



Approved February 15, 2018
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 01/18/2018](#)
Thursday, January 18, 2018

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 10:01 am on January 18, 2018, at the Fair Political Practices Commission, 1102 Q Street, Suite 3800, Sacramento, CA 95811. Chair Remke and Commissioners Audero, Cardenas, Hatch, and Hayward were present.

Welcome

Chair Remke: All right. Good morning. So, I think it's working now. Go ahead and take the roll, please, Sasha. Thank you. Good morning. I just want to take a moment to welcome our new Commissioner Frank Cardenas. He comes to us with 25 years of government service, private consulting, and practicing law. He does have a special interest in business ethics and corporate governance. He most recently has been an adjunct instructor at the California State University in Los Angeles and we're excited to have him and I think that both his private and public service is going to serve us well. So, thank you and welcome. Okay so, is there any public comment for a matter not on the agenda today?

Public Comment

- 1. Public Comment for Items not on Agenda.** During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Commission and before any action is taken.

Commissioner Audero: Chair Remke?

Chair Remke: Yes?

Commissioner Audero: I have two - I have two. Possibly only one. I understand that we're taking matter three off the agenda. Is that right?

Chair Remke: Yes, I was going to talk about that after I gave the public an opportunity to see if there was any public comment. But, okay, go on.

Commissioner Audero: but the reason I ask is because if we're taking it off and we're not going to be able to discuss matter three then I would like to discuss it during public comment as a public or we can put it on the agenda just for discussion and no action I don't know if we can do that Mr. Woodside I don't know how best to handle this

Chair Remke: well it is an enforcement matter and so I would be cautious about discussing it if it's not officially presented to the Commission on issues that may ultimately become before the Commission I mean I'm not sure perhaps miss West can bring us up to speed as to why it's being pulled and maybe that will answer your questions and or give you an opportunity so let's just go with number three for right now

Commissioner Audero: Sure.

Galena West, Chief of Enforcement: okay Galena West, Chief of Enforcement. So, as you can see this is a default for sixty thousand dollars for someone that is still currently in office and has reached out to us that wants to become current on his filings and as disclosure is our goal we have decided to work with him and so he's working with the legal division to come up to date with his filings and we wanted to give him some more time to do that

Commissioner Audero: that's kind of what I figured which is a good sign I don't know what ultimately is going to be I imagine that it's going to be presented to us as some kind of a stipulation if you reach an agreement and so I wanted to and I don't know if this is the appropriate time to discuss some thoughts that I had about it because I don't know if this is the appropriate time or we wait until it comes back as a stipulation but I don't know if you want our guidance as you go through your next round of negotiations with him or you would rather wait or would be more appropriate and, Mr. Woodside, maybe you can weigh in, on you know whether we just wait and it comes back as a stipulation and then we either approve or don't approve

Jack Woodside, General Counsel: Jack Woodside, General Counsel. I think that's the best way to proceed since it has been pulled as a discussion item and we can always - you can always get direction when it comes back before the Commission

Commissioner Audero: okay that's fine. That's that on number three and then my second public comment was only to express my thanks to the legal department and specifically Mr. Feser because thanks to the work that was done by the legal division and some research that was done I was able to swear in my son as a lawyer because I sit as commissioner and that was a big surprise for me and he did it all through working with you so I just wanted to tell you I appreciate it. It was unbelievable experience to swear in your own son so thank you

Chair Remke: okay so was there any public comment for an item on for an item not on the agenda okay seeing or hearing none we will move on to the well first of all just to make that clear items number 3, 22, and 23 are being pulled from the agenda so they will not be heard today so moving to the consent the remaining items are 4 through 21 do the commissioners have any items they would like to take off consent

Approval of Commission Minutes

2. Approval of December 2017 Commission Hearing Minutes.

5:00 Commissioner Hayward: point of order should we approve the minutes

Chair Remke: yes, we should. Is that next? Sure is. okay so I sorry I skipped item to the minutes any Corrections or comments from the Commissioner on the minutes?

Commissioner Hayward: I move approval.

Commissioner Hatch: Second.

Commissioners Audero and Cardenas abstained from the vote.

Ayes: Commissioners Hatch, Hayward, and Chair Remke.

The motion passed 3-0.

Consent Calendar 3-22

Chair Remke: okay thank you all right now moving to the remaining items on the consent calendar four through 21 and Commissioner Audero I saw you had some you wanted pulled

Commissioner Audero: right I need to pull four but only because I am going to have to recuse myself on that

Chair Remke: okay so we'll pull for any other items pulled from the consent calendar

Commissioner Hatch: I don't want to pull any but I have questions on three of them.

Chair Remke: okay so we'll get to those in a minute but hearing no other pulls so Commissioner Hatch why don't you start with your questions go one at a time please

Commissioner Hatch: item four

Chair Remke: well let's okay so if you're going to go item four

Commissioner Hatch: Oh, I'm sorry that's been pulled so I'll let it go.

Chair Remke: yeah, let that one go we'll take that separately

Commissioner Hatch: alright item 5 I was - this was presented as two counts and in my tortured mind it seemed like it would should have been appropriately four counts. my logic is here that you had two broad categories late filed and just not filed and within each of those you had contributions made and other contributions received and late contributions you've heard the diatribe about how I feel about that it seems like they get minimalized by ganging them all together and this is to me could easily be four counts so I'd like to get your view on this

Galena West, Chief of Enforcement: Certainly. Galena West, chief of enforcement as you can see by the breakdown what we tried to do is find a reasonable method and this was also negotiated before the comments at the last meeting were taken in consideration but as for the ones received if you look at count one it would only have had a four thousand dollar amount received in its count by itself and then in count two that would have been the one, one thousand dollar contribution and so since those amounts were so small we took them in aggravation instead of as separate counts because otherwise the fine amount would be much larger in order to justify four counts for the \$1,000 which meets the threshold exactly and then the 1,500 and the 2,500

Commissioner Hatch: You don't dispute that there's different kinds of activity made versus receipt is just you felt that they were small enough

Galena West: right and the since the law is all the 24-hour reporting for made and received at the same threshold we have done a couple cases in the past where we have combined them as well

Commissioner Hatch: thank you

Chair Remke: any other questions on item 5 okay Commissioner Hatch you had another?

Commissioner Hatch: yeah item 16. This is a streamline, so it shouldn't be too complicated here but in in this item it was the only item that proposed I think there's four hundred dollars and direct comparable was item 19 which was two hundred dollars for the very same thing and I was wondering why this particular one was four hundred. its streamlined so it would be kind of cookie cutter

Galena West: its streamlined and it is cookie cutter which is exactly the procedure that we follow from the May 2015 memo so basically the memo states that if we have cooperation and filing with the first contact to where we have cooperation completely and somebody made a mistake in their filing late and they get the two hundred dollar fine and if they don't cooperate and we have to do a lot more effort and contact them more and get them to file then the fine has gone up

10: 06 Commissioner Hatch: it was a little hard to see that in what's in the document, this stip. so there's a different level of cooperation is that what you're saying

Galena West: yeah and in fact this would be a second level of cooperation so if it had gone to probable cause report and then on to accusation then the fine also would have elevated by 200 each time

Commissioner Hatch: okay thank you

Chair Remke: where those all your questions Commissioner hatch

Commissioner Hatch: yes, thank you

Chair Remke: any other questions from the commissioners on the remaining items on consent

Commissioner Hayward: I have a question on item 23

Chair Remke: okay item 23 oops that's not on consent

Commissioner Hayward: skip me I wrote the wrong thing down

Chair Remke: yeah do you in a minute

Commissioner Hayward: yeah let's see if anyone else has questions

Chair Remke: any other questions from the commissioners okay well while you're looking else go ahead any public comment on the remaining items on consent five through 21 seeing or hearing none, Commissioner Hayward, let me know when you're ready.

Commissioner Hayward: actually, it was 23 and it's pulled so never mind

Chair Remke: okay is there a motion for the consent calendar

Commissioner Audero: I'll move approval of the consent calendar items 5 through 21

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Cardenas, Hatch, Hayward, and Chair Remke.
The motion passed 5-0.

Campaign Non-Filer

- 3. In the Matter of Williams for AC Transit Board 2014 and Mark Williams; FPPC No. 16/205 (Default Decision).** Staff: Commission Counsel Ruth Yang and Staff Services Analyst Dominika Wojenska. Mark Williams was a successful candidate for the Alameda-Contra Costa Transit District Board of Directors in the November 2, 2010 and November 4, 2014 General Elections and is currently holding office. Williams for AC Transit Board 2014 is his candidate-controlled committee. The Committee and Williams

failed to timely file ten semiannual campaign statements covering the reporting periods of January 1, 2012 through June 30, 2014 and October 1, 2014 through December 31, 2014, in violation of Government Code Section 84200 (10 counts); and two pre-election campaign statements covering the reporting periods of July 1, 2014 through October 18, 2014, in violation of Government Code Section 84200.7, subdivision (b) (2 counts).
Total Proposed Penalty: \$60,000.

- 4. In the Matter of Yes on 34, a Coalition of Justice Orgs. and Lisa Le; FPPC No. 16/084.** Staff: Senior Commission Counsel Neal Bucknell and Program Specialist Soni Mangat. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Proposition 34 was an unsuccessful state ballot measure on the November 6, 2012 General Election ballot. Yes on 34, a Coalition of Justice Orgs. was a primarily formed ballot measure committee in support of the proposition. Lisa Le was the Committee's treasurer. The Committee and Le failed to timely file several 24-Hour Reports regarding receipt of nine contributions, in violation of Government Code Section 85309, subdivision (b) (1 count); and failed to timely file five \$5,000 reports regarding receipt of five contributions, in violation of Government Code Section 85309, subdivision (d) (1 count). **Total Proposed Penalty: \$7,000.**

Chair Remke: okay so we'll go back to item 4 and Commissioner Audero you are yeah are you recusing yourself do you state on the record her reason for recusal

Jack Woodside, General Counsel: yes reason for your recusal

Commissioner Audero: so my reason for recusal is that I represent the ACLU of Southern California in a multitude of cases and this involves them as a contributor as well I think as a contributor as well as a sponsor of the committee

