe 2020

Commissioner Hatch: All right thank you

Commissioner Audero: Chair

Chair Remke: Commissioner Audero

Commissioner Audero: So is there something that we can put on the website to alert people hey heads up we're working on revising these if you have questions you know call you I mean something that alerts people because clearly, we've already identified which regulations are gonna need that's right you have a list

Jack Woodside: Yeah

Chair Remke: Well preliminary because I think the idea is there may be more once you really start getting into this

Commissioner Audero: We know at the very least there are 16

Jack Woodside: Right

Commissioner Audero: So is there a way to flag those for people so

Erin Peth: Yeah one thing we had discussed was now that we have kind of solidified the whole plan and to put something on the website that says good like I said we have sort of alert this is coming but also this is the what you could expect to see in the next couple months from the Commission and so we could post at least preliminarily these are the regs that have been identified maybe with a caveat that there might be additional ones but yeah we thought we'd be happy to post something like that

Chair Remke: So, the discussion was to have on the homepage a DISCLOSE Act button right there and - and then you click on it and then it lists all the things that Erin just listed about regs we could list the regs list the website let's links to the website so everything is in one spot of course because it's then scattered throughout our website but the least there's a starting point to get to

Commissioner Hatch: I like that

Chair Remke: Okay any other questions or comments on this issue any other questions or comments from the Commissioners regarding the rest of the staff reports

Commissioner Audero: Yes

Chair Remke: Commissioner Audero.

Commissioner Audero: So I didn't finish so I can go back to you so I had raised earlier that I would like to see on the agenda and I don't know if this is already gonna be taken care of but I think it would be helpful to put on the November agenda so I'm now going to ask for it officially a list of what's going to be done and a timeline because I think that I think it would be really helpful to get to put that out for public comments so that is AB 249 people the proponents can say you know we agree with this but you know maybe this one could go first and at least there can be a discussion and the public can be involved rather than be something that we just do on our own and then the public gets upset because they would have wanted something sooner than then maybe you thought so can we get that for November

Erin Peth: Yes

Commissioner Audero: Perfect and then on the legislative report I just have a comment so you know but I think part of it I think ended up being addressed in Mr. Lang's letter that came in but - but I do want to express my own personal concern about the October legislative update which about AB 249 because and I this is going back to when Commissioner Hatch brought up you know let's make sure that we're all on the same page about concerns and so we had a lengthy conversation about AB 249 where the recommendation wasn't adopted and I don't know that there was any adoption of the concerns I don't think there was any consensus and so I was very surprised to see that the concerns were still in the report despite the fact that no other law no other bill I should say not law had any more than just like a two paragraph summary of the law or as a bill and AB 249 had five paragraphs of concerns and I have to say that I think that's inappropriate and in this particular case I'll say no harm no foul

because Governor Brown signed AB 249 into law before this came out but if he had not because he's still by the time that this came out he had a few days left and if he had not I think that this would have been a message that really wasn't authorized by the Commission and so I have a concern and I - I don't know if the way to resolve it was the way that I was gonna resolve it which was I was gonna write the Governor a letter but then I realize oh wait but he signed it already so no point but how do we resolve this issue of when we don't adopt a recommendation that things get stripped the concerns that people whether we call them whether you call them these are my staff concerns or these are my personal concerns I think they're very clearly interpreted as Commission concerns and so I think we have to number one be careful but how but that was already sad right months ago so how do we resolve this problem going forward I don't know that it's a governance issue I mean it's been brought up as part of the letter about governance but I don't know if that's the way to do it but how do we resolve this I guess I did have a question

Phillip Ung, Legislative and External Affairs Director: You said it was in comment I think the language between the September report where we had a staff recommendation the October report where we - we didn't I at least when I wrote it I purposely took out some of the language that I think was advocating for a staff position and - and changed it so that it was simply a description of what the bill did and based on your reactions you may have disagreed with that but there was some attempt on my part at least I thought I achieved it by changing the language to be an objective observation of what the bill does now as regards to the size of the description of 249 I think it's objectively that the bill is larger than all the other bills it contains substantively more changes to the act than other bills do and so it needed to be described in greater detail

Commissioner Audero: So, I went back and I looked I traced it. I just kind of traced it from day one

Phillip Ung: Yeah.