Chair Remke: thank you okay so you'll step out

Commissioner Audero: and with that I'm out

Chair Remke: so item four any questions from the commissioners as to item four

Commissioner Hayward: madam chair I had a question

Chair Remke: okay Commissioner Hayward

Commissioner Hayward: I or or maybe it's just a concern or I cut to the chase I think the negotiate fine here is very low for the conduct at issue I think we're looking at a respondent that is sophisticated a campaign that is of great public salience lots of attention being paid and failure to file contributions that I think they probably failed to file I'm not why I shouldn't I shouldn't cast aspersions on their motivations but the monetary contribution in the amount of half a million dollars that they received on the 15th has got to be something that they expected before the collection and I wonder about

the calculation of the timing because knowing and having reason to know versus just waiting and getting the check later they have - still have money in the bank account and they still have money in the bank so I don't feel like we're you know chasing someone into bankruptcy if we ask them to pay a higher fine you know the professional treasurer I would think would have known better and so that's pretty much it. I think they're really getting away with not having to pay much of a fine for violations that I think are pretty significant

14: 30 Galena West, Chief of Enforcement: Hi, Galena West, again. a lot of information went into this case. as you can see it's much older it was a, I believe, a 2011-2012 audit and so by the time that we opened the case it was January of 2016. So, while it does seem low they signed a tolling agreement for us to even have a lot of the charges that we have now which is a great level of cooperation and they were remedying for current behavior for the 2016 election at the same time so we did give that great weight in order to come to a stipulated agreement and also when we were looking at the contributions themselves being non-monetary contributions of an ongoing nature which was the majority of what was beyond the five hundred thousand dollar contribution, then we were taking that in consideration as it was ongoing personal services that were being donated to the committee as non-monetary contributions. so we also took that in consideration that it was a sponsor that was giving the non-monetary contribution and since that was known since it was the sponsor of the committee we thought that that lessened the harm as well and then as to the five hundred thousand dollar contribution coming on the date of election it is a very troublesome issue that we do run into quite a lot but having been an FTB audit and they thoroughly vetted the issue themselves and then we looked at it ourselves there was no way for us to prove that this came in before the election or they knew about it we do run into this generally with accrued expenses as well where a mailer goes out as an accrued expense and the printer just miraculously gets paid after the election with no contributions being attributed to the committee before the election so it is an ongoing problem that we are trying to find a solution for but as of right now this is the legal definition was he was reported after the election and that's when it was required

Chair Remke: okay any other questions from the commissioners on item four

Commissioner Hatch: yes

Chair Remke: Commissioner hatch.

Commissioner Hatch: thank you I was a little bit puzzled on this in-kind contribution of staff there's pretty much an ongoing basis. do we have a standard that says how often you have to report that or is it just whatever they feel like they're going to wrap it up

Galena West: its notice and knowledge so when you have notice of the contribution you report it within 48 hours but it's also when you have knowledge of the contribution

Commissioner Hatch: but every day for in this case right through the election correct?

Galena West: right and if it's the amount of volunteers to where it's a thousand dollars every day you can cumulatively cause yourself to have to file reports but for a lot of non-monetary contributions they are bulk together when it comes to sponsor committees providing services and like I said earlier that was one of the things that we took into consideration when determining the fine amount

Commissioner Hatch: okay so every time it accumulates to a value of \$1,000 worth of in-kind contributions that triggers an obligation to like report that segment so like if it's a total of \$50,000 it should have been five reports more or less

Galena West: If it comes to a thousand dollars then you can group some when you're estimating and then come back if you're 20 percent off so you have that for non-monetary contributions

Commissioner Hatch: they didn't report this till after the election as I recall right

Galena West: correct

Commissioner Hatch: the number

Galena West: correct, \$68,000 I think.

Commissioner Hatch: So, they didn't provide those inner interim reports

Galena West: right I believe that it was a few that were due within the last 16 days the non-monetary contributions were eighty-one thousand and the monetary were twenty-nine thousand for count one and the ones that were due - sorry I'm getting used to glasses - and the ones that were due before the election attributed to a small amount that weren't reported. So, all in count two were reported before the election but not all in count one were reported before the election

Commissioner Hatch: that - is it maybe I've got my facts mixed up but I thought that there one of those in-kind staff time - ongoing staff time was reported the day after the election and it was pretty sizable

Galena West: right the account one information was not before they election but the count two information was

Commissioner Hatch: so just for my frame of reference I wanted to get an idea of what should they have done so not just that they should have reported a day or so earlier but they actually should have broken this up and reported it incrementally

Galena West: right so when your staff time is donated then you would report it incrementally, correct.

Commissioner Hatch: so, they either actual or an estimated they need to report it every time it's an increment of thousand dollars worth of in-kind services correct

20:21 Galena West: more or less yes

Commissioner Hatch: There's a nuance that's not escaping me. I'd like to know what that is

Galena West: it's just the estimation you want so if you get a report from the donor and the donor says I gave a \$2,500 non-monetary contribution staff time to you, you report that. but if you're asked to be how much staff time that you received then you can bulk that

Commissioner Hatch: right but I mean if I complied by giving you a report of \$5,000 worth and then I you know give you another one for \$7,000 what happened to that obligation to do it every thousand dollars

Galena West: well you do it then the 7,000 because that's when you got notice so that's why I'm saying it's a little complicated so what the treasure here was saying was that she didn't receive notice of that timely and that she received the non-monetary contributions but she didn't receive the exact number until later and so one of the things out of the multitude of 81,000 that she didn't do was estimate it and filed a report on the estimated amount so that's why

Commissioner Hatch: (Overlapping) Their response was the committee (inaudible).

Galena West: yeah they're responsible for filing that

Commissioner Hatch: Yeah it seemed like it should have been earlier. thank you

Chair Remke: I would just add that when I first read this I tend to agree with some of the concerns raised by Commissioner Hayward as to the ultimate amount of the fine when you look at the size of the committee and the eight million dollars raised and spent but just because I think there could be a possibly better stipulation being stronger I also do take into consideration the real concerns about our ability to prosecute this case based on the timeliness of it so when all said and done I do think it's a fair and reasonable settlement and a good job on a complex case between you and FTB so I do appreciate that

Galena West: I would add that there was one further wrinkle that the law changed at that time between election cycle reports and LCR's so this is when the 16 days changed to the 90 days for all reports and so this committee was also tangled in that law change

Commissioner Hatch: That period

Galena West: right because that law change went into effect January 1st 2013

Commissioner Cardenas: Question. I'm sorry. what's an LCR?

Galena West: I'm sorry. I do that

Commissioner Cardenas: I'm sorry about that

Galena West: so right now we call things 24-hour reports because the new though well I guess not new 2013 law is that any time you get a thousand dollars made or received to your committee you file a 24-hour report and so we call them generically 24-hour reports whether it's made or received or about an independent expenditure

Chair Remke: within 90 days of the election

Galena West: within 90 days of the election and includes the election date before that the law was bifurcated to where there was different rules for electronic filers there's different rules for prime we formed filers and there was a 16 day before the election of 24-hour filing for everybody that was called the LCR period delay contribution report period

Commissioner Cardenas: late contribution report

Galena West: right

Commissioner Hatch: I'd like to follow up on that

Chair Remke: commissioner hatch

Commissioner Hatch: thank you one of the items I don't remember which one didn't refer to them as late contribution reports they said \$5,000 reports is there a difference or is that just somebody's terminology

Galena West: no that's a great point in the electronic filing portions of the Act they also came up with a \$5,000 report so if you're outside the 90-day cycle then any time it's \$5,000 instead of a thousand you're required to file a report within 10 days

Commissioner Hatch: oh 10 days it was a 10-day report okay thank you

Chair Remke: okay any public comment on item for seeing or hearing none is there a motion

Commissioner Hayward: I will move approval

Chair Remke: Second.

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

- 5. In the Matter of Bloom for Assembly 2014, Richard H. Bloom, and David L. Gould; FPPC No. 16/456.** Staff: Commission Counsel Theresa Gilbertson and Program Specialist Bob Perna. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Richard H. Bloom was a successful incumbent candidate for Assembly District 50 in the November 4, 2014 General Election. Bloom for Assembly 2014 was his candidate-controlled committee. David L. Gould was the Committee's treasurer. The Committee, Bloom, and Gould failed to timely file eleven 24-Hour Reports in violation of Government Code Sections 84203 and 85309, subdivision (a) (2 counts). **Total Proposed Penalty: \$5,000.**
- 6. In the Matter of Apartment Association of Los Angeles PAC and Trevor Grimm; FPPC No. 17/1379 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Apartment Association of Los Angeles PAC is a state general purpose committee. Trevor Grimm was the Committee's treasurer. The Committee and Grimm failed to timely file ten 24-Hour Reports by their respective due dates, in violation of Government Code Section 84203 (10 counts); and failed to timely file one pre-election campaign statement for the reporting period of October 1, 2014 through October 18, 2014, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$2,656.**
- 7. In the Matter of California Apartment Association Independent Expenditure Committee and David Bauer; FPPC No. 17/606.** Staff: Commission Counsel Theresa Gilbertson. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. California Apartment Association Independent Expenditure Committee is a state general purpose committee. David Bauer is the Committee's treasurer. The Committee failed to timely file one pre-election statement cover the reporting period of July 1, 2014 through September 30, 2014, in violation of Government Code Sections 84200.5 and 84200.7 (1 count). **Total Proposed Penalty: \$2,500.**
- 8. In the Matter of Oscar Magana for Maywood City Council 2015 and Oscar Magana; FPPC No. 16/073 (Streamline Settlement).** Staff: Senior Commission Counsel Bridgette Castillo, Special Investigator Marshall Miller, and Staff Services Analyst Dominika Wojenska. Oscar Magana was an unsuccessful candidate for Maywood City Council in the November 3, 2015 General Election. Oscar Magana for Maywood City Council 2015 is his candidate-controlled committee. The Committee and Magana failed to timely file two pre-election campaign statements covering the reporting periods of July 1, 2015 through October 17, 2015, in violation of Government Code Section 84200.5 (2 counts); four semiannual campaign statements covering the reporting periods of October 18, 2015 through June 30, 2017, in violation of Government Code

Section 84200 (4 counts); and two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$1,737.**

- 9. In the Matter of Muratsuchi for Assembly 2014, Albert Muratsuchi, and Jane Leiderman; FPPC No. 16/461 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Albert Muratsuchi was an unsuccessful candidate for California Assembly in the November 4, 2014 General Election. Muratsuchi for Assembly 2014 was his candidate-controlled committee. Jane Leiderman was the Committee's treasurer. The Committee, Muratsuchi, and Leiderman failed to timely file two 10-Day Reports by their respective due dates, in violation of Government Code Section 85309 (2 counts); and failed to timely file five 24-Hour Reports by their respective due dates, in violation of Government Code Section 84203 (5 counts). **Total Proposed Penalty: \$1,667.**
- 10. In the Matter of Friends of Marciela Cruz for Trustee 2013, Maricela Cruz, and Omar Perez; FPPC No. 16/220 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson and Staff Services Analyst Dominika Wojenska. Marciela Cruz was a successful candidate for Board Member on the Alisal Union School District Board in the November 5, 2013 General Election. Friends of Maricela Cruz for Trustee 2013 was her candidate-controlled committee. Omar Perez served as the Committee's treasurer. The Committee, Cruz, and Perez failed to timely file two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts); and one semiannual statement covering the reporting period of October 25, 2013 to December 31, 2013, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$1,324.**
- 11. In the Matter of Liberty Mutual Insurance Company PAC, Melissa Cyr, and Laurence Yahia; FPPC No. 17/1384 (Streamline Settlement).** Staff: Chief of Enforcement Galena West Political Reform Consultant Chloe Hackert. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Liberty Mutual Insurance Company PAC is a state general purpose committee. Melissa Cyr and Laurence Yahia are the Committee's treasurers. The Committee, Cyr, and Yahia failed to timely file five 24-Hour Reports by their respective due dates, in violation of Government Code Section 84203 (5 counts). **Total Proposed Penalty: \$1,240.**
- 12. In the Matter of California Thoroughbred Breeders Association PAC; FPPC No. 17/1357 (Streamline Settlement).** Staff: Chief of Enforcement Galena West, Intake Manager Tara Stock, and Program Specialist Grant Beauchamp. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. California Thoroughbred Breeders Association PAC is a state general purpose committee. James Murphy is the Committee's treasurer. The Committee and Murphy failed to timely file one pre-election campaign statement covering March 18, 2014 through May 17, 2014, in violation of Government Code Section 84200.5 (1 count); and three 24-Hour Reports, in violation of Government Code Section 84203 (3 counts). **Total Proposed Penalty: \$1,044.**

- 13. In the Matter of Committee for Lynn Rodgers-Boone for Mayor 2013 and Lynn Boone; FPPC No. 16/216 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Staff Services Analyst Dominika Wojenska. Lynn Boone was an unsuccessful candidate for Mayor of Compton in the April 16, 2013 and April 18, 2017 Special Elections. Lynn Rodgers-Boone for Mayor 2013 was her candidate-controlled committee. The Committee and Boone failed to timely file two pre-election campaign statements for the reporting periods of January 1, 2017 through April 1, 2017, in violation of Government Code Section 84200.5 (2 counts); and failed to file an amendment to the Committee's statement of organization within 10 days after the Committee changed its treasurer, in violation of Government Code Section 84103 (1 count). **Total Proposed Penalty: \$621.**
- 14. In the Matter of Ojai First No on Measure D, Michael Haley, and David Byrne; FPPC No. 16/19965 (Streamline Settlement).** Staff: Commission Counsel Christopher Burton and Special Investigator Jay Martin. Ojai First No on Measure D was a local primarily-formed committee that opposed an initiative in the City of Ojai. Michael Haley was the Committee's treasurer. David Byrne was the Committee's principal officer. The Committee, Haley, and Byrne failed to timely file one semiannual campaign statement covering the reporting period of June 1, 2016 through June 30, 2016, in violation of Government Code Section 84200 (1 count); and failed to timely file one 24-Hour Report, in violation of Government Code Section 84203 (1 count). **Total Proposed Penalty: \$488.**
- 15. In the Matter of Solano for School Board 2013, and Paul Solano; FPPC No. 17/1060 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Paul Solano was a successful candidate for Board Member of the Bassett Unified School District in the November 5, 2013 General Election. Solano for School Board 2013 was his candidate-controlled committee. The Committee and Solano failed to timely file one semiannual campaign statement for the reporting period of January 1, 2017 through June 30, 2017, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$230.**

Statement of Economic Interests Non-Filer

- 16. In the Matter of Jonathan Slinger; FPPC No. 17/746 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Jonathan Slinger, a Consultant for the 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: \$400.**
- 17. In the Matter of Eleonor Griffith; FPPC No. 16/19996 (Streamline Settlement).** Staff: Chief of Enforcement Galena West, Intake Manager Tara Stock and Staff Services Analyst Katie Trumbly. Dr. Eleonor Griffith, a Physician/Surgeon with the Department of Correctional Health Care Services with the California Department of Corrections and

Rehabilitation, failed to file her Assuming Office Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

18. In the Matter of Bruce Pope; FPPC No. 17/977 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Bruce Pope, a Board Member of the Small Cities Organized Risk Effort, failed to timely file an Assuming Office Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

19. In the Matter of Peter De La Torre; FPPC No. 17/1068 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Peter De La Torre, a Planning Commissioner for the City of Desert Hot Springs, 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 Pete Pedersen; FPPC No. 17/1396 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Pete Pedersen, a Planning Commissioner for the City of San Anselmo, failed to timely file an Assuming Office Statement of Economic Interests, in violation of Government Code Section 87202 (1 count). **Total Proposed Penalty: \$200.**

Statement of Economic Interests Non-Reporter

21. In the Matter of Marc Mitchell; FPPC No. 16/451 (Streamline Settlement). Staff: Senior Commission Counsel Angela Brereton, Special Investigator Paul Rasey. Marc Mitchell, a Planning Commissioner for the City of Redondo Beach, failed to timely disclose his spouse's income from NSI Corp., dba Pike Properties in his 2012, 2013, 2014, and 2015 Annual Statements of Economic Interests, in violation of Government Code Section 87207 (4 counts). **Total Proposed Penalty: \$400.**

22. In the Matter of William Goddard; FPPC No. 17/1002 (Streamline Settlement). Staff: Senior Commission Counsel Angela Brereton. William Goddard, a Director for the Big Bear Airport District Board, failed to timely disclose investments in and income from Goddard Aircraft Services in his Assuming Office Statement of Economic Interests, in violation of Government Code Sections 87206 and 87207 (1 count). **Total Proposed Penalty: \$100.**

General Items 23-29

23. Assignment of Hearing to Administrative Law Judge (ALJ): In the Matter of Juan Sandoval Elect for County Superintendent of Schools 2014, Juan Sandoval and Vangie Urias; FPPC No. 14/434. Staff: Executive Director Erin V. Peth, Chief of Enforcement Galena West, and Commission Counsel Michael W. Hamilton. The Executive Director and the Chief of Enforcement are recommending that a hearing be conducted before an ALJ pursuant to Government Code Section 11512, subdivision (a).

The ALJ will make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then have the opportunity to review the proposed decision and make the final determination on the case. If the Commission agrees with this recommendation, no action is required.

Staff Memo

24. Adoption of Amendment to Regulation 18535. Restrictions on Contributions

Between State Candidates. Staff: Zachary Norton, Senior Counsel, Legal Division. At the Commission's direction, staff proposes to amend Regulation 18535 permitting unlimited contributions from a state candidate to another state candidate's legal defense fund or candidate controlled ballot measure committee. This item was on the December 21, 2017 agenda, but it did not receive sufficient votes for formal action as the vote for approval was 2-1.

Staff Memo

Proposed Amendment to Regulation 18535

25:15 Chair Remke: okay so we are on item 24, the proposed amendments to regulation 18535. Mr. Norton?

Zachary Norton, Senior counsel, Legal Division: good morning Chair Remke and Commissioners. I'm Zachary Norton senior counsel legal division. today staff is proposing, at the direction of the Commission, amendments to regulation 18535 and I'll note that these are the same amendments that were proposed at last month's meeting. regulation 18535 was originally adopted to provide clarification regarding the limits on inter candidate transfers at its July meeting the Commission discussed the inter candidate transfer limit which, at that time, applied to state candidates who are the subject of a recall election the Commission subsequently adopted an opinion as well as amendments to regulation 18535 permitting unlimited contributions from a state candidate to another state candidate who was the subject of a recall. during deliberation of these regulatory amendments, a comment letter was received asking the Commission to consider reversing its long-standing interpretation that limited one state candidate contributions to another state candidates Legal Defense Fund and candidate controlled ballot measure committee. although the Commission could not take action on this proposal at that time it did direct staff to prepare an amendment incorporating these changes. staff has prepared an amendment to regulation 18535 as requested which would explicitly permit unlimited contributions from a state candidate to another state candidates Legal Defense Fund and candidate controlled ballot measure committee.

Chair Remke: so any questions from the commissioners for Mr. Norton okay is there

Commissioner Hatch: Just a comment.

Chair Remke: Commissioner Hatch

Commissioner Hatch: this was before us last month we were short there was only three members I think it - the law is very clear these should be adopted. the Supreme Court ruled on the on the ballot measure committee issue and this is long overdue thank you

Chair Remke: any other comments from the Commissioners?

Commissioner Cardenas: Questions

Chair Remke: okay Commissioner

Commissioner Cardenas: Do I need to introduce myself for the record everytime?

Chair Remke: No.

Commissioner Cardenas: Okay. Is it Mr. Norton

Zachary Norton: yes

Commissioner Cardenas: Mr. Norton and what other contexts may a state candidate committee receive contributions which are unlimited

Zachary Norton: because of recent changes the unlimited contributions may be received in the context of a recall election and the changes that we have proposed today would just extend or remove those limits for this - these two other situations

Commissioner Cardenas: that's the only time that's the only occasion I gather this has been decided but for johnny-come-lately hear that's the only time that a state candidate committee may receive contributions from anybody which are unlimited that's correct

Zachary Norton: yes yes that would be correct.

Chair Remke: Commissioner Hayward did you want to add something to that?

Commissioner Hayward: well isn't it the case that a candidate can give himself unlimited money

Zachary Norton: yes, that is true. other than the canid this is the only time where one candidate may contribute to another candidate it's in these currently for the recall election and this would extend to these two other situations the legal defense fund on the candidate control ballot measure committee

Commissioner Cardenas: so the only - the only candidate controlled entities which are not because of the recent change to the inter candidate transfer of monies the only entities to which a state candidate is now precluded from accepting money from another state

candidate is her or his legal-defense fund or they're controlled ballot committee these are the two exceptions which we are which the Commission has directed you to suggest to us should be changed

30:10 Zachary Norton: yes yes it would just be for these two

Chair Remke: in addition to the recall

Zachary Norton: in addition to the recall which we've already we've

Chair Remke: so the notion that it's state candidate to state candidate on their general election committee right limits apply we carved out the exception for the recall and now we're looking at two additional exceptions for the limits to these two committees as well

Commissioner Cardenas: all right well hopefully this is the only time that the new guy exposes his ignorance

Chair Remke: no it's been a complicated issue

Commissioner Cardenas: I have no doubts and I make no promises about that. but there's - is there any limitation on the type of underlying grievance or charge the reason for which a state candidate would require legal defense at all Is there any prescription what way no if it's a serial murder no we're not going to? for example in in corporate law we have the context of ultra virus if it is outside of realm of the individuals you know a performance of their duties

Zachary Norton: yes I see we're going on that and there are other limitations specifically as to what committee funds may be used for and those types of defenses it would have to relate to conduct that relates to the office holder so I'd have to have something to do with wrongdoing by the committee and yeah murder accusation that would criminal right something that's not related to holding office that would not be permissible so this does not open the floodgates for legal defense for anything and everything it would actually be something like the enforcement actions or some kind of investigation or administrative action that is resulting from acts or emissions by the candidate or committee

Chair Remke: so the thing can I just jump in so if this does not impact the law or restrictions on legal defense funds at all so that law as it stands now in the restrictions on what it can be used for connected with the state candidate remain the same the only issue is how much money can go in there from another state candidate that's the only issue before us now so there are restrictions those restrictions are not touched by this proposal

Zachary Norton: that is correct

Commissioner Cardenas: and my question is, are there restrictions and I gather the answer is yes

Zachary Norton: yes

Commissioner Cardenas: and those restrictions are within or without the political reform Act

Zachary Norton: those are contained within the Act and then those are

Commissioner Cardenas: In other words, Commissioner read the act.