Commissioner Audero: And when it first came up it had two paragraphs and then it eventually had three paragraph two paragraphs of description right just very plain vanilla this is what the bill does then in August I believe was the first time that we saw concerns so there was two paragraphs and then there were three paragraphs of concerns the same three concerns that showed up in September right except that in September of course they were highlighted and underlined and bolded and so you know and understood you had a recommendation right so I appreciate the fact that that was that but then you look at October and it has the exact same one two three four five concerns as the one in September and I'm with almost the exact same language almost so to me that is kind of saying I'm gonna put this on there because I want to because we said no we clearly said or at the very least we didn't say yes it's fair enough so I have tell you I - I think that is I just don't think that was the appropriate way to approach this and I would like to do something different going forward

4:49:51

Phillip Ung: I've noted that and I'm happy to - to make those changes going forward thank you

Commissioner Audero: Thank you

Chair Remke: Any other questions or comments regarding the staff reports

Commissioner Hatch: I just say that I (inaudible) I had I was that concern you know I expressed it before

Chair Remke: Are you on the mic?

Commissioner Hatch: Oh excuse me that I don't speak that loudly either these concerns technique is something that damages the reputation of the organization and it goes to the credibility for the next time we you know have something that we want them to pay attention to and so it's - it's a - it's a downward spiral you know we need to be very careful about what we send over there that isn't you know the Commission's adopted opinion and I know there were accusations made in that letter that was somehow attributed to item 31 but this is this is not good for the organization whereas the gray-haired guys in the Senate like to say the institution this organization is getting damaged you know by these kinds of things and it's not good you know we're here for the long term we want to be able to be really listened to carefully and have legislators you know value our input when we give it but it should it should not be just tossed over there like hand grenades and that's it thank you

Commissioner Audero: Chair Remke I just have a follow-up

Chair Remke: Commissioner Audero.

Commissioner Audero: So, the tossing of the hand grenade I just have a question because I heard something that I was not aware of and so I just I just want to ask it do you send these do you or anybody send these legislative updates out of the Commission to like the floor of the Senate or do we just post these

Phillip Ung: These reports are just posted

Commissioner Audero: Do you send anything to the legislators before vote I'll tell you what I heard I don't wanna beat around the bush because it's silly but so my understanding was that the - the vote was going to be taken on the on the Senate floor and excused if I don't use the right terminology I'm not a politician but a vote was gonna be taken on the Senate and less than half an hour here's what I was complained to me less than half an hour before the vote there was an email from you saying here by the way is an update on the staffs either position or recommendation or something that was completely out of sequence of when this was posted as the agenda and that so what I heard was that it apparently threw everything into turmoil and because it went to the Republicans and so all of a sudden there was like (inaudible) look at what the FPPC has to say and - and so the vote was temporarily

suspended and then and then eventually a couple of hours later the vote was taken but only after everybody had kind of gotten together and because - because apparently somebody said look at what the FPPC has to say and the clarification had to be made wait a minute that's not the FPPC that's the staff and so I'm concerned this is kind of going back to the same thing it just it concerns me that although your words may say staff it does say as I as we talked about that first time that you raise the issue it does say FPPC position and what went out apparently was the one that said recommendation but I just under what circumstances do you send things to legislators

Phillip Ung: To answer your question directly only upon request but I'm happy to go through also how that whole thing unraveled because I watched it live when it occurred

Commissioner Audero: Okay, I'd like to hear it because I've already heard one ear full and I'd like to be balanced (inaudible)

Phillip Ung: If I may, Madam Chair

Chair Remke: Yes.