Chair Remke: no no I'm trying to hope someone's going to jump forward with the exact language of what it says it has to be four but uh I guess we can we'll follow up with you on that it is in there and it does provide some guidance but of course it is an issue for interpretation from time to time and a request for advice we receive from time to time whether or not a certain expense is allowed under those restrictions

Zachary Norton: yes

Chair Remke: any further questions okay any further questions from the commissioners okay any public comment on item 24

Richard Rios, Olson Hagel and Fishburn: good morning madam chair members of the Commission Richard Rios from Olson Hagel and Fishburn. welcome Commissioner Cardenas with respect to this issue just request that the Commission adopt the regulation to address Commissioner Cardenas' question the candidates who have a ballot measure committee and are permitted to accept unlimited contributions from any source other than other state candidates and so this adoption of this regulation would allow state candidates also to contribute unlimited funds to candidates ballot measure committee and legal defense funds that's all madam chair if there are no questions thank you

Chair Remke: okay thank you any other public comment on this matter seeing or hearing none is there a motion

Commissioner Hatch: I move for adoption

Commissioner Audero: second

Ayes: Commissioners Audero, Cardenas, Hatch and Hayward.

Nays: Chair Remke.

The motion passed 4-1.

25. Adoption of Amendments to Regulations 18401, 18420.1, 18432.5, 18440, 18450.4, 18531.10, 18533, 18901.1, to incorporate AB 249. Staff: Sukhi Brar, Senior Counsel, Legal Division. Staff proposes the second phase of regulatory amendments resulting from the implementation of AB 249 (the Disclose Act), which overhauled the Act's advertising

disclosure provisions. This proposal will harmonize existing language and remove redundant language. Regulation amendments to incorporate AB 249 included in the first phase were considered and adopted at the December Commission Meeting.

Staff Memo

Amendments to Regulation 18401

Amendments to Regulation 18420.1

Amendments to Regulation 18432.5

Amendments to Regulation 18440

Repeal of Regulation 18450.4

Amendments to Regulation 18531.10

Amendments to Regulation 18533

Amendments to Regulation 18901.1

34:45 Chair Remke: okay item 25 Thank You Zak okay these are proposed amendments to regulations affected by AB 249 the disclose act

Sukhi Brar, Senior Counsel, Legal Division: Yes good morning Chair Remke and Commissioners Sukhi Brar, Senior Counsel with the Legal Division. I'm here today to present eight regulations in light of the passage of AB 249 these are regulations that needed to be amended due to the passage of that bill this is the second phase of regulations the first phase of nine regulations was adopted by the Commission in December so with that staff recommends approval of the proposed amendments on the agenda today

Chair Remke: okay questions from the Commissioners as to the proposed amendments Commissioner Audero

Commissioner Audero: Hi thank you thanks for putting all of this together I know is a lot of work I have a question about 18401

Sukhi Brar: okay go ahead

Commissioner Audero: and bring it up and I'm going to point you to a specific

Sukhi Brar: okay

Commissioner Audero: so 18401 creates a record-keeping requirement

Sukhi Brar: correct

Commissioner Audero: and help me out here because I can't find that anywhere in AB 249

Sukhi Brar: Which record keeping

Commissioner Audero: (Overlapping) the record keeping requirement that was added to 18401

Sukhi Brar: about that ear marking and record-keeping of that

Commissioner Audero: so, 18401 a, two little two i... it's probably not the best way to...

Sukhi Brar: the two little eyes?

Commissioner Audero: Yeah. So, a committee making contributions with your marked funds must maintain documentation showing which earmarked funds were contributed to another committee

Sukhi Brar: correct so AB 249 requires a committee to provide information to another committee when they're giving earmarked funds to that committee so that's where this comes from it's coming it's requiring record-keeping for that transaction that is required by, which you know passing that documentation is required by AB 249 so this is requiring records for that

Commissioner Audero: I agree that AB 249 requires passing information from one committee to the other as a top contributor and there are rules about that I get that what I'm asking you is we're in AB 249 is a record-keeping requirement

Sukhi Brar: it doesn't specifically have a record-keeping requirement but from the requirement in the bill that talks about committee is required to keep document or to provide documentation to the next committee that's where we're getting this from

Commissioner Audero: so it appears to me then that we're creating a record-keeping requirement that AB 249 doesn't have out of whole cloth I might not know

Sukhi Brar: I don't see it that way but that could be one interpretation of it yeah I really we do have authority for it with the bill

Commissioner Audero: so I guess that's my question is where is our authority to create a record-keeping requirement

Sukhi Brar: so I we have a section in the act that has record-keeping requirements in it that would be a section...

Commissioner Cardenas: May I?

Chair Remke: Commissioner

Commissioner Cardenas: While we're looking for a specific section or citation it would just occur to me almost a priority that this would be kind of a necessary and proper administrative enablement in order to enable the Enforcement of the Act there needs to be how would one know if there were not records which were maintained by somebody

Sukhi Brar: right and so these records help us make sure that the committee is in compliance with the requirements of the Act if they don't have records of it it's very hard to make sure that they have done that

Commissioner Audero: But isn't that

Chair Remke: excuse me

Commissioner Audero: well it was interrupted in the middle of my conversation so I'm just going to continue

Chair Remke: once you recognized Thank You Commissioner Audero

Commissioner Audero: so my question is if it's it seems to me that when Enforcement goes in it would be up to the committee to show whatever records it has in order to defend itself

40:02 Sukhi Brar: correct

Commissioner Audero: right so it sounds like we're trying to find a way to create a record-keeping requirement that is a defense already for the committee and my concern is we're creating something new that doesn't exist within AB 249 and the only thing we're doing here is we are amending regulations to implement AB 249 so I'm trying to find where AB 249 allows us to do that that's number one and number two I guess my question would be so what happens if they violate this new record-keeping requirement

Sukhi Brar: okay so record-keeping requirements are provided for in the act in Section 84104 and what that section says is that it should be the duty of each candidate treasurer principal officer and elected officer to maintain detailed accounts records bills receipts necessary to prepare their campaign statements so it falls

Commissioner Audero: (Overlapping) So it's already there.

Sukhi Brar: within that yeah

Commissioner Audero: so if it's already there why do we need to create a special record-keeping requirement within this regulation

Sukhi Brar: so we created that record-keeping requirement because we received comments from interested persons that they would like that written specifically in the

regulation and we believe it's not it's necessary for guidance to people who want to comply with the law

Commissioner Audero: so what exactly was said at the interested persons meeting about this

Sukhi Brar: that they would like I can't remember was at the meeting or comments received later but it was basically that they would like there to be a record of this transaction

Commissioner Audero: but there is a record of the transaction

Sukhi Brar: but they would like they would they would like there to be a requirement to keep a record of it

Commissioner Audero: okay so let's unpack all of this because a lot was said so number one it did or did not happen during the interested persons meeting

Sukhi Brar: I said I could not remember if it happened during the meeting or a comment I received after the meeting but it came from an interested person

Commissioner Audero: and did that comment come in by phone to come in and writing can we see it you tell us what the comment was

Sukhi Brar: it was between me and Trent Lange from clean money campaign so he is here so maybe he recalls when we talked about it but it was

Commissioner Audero: (Overlapping) okay so we can get to that so the question again and I apologize if you answered it but I didn't quite capture the answer what happens if this record if this particular record-keeping requirement is violated

Sukhi Brar: it could be a potential violation if there is no record of it

Commissioner Audero: so now we've created a law in essence by regulation that creates another potential violation for a committee that didn't exist in AB 249

Sukhi Brar: it's not specifically AB 249 but it's part of the Act

Commissioner Audero: but if it's part of the Act it's already there I guess I guess my concern is we're using the passage of AB 249 and we are creating regulations that are supposed to facilitate the implementation clarify the law facilitate the implementation of the Act and here I believe are creating something new for which there could be a violation so let me ask you if there was a violation of that what's the penalty

Sukhi Brar: it would be the same as any other violation

Commissioner Audero: so, it's \$5,000

Sukhi Brar: right

Commissioner Audero: and how would that work in terms of \$5,000 per what

Sukhi Brar: per violation I mean that's up to the discretion of Enforcement but just like any other violation that we see on the agenda there are negotiated settlements but the it would be the max of 5,000 per violation

Commissioner Audero: no no I understand but what would the violation look like would it be one time if they for each person who was a top contributor if that information wasn't recorded in some ledger somewhere would it be for every top contributor would it be one violation per campaign what does that look like

Sukhi Brar: so every time that a campaign committee did not keep a record of that transaction that would be in my opinion

Commissioner Audero: so it's per transaction like per Top Contributor person

Sukhi Brar: every time the money has passed

Commissioner Audero: okay okay so and then what do you mean by documentation what exactly is Enforcement going to be looking for

Sukhi Brar: they look for copies of checks any type of bank statement sometimes campaign committees can make create their own record of it

Commissioner Audero: okay thank you so the concern I have is I think that as a as a committee treasurer I guess you now have this new record-keeping requirement that I think is also on top of it vague because I don't know what it means to maintain documentation for this so I have a concern about that and then I don't know if anybody else wants to address any of that because I have another question but it's unrelated to the record-keeping

45:39 Commissioner Hatch: If you don't mind while you're on that particular point

Chair Remke: Commissioner Hatch

Commissioner Hatch: you had mentioned that we have a general requirement that exists now for record-keeping but apparently it's not very detailed either is it

Sukhi Brar: yeah it's not as detailed as what Commissioner

Commissioner Hatch: (Overlapping) Right it doesn't have individual categories of kinds of infractions so to the extent that we want to be more specific would we not notice and revise that regulation that existing regulations

Sukhi Brar: correct we could do that

Commissioner Hatch: you could do that and then the other thing that is concerning to me as I hear this unfold is that in effect we're sort of highlighting this one infraction as like special so then are we going to be obliged to go back throughout our regulations and highlight in context all of these other kinds of infractions relating director keeping

Sukhi Brar: no, we don't have to do that

Commissioner Hatch: don't have to it seems like we're then making this one sort of special and it kind of and then you have to wonder well why is it special

Chair Remke: okay I can I just I mean is everyone we're all clear right that 18401 is an existing regulation which does exactly what you're talking about for the generic requirement in the acts so the Act is generic maintain records you're required to do that

Commissioner Hatch: right in a broad way with no detail about what constitutes a record

Chair Remke: right and then we have 18401 in place now which is an existing requirement required record-keeping that's already the existing regulation which breaks it down in a much more detailed way to provide more information to guide people and not hopefully set them up front on knowing violation and then so what we're doing with this proposal is adding the details of this particular disclosure to those existing regulations

Commissioner Hatch: I don't see detail there what I see is a reference to the record-keeping related to this issue and what it smacks of is making this sort of an extra special violation and I don't know where that leads in the future that's why I think it's perhaps misplaced if you need to clarify the general requirement that's already in regulation that would seem to be the place to do it but I don't I tend to agree that it shouldn't just be piggybacked on here as a special you know

Chair Remke: so I'm just so I'm clear are you proposing that the record-keeping requirements for the disclose Act being a separate regulation is that suggestion?

Commissioner Hatch: (Overlapping) no I'm saying that the existing general requirement for record-keeping be modified as need be to make it clear relative some new categories and this seems to without providing the sufficient detail as to whether it relates to is sort of elevating this one a little bit above every other record-keeping requirement it's misplaced and you have to find it now if I were wanting to know whatever my record-keeping requirements I'd go to the general section on record-keeping I think if I comply

with that I'm good but now we got this one planted over here someplace that I have to find and that's the kind of thing that gets people inadvertently in trouble

Chair Remke: but that's the point it's in the general record-keeping requirement so if I go if I want to know my record-keeping requirements under the Act for campaign statements I go to 18401 that's where all this and it's pretty detailed the accounts and records must contain a continuous computation a campaign account balance I mean it goes on and on for those under \$25 those under \$100 over \$100 I mean it breaks it out in detail what is required under the broad category of the Act so I'm just trying to get cleared you say it should be in here or should be in a separate place

49:57 Commissioner Hatch: It should be there

Sukhi Brar: okay so it is this is the record-keeping regulation this is the general regulation where everyone goes to to find out what records they have to keep

Chair Remke: for campaign statements

Sukhi Brar: yeah

Chair Remke: and all the duties under Chapter four of the campaign statement Act do other Commissioners have questions regarding 18401 why we're on it right now I'm going to get to those do you want to continue

Commissioner Hatch: (Overlapping) I get your point on that thank you

Chair Remke: okay Commissioner Audero has further questions on 18401

Commissioner Audero: yes thank you so on 18401 wherever it is exactly but the reference to the first in last out reporting

Sukhi Brar: yes that's in the triple little i

Chair Remke: Where is it again?

Sukhi Brar: it's on page 2 of the proposed amendments and it is found in on line 15 it starts that paragraph it's in there

Chair Remke: thank you

Commissioner Audero: so you the rule and AB 249 says a reasonable accounting method to figure out who you're going to disclose right as the top contributor in certain circumstances where it's not clear if you're donating if you're contributing more than the earmarked funds that you received or if you receive both earmarked funds and non-earmarked funds and you contribute and the suggestion is made I suspect among others

first in last out no last in first out which I interpret to actually mean last in first disclosed is that what you mean

Sukhi Brar: last in

Commissioner Audero: first to be disclosed

Sukhi Brar: what this is talking about is so the last earmark contrib - correct yes I get what you're saying yeah

Commissioner Audero: okay so I have questions about that because I'm not sure that last in first out works so I want to give you a couple of hypotheticals and I want to tell you know what you to explain how you're reasoning that last in first disclosed gets disclosed

Sukhi Brar: okay

Commissioner Audero: so okay on day one you have \$50,000 from donor A which is earmarked for measure X day two you have \$100,000 from donor B also earmarked for measure X and on day three you have \$50,000 from donor C that is not earmarked all of these we would be considered top contributors right because they're fifty thousand and above so this committee receives two hundred thousand dollars right but it contributes a hundred and fifty thousand dollars

Sukhi Brar: okay

Commissioner Audero: how is this recorded how is this disclosed I should say under the last and first out method

Sukhi Brar: okay so I have to think about this

Commissioner Audero: I get it I had to think about it myself and kind of come up with this so I understand you take your time

54:50 Chair Remke: would you like a lifeline I'm just wondering if Trish wants to help who is the campaign state minute you know finally next verdict Trish you want to assist it and some of these more detailed accounting methods and questions as you handle those every day and provide the advice yes this is putting you on the spot so go

Trish Mayer, Assistant Chief of Legal Division: hi I'm Trish Mayer assistant Chief in the legal division and if I understand your question correctly because the contributions from A and B or earmarked those would be the first two used and then once those are used that you'd go to this non-earmark offense

Commissioner Audero: so that's not last and first out

Trish Mayer: Last in first out with respect to funds that were earmarked

Commissioner Audero: so what would you report here what would what would you do what would you disclose in this hypothetical as far

Trish Mayer: as the record-keeping or the actual reporting

Commissioner Audero: no the actual disclosure

Sukhi Brar: on the ad

Commissioner Audero: using the reasonable accounting methods to figure out who which contribution to report

Trish Mayer: contributions from a and B

Commissioner Audero: and that's because they're both of your marked and so we don't look at the one from C because it's not earmarked

Trish Mayer: correct

Commissioner Audero: okay I'm not sure that's what last in first-out says but okay now okay I have another one so that that was one situation right where you receive earmarked funds and non-earmarked funds and when you bring it all together you're - you've received X number and then you the committee is contributing less than that right so that takes care of the one exam on one circumstance where you have to excuse me figure out who to disclose so let's look at the other one where you receive more earmarked funds than you contribute to another committee so day one you have you receive from donor a \$75,000 day two and they're all earmarked and let's say they're all your mark for the same thing okay day two you receive \$100,000 earmarked from donor B day three you receive 50,000 ear marked from donor C and day four you receive 50,000 from donor D for a total of two hundred seventy five thousand receipts

Sukhi Brar: everything's earmarked

Commissioner Audero: everything's earmarked for the same purpose and then the committee contributes a hundred and seventy five thousand dollars who do you disclose

Sukhi Brar: so then that would be the last in first out so you would disclose the most recent one moving backward from there

Commissioner Audero: so what happens so that's a hundred thousand right donor for donor D and donor C or a hundred thousand together but you have to disclose 175

thousand so do you just disclose the donor to the next one right is a hundred was a hundred thousand what do you disclose there

Sukhi Brar: so you would just close the rest from them

Commissioner Audero: seventy five

Sukhi Brar: seventy five

Commissioner Audero: and that would leave twenty-five thousand donated from this donor event well wouldn't make them a top contributor well so what happens to that twenty five thousand

Sukhi Brar: so if they eat don't use it and it's still there it depends on what the committee uses that twenty five thousand for they may use it for ad they may not they may give it to another committee

Commissioner Audero: if they give it to another committee because originally this person was \$100,000 which would have made them a top contributor is this person then listed as for twenty five thousand as a top contributor

Sukhi Brar: so if it's given to another committee and only twenty five is given then they're not a top contributor for that new committee on the ad because they didn't give the fifty thousand for that ad

Commissioner Audero: okay so I question the last in first out as an exam I guess it's an example of a reasonable accounting method what consideration have you given to other reasonable accounting methods and what were they

Sukhi Brar: this is the one that we've been using for in other circumstances when it comes to multipurpose organizations this is what we've been using so that's why we decided to use it again here because it has thought about in the past and so we went with that one as the example

59:53 Commissioner Audero: okay I just wonder if do we do we anticipate problems I mean why not just let people do their own and I guess you are letting people do their own thing pick their own reasonable accounting method you're not going to require last in first out

Sukhi Brar: right and an original draft of this had a requirement at last in first out and we changed it to have it as an example to give guidance that people wanted but it still has this reasonable accounting method language there too

Commissioner Audero: okay

Commissioner Hatch: would that override thought the reasonable account method

Sukhi Brar: so if somebody uses the last in first-out reasonable accounting method then we're going to say that's not a violation because it's actually an example we provide is that your question it helps people it gives guidance to people who want a direct answer on how to do it

Commissioner Hatch: but if you put this in sort of the de-facto requirement that you do it that way as opposed to other ways

Sukhi Brar: it's not a de facto requirement but it's I think more of like a safe harbor if you use it you know you can be sure that this is okay that's why we provided an example

Commissioner Hatch: example is a little short of a safe harbor but

Sukhi Brar: it doesn't mean that they have to use that method

Chair Remke: Commissioner Audero.

Commissioner Audero: so how would you feel about changing this to say this determination must be done using a reasonable accounting method such as and then here comma without limitation comma the last in first out accounting method

Sukhi Brar: that is fine with me

Chair Remke: any other questions on 18401 okay do the Commissioners have other questions regarding other regulations

Commissioner Hatch: yes

Chair Remke: Commissioner Hatch

Commissioner Hatch: clean money had suggested adding some language to 18450.1(a)1

Chair Remke: What which reg?