Phillip Ung: Thank you so as you know we release the agenda 10 days before every third Thursday of the month and it usually goes out right after one o'clock and that is what occurred in this instance it went out I think a 103 or something like that we had no idea that the Senate was gonna take AB 249 up on the floor it was eligible to be taken up on September 11th on that Monday but we had gotten no indication that it was going to be taken up so as we do on a regular process we release our agenda which included the staff recommendation of oppose unless amended and that's what we did we released it and then they took up the bill and I was while I was watching session I said oh wow they're taking it up I know they were taking up today and then the Republican leader Senator Bates stood up and said I have in my hand here an opposition letter from - she called it an opposition letter from the FPPC - and I remember screaming at my monitor like that's not what it is right and - and - and then suddenly my phone blew up with lots of folks calling saying what is this letter you need to send us the letter and I had told I told them it's not a letter it's our staff recommendation that's in our legislative agenda that goes out every month ten days before the third Thursday and then that is when I send and that's I think that's the email that was sent to staff because they said send us the agenda and so then at request we sent the agenda over so that's how that all occurred it wasn't Mr. Lang's letter says that you know there's rumors that it was done on purpose we went through our regular process of releasing it with no knowledge or indication that the bill was going to be taken up so it was purely a coincidence

Commissioner Audero: What is what do you mean by release you mean we post the agenda

Phillip Ung: Right posting the agenda yes

Commissioner Audero: So okay but what I've heard what I heard was that there was an email from you that went to and sorry I can't find my sheet of paper that says who it went to but I

think it apparently didn't go to the authors but it went to various people and that's what then triggered the conversation of wait a minute I have in my hot little hands and then and then the vote was so it seems like this was but what is being said is it wasn't just that it was posted it was an affirmative email from you is what I've been told

Commissioner Hatch: (Inaudible) myself so that's what was (Inaudible)

Phillip Ung: And an upon request we - we sent an email to staff who wanted to copy the agenda I think that's the email that they were possibly referring to

Commissioner Audero: Oh, I see yeah so, the agenda goes up but what does who's the woman that says I have in my hot little hands

Phillip Ung: That's senator bates

Commissioner Audero: Everything yeah right through yeah

Phillip Ung: That's Senator Bates

Commissioner Audero: And - and she got it because somebody called and asked and you sent it

Phillip Ung: Yes, after the agenda had already been posted

Commissioner Audero: Okay all right so thank you for that clarification that's very helpful but I want to use your point of do you see how these things are misunderstood as FPCC positions wrongly so - so I - I'm not anything to - to but the problem is that the reality is that that's how they're seen and so whether we like it or not I think we have to address that reality because - because there are people who see it as an FPCC position

Phillip Ung: And I'm trying to kind of reconcile how we make staff recommendations and a publicly noticed agenda and prevent whatever politics goes on at the white building across the street from kind of perverting it right and - and I think that that I don't know how to do that because they - they take staff recommendations and they call them opposition letters they take um they take our you know our opposition and take it out of context and comment out of context and use it to batter their - their opposition and so it's I'm not sure how we do that while still providing clear transparent notice to the public and - and to the Commission of our position but I'm always happy to hear suggestions before much smarter than I am so -

Commissioner Audero: And I don't have the answer either but I would suggest that one way is, once we have acted by inaction if you will like we did right then, all the stuff disappears. I think that that would - that would be very - that would make it super clear to the public that, look what you know, here's what happened, and then all these concerns that they didn't adopt are no longer there.

Phillip Ung: Right, and I think we I noted that at the last conversation. Yes, thank you.

Commissioner Audero: So no, thank you.

Chair Remke: Okay any other questions or comments regarding the remaining staff reports?

Commissioner Audero: Not on the staff reports but I have one question.

Chair Remke: Okay the staff reports are submitted. Your question?

Commissioner Audero: Yeah so, the other thing that I wanted to put on the November agenda is a discussion regarding the process for issuing Commission opinions. So, I just want to make sure that you caught that.

Chair Remke: Mmhmm. I have it - I have it. Anything else? Okay, motion to adjourn.

Commissioner Hayward: So moved.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4 to 0.

The meeting adjourned at 3:00 pm.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved November 6, 2017

Joann Remke, Chair
Fair Political Practices Commission