Commissioner Hatch: 8-18450.1 (a)3

Chair Remke: I don't is that one on here this time

Sukhi Brar: no that's not a right now it's up at the next meeting

Commissioner Hatch: that's not in this package

Sukhi Brar: no

Commissioner Hatch: oh I apologize

Executive Director Erin Peth: just to clarify there was an interested persons meeting on Tuesday regarding that reg that's the sign regulation that has the interplay with the disclose Act and so I think the clean money campaign sent everyone and a letter and response to that IP meeting but that's not on this agenda

Commissioner Hatch: numerically it was within the range of stuff

Executive Director Erin Peth: that will be coming back

Chair Remke: but timing is confusing but that's coming back next month

Commissioner Hatch: alright thank you

Chair Remke: okay any other questions on the remaining regs

Commissioner Audero: I just have a procedural question

Chair Remke: Commissioner Audero

Commissioner Audero: as we vote for this are we voting one by one or are we voting in bulk

Chair Remke: it could be a motion made it depends on how you want to make the motion okay no other questions oops sorry

Commissioner Cardenas: yeah for whomever my question relates to I guess it's section 85704 earmarked funds the definition of earmarked funds

Chair Remke: Sorry which did you are you referring to the statute itself what did you say

Commissioner Cardenas: I believe it's the statute itself section 84501

Chair Remke: okay thank you

Commissioner Cardenas: definition of earmarked funds

Sukhi Brar: 85704

Commissioner Cardenas: pardon me

Sukhi Brar: I think you're referring to section 85704 definition of government

Commissioner Cardenas: yes sorry 85704 I was close I mean I was I was within the range
Commissioner Hatch mentioned we know range is good so

Commissioner Hatch: that's right

Commissioner Cardenas: the ballpark exception right an Enforcement of this and so therefore maybe it's utility is dependent on I think the individual let's say the treasurer account Campaign Committee treasurer self-identifying and self-reporting a transaction as having been earmarked right and an inverse a way of getting at that maybe is isn't it isn't it the nature of dark money at the more nefarious end right I mean we're conceptualizing you know there's this cloud of dark money and at the darker recesses where it's you know it's darker than other shades of dark it isn't largely the problem that a lot of this money moves with a wink and a nod which then is not reported so I mean I gather this is this is a you know stretch better than whatever has existed before and you know it took you know a little bit of time for this to get through but I'm just wondering I mean unless you get into someone's you know mens rea their state of mind how would you we are necessarily dependent on people saying you know what we're doing dark money but we aren't going to be that dark and so we're going to disclose but isn't the I'm asking compound questions I realize this but you understand what I'm saying

1:05:35 Sukhi Brar: yes I definitely understand what you're saying this is something that we've been contemplating for some time now how to get at that

Chair Remke: it's like I'm just condensed with a head of a pin right it's like to all they don't dance so there's no answer I mean it's is just by definition rhetorical

Sukhi Brar: not I don't want to go to the extent of saying there's no answer we're trying every to figure out what the best way to go about that is in the past investigations been our strongest tool but you know that's where we're at right now

Chair Remke: and recordkeeping

Sukhi Brar: recordkeeping helps with those investigations

Chair Remke: your point earlier that you know the record-keeping is the way to track what is happening it's inconsistent with other evidence an investigation ultimately overturns the wink and the nod then we have two different scenarios to look at okay so were there are no more questions on the regulations because I want to ask for public comment then we can have follow up questions if there are

Commissioner Hatch: I have a question that

Chair Remke: Commissioner Hatch

Commissioner Hatch: Commissioner Audero's point about the I believe was the last in first out

Chair Remke: okay

Commissioner Hatch: I have a little bit troubled by the example that she gave that means that in effect there may be better ways to do this to create maximum disclosure and especially when there's as to Mr. Cardenas is point that often these things are kind of worked out in advance that we don't create a situation where they sort of begin to time these contributions in a way to split a major donation so that it's not required to be used as the top disclosure so perhaps rather than giving this example we should be providing language that requires that they do it in a manner that provides for the maximum disclosure as opposed to giving something that in itself has got is subject to manipulation so they have a duty to do whichever method provides maximum exposure at the time they're doing it

Sukhi Brar: I think the last in first-out accounting method is one of the best that we've come up with I'm not sure what else

Commissioner Hatch: well it may be but just in that one example it was clear that you could take a very large contribution and cut it down to just 25,000 therefore making it under the threshold to have to be listed as one of the top contributors so that that in itself makes me give pause because I know that a lot of times this money is coordinated in terms of its arrival time and so we shouldn't highlight something as okay when we know in fact it's not okay at all situation so maybe the wisest choice is to put in a specific obligation that says you have a duty in these things to treat them in a manner that would provide the most exposure or not exposure but disclosure in each case

Sukhi Brar: so at the very least at least put something like that

Commissioner Hatch: right so it should sort of force them to say okay on this one I'm doing you know last in first out and the other one I'm going to do some other method because you know it minimizes it if I don't I minimize what otherwise should be highlighted

1:09:45 Sukhi Brar: okay

Chair Remke: I think the concern I have is that there is no best accounting method for someone who is intentionally attempting to hide disclosure I mean the purpose of the law was to say if you earmark which used to be considered illegal if you earmark in this context you have to disclose so I think that Commissioner Hatch goes to your concern I mean that's why they put this in more strongly you have to disclose all earmarked contributions okay so then when we go to look to the best accounting method which as has been mentioned LIFO was heavily debated and discussed among all the regulated community when we went with the multi-purpose organization disclosure rules is the best

way to do that now the examples if someone is trying to split it so they're not disclosed becomes an Enforcement case because it's earmarked and they're taking action to avoid disclosure

Commissioner Hatch: no if they're following LIFO in that particular instance they've got an effect a safe harbor even though they know that when they time those contributions it would you know distort you know the veracity of their report and so I want to consider us to consider a requirement that in each case they're required to select the method that provides the maximum disclosure which means they might use LIFO in one instance and some other method at another I just you know I don't think I think this is a trap for us and it would be enforceable I believe Galena West, is she's still here it might be a handier tool if you have a specific obligation that they must select whichever method in each instance that provides the maximum disclosure so they have so when you are looking at a case that's brought to you Galena we know that you see that well they had anomalous results as a result of the using LIFO when they could have used something else that provide better disclosure and they sort of lived to find the one that would be you know if you just said you could use any method you want yeah they're going to pick a method just the opposite the one that provides the least disclosure if they're left to their own devices and I think we need a positive requirement that they select in each case the method that provides the maximum disclosure

Chair Remke: but I think yeah I agree but I think the issue is on the front end not on the back end so I think the issue is when making contributions you can't make them to avoid disclosure because again you're talking about split contributions because even if you say maximum disclosure on the back end I don't know how any accounting method is going to force someone to say well I'm going to add these two together therefore they will be quote quote disclosed I think it's on the front end about the way you contribute an earmark as to not avoid disclosure which I do think the language in there isn't there and in its rather lengthy but I believe in the disclose act there's something about not making contributions to avoid disclosure

Sukhi Brar: yeah there is some language in there

Commissioner Hatch: But it makes it a lot tougher to enforce I'd like to hear from the sponsor if it's the appropriate time on this issue

Commissioner Audero: okay can I just make one a different comment

Chair Remke: Commissioner Audero

Commissioner Audero: so I hear everything that's being said and I am concerned about something that you said and I'm wondering how we're in a kind of reconcile at all in the end but you said that there would be a presumption that they have satisfied the reasonable accounting method if they use last in first out and if we give that presumption then I think

that we're defeating the purpose and we are creating a situation just like Commissioner Hatch has raised so I have a very big concern about this presumption

Sukhi Brar: so would adding language to the regulation that says something like intentionally trying to get around these disclosure rules would not be you would not be allowed this presumption in those cases

Commissioner Audero: how about just taking out LIFO as an example and how about just leaving it to Galena West and her division to use to review it under whatever method and to come to a conclusion and then if we start to see if Miss West and her group starts to report back to us that we have a little bit of a problem here we really need you know we're seeing this kind of violation over and over and over then we regulate but to regulate just so that we can throw something out there that actually I don't I personally don't think is helpful I think it's counterproductive but just from how it would play out but that aside where it creates this presumption I think as a bad idea

Chair Remke: I would just ask Trish because again you respond to the questions on this and I'm assuming if we take out LIFO the first question and phone call and email you're going to start getting is what's what do you guys consider a reasonable accounting method

Commissioner Hatch: and that's why I suggested what I did so that they would be obliged to use the one that in each case provides for maximum disclosure the most disclosure and if you I think if you just take the life out out and leave it to their selection of the method then they're going to select just the opposite of what I'm request and you'll select the method that provides the least disclosure

1:15:40 Chair Remke: so are you what if it stayed the language as it is which is such as which is an example as that language means such as and then put an added sentence at the at the end of the paragraph which has the reasonable method must provide the greatest disclosure whatever the language is

Commissioner Hatch: I would take the example out and instead add the sentence that requires that in each case that they select the method to provide the most disclosure

Commissioner Hayward: Madam Chair

Chair Remke: Commissioner Hayward

Commissioner Hayward: I think if we're going to start doing that kind of word smithing to this we need to bring it back it's not at all clear to me that we can go beyond just saying reasonable accounting method because that's what the disclose Act said and we're starting to I think get into a little bit of you know self-legislating and I'd want to give people who have thought about this question you know a long time the opportunity to talk about it with us by way of comment letter and whatnot before we make any final decision

Chair Remke: in along those same lines I guess I'd like to be able to highlight some of the language that's already in the disclose Act which I think may get at some of your concerns and whether it's we repeat it or not but I don't have it in front of me so I can't pull it out but

Commissioner Hatch: I just don't think that it's adequate to leave it to their own devices

Chair Remke: no I think we this regs going to be

Commissioner Hatch: back and forth you know LIFO FIFO you know back and forth and this is a an area where the creative accounting is born and the example that was given where the money passed on was less than the aggregate of that earmarked so that means that the committee that's receiving this money can artfully decide what size checks that they're going to you know write to pass on based upon how they can provide the minimum amount of disclosure and I just I think it's too much TVs I get that it's probably not good for me to just write the sentence myself and have it adopted I'm fine to do you know carry it over but I would like the sense of that to be you know in your uppermost minds when you're writing where you're rewriting this

Chair Remke: Commissioner Cardenas

Commissioner Cardenas: I don't know what the grace period is for the new guy asking dumb questions but I'm going to I'm hoping it hasn't expired yet was there any thought given to just largest to smallest I mean there's darkness and then there's weight I mean if a half a million-dollar contribution is far and away the largest that was made to a particular committee but it also happens to have been you know the fourth one receding in time why not include it

Sukhi Brar: Okay that's something to think about - I mean it's sort of when it comes to that being the fourth donor you're right we haven't really thought about that but they are required to be listed when it's the top three the highest one first but when they're the fourth one out no we haven't thought about that

Chair Remke: I want to hear from if you have other questions regarding regulations and obviously the public but I'm just going to throw out the idea that we don't vote on 18401 today and we think about these issues and bring that particular one back

Commissioner Hatch: I would like some language brought back to us that reflects the concept

Chair Remke: sure but I'm just saying that for right now right

Commissioner Hatch: (Overlapping) they want but I want to see that when it comes back

Chair Remke: but I'm just throwing that out as if we're going to continue to talk about 18401 if there's questions about the other regs because we do have eight other regs that if we're going to hit on those and hear from the public that's all I'm just saying if we're going to bring it back anyhow we can flush out all these a little bit more I think a lot of issues have been raised that can be addressed at an IP and brought back Commissioner Audero

Commissioner Audero: so I completely agree with that approach but I would like as part of what's going to be reconsidered is the new record-keeping requirement

Chair Remke: okay so Commissioners questions on any of the other remaining regs being proposed today 7 okay so let's hear a public comment on the regs and Mr. Lange if you can address 18401 obviously but also understanding that it sounds like the approach is going to be that we're going to put it over so we can flush it out more

1:20:20 Trent Lange, President, California Clean Money Campaign: yes absolutely Thank You Trent Lange president the California clean money campaign the sponsor of AB 249 the disclose Act first of all we'd like to thank staff for working so well is this not just closer okay first like to thank staff for doing such a great job on this entire package of regulations the rest of these regulations here today we are perfectly happy with reflecting the intent and code of AB 249 we do think in general that it is important to have this kind of record-keeping as an addition to all the other record-keeping because this is an this is a kind of a new kind of requirement it's one thing for a committee to know that they have to keep the checks and you know the invoices and that sort of stuff that's relatively simple but this is admittedly more complex to have these new earmarking rules so we can trace the dark money through different areas and AB 249 does clearly spell out the perhaps not as clearly as it should on the reasonable accounting method the different steps that it has to be done where earmark funds are divided up when they are given to one committee or to another so we think it's very important to have these in here that we're happy to see some of the clarifications in terms of the reasonable accounting method issue I think we would have some concern about committees potentially picking and choosing which accounting method they would most want to have we'll have to think a little bit more about whether or not how difficult it would be to require them to choose the one that has the most disclosure because that may depend upon where they ultimately give the money to later on which committees the issue here is in a case in in in sort of the example that that you gave of a part of the money being earmarked funds be given to one committee and then one of the big checks being divided up now that \$25,000 doesn't go away if they then give that other content that same contribution to the original give more earmarked funds to the first committee that they gave to then it would accumulate in that committee as being earmarked as and it would add up in that same committee and show the full hundred thousand dollars in that particular case where they had it divided up in the different cases

Commissioner Hatch: But that donor may not be listed as the top

Trent Lange: well they would be on any subsequent if they give in in this example where you had were they had 200,000 two \$50,000 earmarked ones that were shown for sure and then \$100,000 one that only seventy five thousand was given so first off when they give to that committee two which is then doing an ad that seventy-five thousand may put them over the over the limit to be a top contributor on the ad

Commissioner Hatch: (inaudible)

Trent Lange: so but if they then give that give another check earmarked sorry if they then give another earmarked contribution to that same committee which would then that remaining 25,000 would be the very next chunk that would go in under the LIFO rule then that 25,000 would add up with the original 75,000 they'd have a hundred thousand in that committee

Commissioner Audero: but wasn't the question really more what happens when that 25,000 is given to a different

Trent Lange: yes that's where that would be a potential challenge now I will note that if that set that third committee had received from funds from that same contributor directly or through some other means than that 25,000 would add up to it so yes there are its definite possibility gainsmanship in that in that sort of thing in terms of dividing it up it's not necessarily only because of LIFO this approach is imperfect we will readily admit but so I think these are important questions I don't know that the LIFO per se is necessarily a problem as staff has pointed out that is something that the Commission uses

Commissioner Hatch: you know their alternate definition are not definition but your alternative facts couldn't it also be true that that big contributors that would only got a small piece you know added or counted in that disclosure then be not counted at all because there are subsequent big contributions that come in that wouldn't it and make that one not even on the next list

1:24:48 Trent Lange: that is that is possible and so I mean yeah the challenge there is contributors kind of purposely doling out earmarked funds to multiple different committees and you know and they could you know give they could do it in other ways this LIFO thing doesn't necessarily have to come into effect they could give 49 thousand dollars to the committee then it gives it to committee one and then two weeks later they give another 49,000 to the first committee which then gives it to committee two so there are other ways they could do this sort of thing I mean what the good thing is that these will all be disclosed on their online websites and if any committee plays these kinds of games it will be obvious to the to the public and people who are watching it not necessarily to put it on the ads but people can at least bring attention hey why are you dividing up all these \$49,000 earmarked contributions that seems like you're playing games

Commissioner Hatch: unless we provided clear - for Galena to enforce these games will happen even though people go

Trent Lange: yeah, I mean I think we're perfectly okay with listing LIFO as one of the one of the examples you know we were looking forward to working with the Commission on possible follow-up legislation to clean up some lack of places where there are could use more clarity this might actually be one of those sorts of places that we'd be happy to discuss with the Commission and staff on

Commissioner Hatch: thank you

Chair Remke: any other questions for Mr. Lange okay thank you any further public comment all right is there so again putting aside 18401 perhaps there's a motion for approval of the remaining amendments and repeal

Commissioner Audero: I'll move approval of amendments to regulations all of them listed in the agenda except 18401 is that an okay motion

Chair Remke: and then that includes repealing

Commissioner Audero: yes

Chair Remke: listed as well is there a second okay

Commissioner Hayward: second

Ayes: Commissioners Audero, Cardenas, Hatch, Hayward, and Chair Remke.
The motion passed 5-0.

Chair Remke: Okay. Thank you, Sukhi.

26. The Bagley-Keene Open Meeting Act, Additional Questions by Commissioners.

Staff: John Feser, Senior Counsel, Legal Division. At the October 2017 Commission meeting, Deputies Attorney General Ted Prim and Julia Zuffelato presented an overview of the Bagley-Keene Open Meeting Act. Commissioners Hayward and Audero want to discuss the feasibility of soliciting an Attorney General's opinion to clarify some of the advice provided at the presentation, including communicating between meetings with interested persons on proposed regulations.

Staff Memo

Chair Remke: so, item 26 is the Bagley Keene open meeting act additional questions and Commissioner Hayward you have requested this as a further item so if you'd like to take the lead on this

Commissioner Hayward: sure as we will all recall last fall we had a work session with representatives from the Attorney General's office to talk about the Bagley Keene Open Meeting Law and the rules that it requires of us as Commissioners on a State Commission during that workshop we had a number of questions for the Attorney General's office that at least in my esteem were answered with rather vague advice I mean it several times they give us the caveat that what they were trying to do is give us a best practices type advice which is fine and totally appropriate for a workshop like that but the problem is there isn't a lot of definitive advice regarding what is permissible or impermissible under Bagley Keene especially as it involves Commissioners and members of the public and so I think it would be appropriate for our Commission to seek advice from the Attorney General's office with particular you know not abstract questions you know particular hypotheticals to make this business a little crisper I say that for a number of reasons I think it is chilling when members of the public hear about a problem with Bagley Keene that may involve them approaching a member of this commission with a problem with an agenda item or a problem with just the general law or whatever you know at one point the Attorney General's office suggested that if a member of the public emails all members of the Commission simultaneously that is I can't remember what asking for trouble and is you know looking for problems I mean I can't remember exactly the exact expression it's here in the in minutes but I'm doing this off-the-cuff right now so anyway and I think that is chilling I'm not sure that Bagley Keene prohibits that sort of conduct and moreover I would like the Attorney General to confirm that Bagley Keene means what it says and that that conduct is okay because I would rather not have some member of the public who doesn't like member of the public number-one's opinion to attack us or that person as potentially violating the Act to create some sort of other political dynamic going on and what I think ought to be a fairly straightforward analysis of the law and the regs and how they apply to everyone there are yeah most of the concerns I have regarding what the Attorney General's office was telling us in vagueness are from pages 11 to 15 of the minutes from that meeting and so I think I would like to propose because I seem to be the one that's worked up as much as anyone about this is perhaps I could work with staff to come up with some hypotheticals that seemed reasonable not weird quirky catchy ones but ones that actually reflect what happens in the experience of a Commissioner on a Commission were so little of what we do can be done outside of an open meeting and maybe you know bring that before the Commission next month with the idea of submitting a question to the Attorney General

1:31:13 Chair Remke: I'm going to ask that John Feser respond I guess I think that's a good proposal perhaps that you guys work together and he can create a memo based on your concerns that you raised the kind of big picture items I will say my understanding is I don't know if we'll get very far if what we're proposing to the AG's office our hypotheticals so I don't want you to respond to that as well please

John Feser, Senior Legal Counsel: right Thank You Commissioner Hayward um yes I'll be happy to work with you on the matter the memo that sets forth the process for bringing something before the Attorney General's office for an opinion requires question of law questions of law so hypotheticals might be difficult so we will have to work on that I

mean it's that's I think the biggest challenge is setting forth what question are questions we're going to pose to the Attorney General's office and of course the other problem is the timeliness Attorney General opinions can take two years so that's another issue but those are things that you and I can discuss

Commissioner Hayward: yeah, I guess in response I think by hypotheticals I meant things that happen in real life cleansed from the identification of the people involved so person a is a real person who did a real thing but we're not going to tell the Attorney General what his name is just because or her and then yeah as far as the timeliness just to make everyone clear in and sort of why I'm concerned about this at least we will have asked

Chair Remke: yeah

Commissioner Hayward: so at least when someone comes forward and tries to sharp elbow someone who is as a concerned citizen trying to reach out with a concern we can say listen that's not how we read it moreover we've asked the Attorney General to confirm that reading and you know when we hear from the Attorney General then we'll know but I just it troubles me in an area that's so fraught with First Amendment values on both sides that the vagueness and the sort of air waving is what we seem to be dealing with right now

Chair Remke: so if and I'll hear from other Commissioners but if that's an acceptable process and so again to avoid Bagley Keene issues I would have Commissioner Hayward work with John come up with a memo kind of highlighting the questions and anyone can now speak about those questions but we're bringing it back so everyone can see it and work off it and add to it or change the language or feel like it doesn't cover an issue they may have concerns with but at least we'll have a starting point with some language which will be easier than talking in the abstract and then from there we could talk about if there's an agreement and a motion to present it to the AG's office

John Feser: if I may madam Chair if anybody's going to comment just to get this in full context the AG opinion process requires that the requesting agencies staff provide a legal analysis along with their question so in the short term and for Commissioner Cardenas and everybody of course knows or should know that FPPC staff legal staff is available for any answers any questions any time including Bagley Keene saying we will in this context Bagley Keene we would consult the Attorney General's office as well the experts Ted Prim on any specific questions that we have in the short-term while we wait for an issue on the larger broader question that we would present to Attorney General's office

Chair Remke: And as our legal counsel anyone can contact you confidentially if they just have an issue that feels more sensitive they can get a feed from you if they think the issue is important enough that they've you could always bring it back in a memo to the full commission to hear and review and discuss but as far as this particular issue with that training and issues that Commissioner Hayward feels have been raised I think the approach would be that you'd work with her come up with the memo which would

include some legal analysis it sounds like because we have to do that bring it back to us and we can add change or decide where we want to go from there

1:35:25 Commissioner Hatch: madam Chair

Chair Remke: Commissioner Hatch

Commissioner Hatch: Mr. Feser's remarks kind of fed right into what I was going to raise and that's that we have legal counsel is an opinion from our Chief counsel on a subject matter like this binding upon us or is it just a recommendation to the Commission unlike an Attorney General's opinion

Jack Woodside, General Counsel: an opinion in the sense of a formal opinion

Commissioner Hatch: yeah written opinion a formal written opinion

Jack Woodside: formal written opinion that doesn't require voting I just thought the process

Commissioner Hatch: (Overlapping) Opposed to a Commission opinion which is a whole different thing

Jack Woodside: if you're asking for advice from our staff that's not binding on you it's just our advice

Commissioner Hatch: no I'm not talking about advice I'm talking about it if

Chair Remke: it's not going to provide you immunity

Commissioner Hatch: poses so many questions that require is this allowable under the law or not allowable certain conducts and you one route is to take it to the Attorney General and maybe ultimately that's what you want to do but in the meantime besides just specking it up is it not a possible option on some of these to be able just ask our Chief Counsel to render a written opinion on the allow you know the legality of the various items that are put before them as a legal opinion of our Chief Counsel and my question is does that have any weight as opposed I mean is or is that just an exercise

John Feser: Commissioner Hatch, it has weight to the extent that we reference the law and we give you our recommendations based on the law and the facts that are at issue so it would be like any attorney-client communication and has the weight of the law that's being utilized to give the recommendation

Commissioner Hatch: yeah I'm talking about a published opinion

John Feser: A published opinion by the Commission or by the Chief counsel's office

Chair Remke: so then you're asking for our request for advice and it becomes an advanced type

Commissioner Hatch: I'm not talking of personal advice here I'm talking about well there's a general application of on a certain class of conduct like any one of these lawyers out here want to contact any one of us individually is that allowable or is it not I know there's some would like to say you shouldn't do that but I want to know what's the law and I want it to be that opinion to be available to anyone in the regulated community to read and for us to know

John Feser: right and I think

Commissioner Hatch: I don't know whether it would be considered binding on us for our future conduct or whether it's just advice

John Feser: right and I think the law is binding it's I think Chair Remke sort of referred to this situation it would let's say a memorandum came out as part of the agenda was considered by the Commission that would be something a commission to vote on and we can move forward like for instance we brought this for the Attorney General's office

Commissioner Hatch: that's going to we're not going to get an answer on any of those questions for quite some time and so I'm looking at it facilitate to do a dual process where we take some of these issues and make turn them into Chief counsel's opinions that are available to the public as well as ourselves

Chair Remke: and I think my only point Commissioner Hatch is I'm not sure there is such a thing as he Chief general counsel opinion I'm just trying to clarify so I'm just trying to think about the way we get to what you want is all I'm saying there's not a formal Chief Counsel opinion that's why I referenced the advice letters that's what they are giving and that does provide immunity under the Act but this is outside the act so I guess the thing is part of this is

Commissioner Hatch: They're Bagley Keene issues

Chair Remke: right which is outside so they can't they cannot provide immunity their advice cannot provide immunity all it is our legal counsel it would be us acting in good faith based on their advice which begs the question if we have questions for them and if they give us answers and if we agree to abide by those it's kind of like our own governing principles let's say and we're acting within the advice provided that we all vote in agree upon the question would be then who's challenging that so that's the their advice is solid we agree we move forward and we all agree I don't know if there's a violation of the Bagley Keene is either a criminal violation or a civil action to void the action right correct so again the likelihood of either of those happening is unlikely but if our goal is to have a common understanding of what we can or shouldn't do and work on that together

and agree on that I think that could be asked in this process with Commissioner Hayward perhaps starting it shaping out some of these issues getting our own legal counsels legal analysis as they're required to do that point we could decide if we agree if we want to pursue AG's opinion or how

1:40:52 Commissioner Hatch: I don't know how Hayward did a great job of trying to corner (inaudible) to try and corner the AG staff on some of the critical questions and they dodged them you know it's maybe the unvarnished version and so now we're looking at we're going to be taking us two years to find out what it is that we care about or is there a way to like not in lieu of this but in compatible way do both

Chair Remke: and I think that's what John is suggesting is a two-step process

Commissioner Hatch: of course, what I was asking was if we were to do that does it have any weight you know

Chair Remke: but again I think the issue is weight in what context other than we self-regulate ourselves we can agree to this as governing principles which that's some weight

Commissioner Hatch: well let me give you a parallel example it's quite commonly done in the legislature they have an Office of Legislative Counsel who drafts their bills and whatnot but also any member can ask for a Legislative Council opinion that is published right that governs that subject matter as to what's lawful and what's not

Chair Remke: and that's why I just commented that we don't have that process here so I just wanted to make that clear not to say that we can't get there in a different way

Commissioner Hatch: we have the authority that's never been used

Chair Remke: but I think it would be we would want to adopt our own rules

Commissioner Hatch: that's the question I asked our chief counsel

Chair Remke: do we have a process in place for a you to issue

Commissioner Hatch: for a process in place do you have statutory authority to issue opinions issues brought to you by us

Jack Woodside: no I can issue advice and in the form of memorandum which is submitted to all the Commissioners but the weight of that I don't think is what you are looking for in an actual opinion any opinion I think the only type of opinion we have is one that is considered by the Commission and voted upon and approved as far as my authority it does not go that far

Commissioner Hatch: yeah those are interpretations of the law that we operate under at the act right

Jack Woodside: I'm sorry

Commissioner Hatch: those are for interpretation of the Act

Jack Woodside: correct

Commissioner Hatch: right within that code right so you don't think you think it's silent on it or you think there's anything that isn't there impediment

Jack Woodside: yeah I just don't think there is any avenue for me to take to issue the type of opinion that you just gave an example of with the Legislative Council

Commissioner Hatch: okay no parallel Authority

Jack Woodside: no okay

Commissioner Audero: Can I ask a question

Chair Remke: Commissioner Audero

Commissioner Audero: are you saying that you don't have the authority to do that because it's the Bagley Keene act is not within the jurisdiction of the Commission

Jack Woodside: I think that's one aspect of it but the bigger picture is I don't think I have authority to that would in some other venue provide you with immunity if I issued some sort of opinion what I can do is provide you with advice and whether you choose to accept that or not is up to each one of you but the weight of that advice as far as I know pretty much stops here it has no weight and other venues so

Chair Remke: that's good faith

1:44:36 Commissioner Audero: so the reason I ask is because in October I actually asked that very question that I just posed to you which is the Bagley Keene Act under the jurisdiction of the Commission and the reason I asked that question was because what is a meeting necessarily requires in its definition that we be discussing things within the jurisdiction of the Commission and so my question was Oh well wait the Bagley Keene Act is not I thought within the jurisdiction of the Commission because it's nothing that we can actually effect and the answer was surprisingly different it sounds like you and I are on the same page but if you look at page 14 and 15 of October I got a totally different answer than I expected so I said at the bottom of page 14 would a discussion among the members of our body about the Bagley Keene act to be a violation of the Bagley Keene act since that's not really under our jurisdiction and the answer was well but complying

with it under your jurisdiction is so we would say yes so now I'm thoroughly confused is Bagley Keene act within our jurisdiction if it is then my question to you is then why can't you issue an opinion because it's within our jurisdiction and if it's not then who's right here is it or according to Ms. Zuffelato it is within the jurisdiction of the Commission I'm thoroughly confused and I hope you can clarify

Jack Woodside: well we of course are subject to the backlinking act and to the extent we have provide advice about whether something falls within or without the act itself we can do that but it's not within our jurisdiction to the extent that we can regulate it and

Commissioner Audero: Affect it in any way

Jack Woodside: affect in any way I can give you advice that's where it stops and starts or starts and stops

Commissioner Audero: okay and then and then I guess the question is your advice privileged right and I and I have a concern I mean we can choose to waive the privilege

Jack Woodside: yes absolutely I believe now

Commissioner Audero: so if we are asking you for advice then and we want your advice to be made public I think is where you're going Commissioner Hatch and also where I think Commissioner Hayward is going as we want to make sure that the public knows it's okay to call us or whatever so you could give us proof you could give us advice under privilege or we could choose to waive the privilege

Jack Woodside: you know I believe so and I'll look into that to make sure but I I don't see why it has to remain privileged I think it's our decision whether it's privileged or not privileged or to wave the privilege

Commissioner Audero: at the end of the day the bottom line is if you give us advice and we rely on it and it's wrong and I'm not suggesting you would be wrong by any means but and it just happens to be wrong that doesn't save us right

Jack Woodside: no

Commissioner Audero: we're still out there we're not going to go talk to Jack so

Jack Woodside: you can point a finger

Commissioner Hatch: Through the bars

Commissioner Audero: at the end of the day I mean we still need the AG's opinion the formal opinion from the AG whenever it may come

Commissioner Hatch: I see that now, yeah

Chair Remke: okay so unless there are further questions or issues I guess I would just start with it is the proposal that I suggested adequate for your request

Commissioner Hayward: yes I think so

Chair Remke: and so is the rest of the Commissioners want to add to that proposal of Commissioner Hayward meeting with John to come up with some scope of questions bring it back to us with the analysis and if we want to add to it change it we can do so at the next available meeting and if you have any questions now you want to throw into the mix go ahead

Commissioner Audero: and that's where I was

Chair Remke: okay

Commissioner Audero: so I don't need to throw my questions in but I actually I went through it all thinking that that's what we were going to do is today has come up with the questions but that's okay I have my six questions the only reason that I want to participate in this process somehow is not is that my questions exceed the scope of pages 11 to 15 so I think that there should be a mechanism through which we can the other Commissioners can also submit questions and you know we can talk about what that is and just make it easy and you know and then and then there's a whole host of questions that will be submitted and reviewed by whoever then is presented at the next Commission meeting so we can save ourselves some time

Chair Remke: so why and then John let me know if you see any concerns with this approach that Commissioner Hayward can take the lead on this and work with you but that any Commissioner could directly send you questions to add to the scope of that

John Feser: yes that'll be welcome and the more questions the better so we could we exhaust all the issues that you have

1:50:12 Commissioner Audero: I have a question about the procedure is it actually correct that the AG has no time limits to answer our questions

John Feser: no time on this

Commissioner Audero: so does it make sense then to send one letter with a whole bunch of questions and then have it you know not get answers until every single question can be answered or do we send separate letters I just think about it I don't know what the best approach

Chair Remke: but I'm hoping that Commissioner Hayward and John can work together to kind of narrow similar questions and maybe more group them as broadly to get the answers as concrete as possible but without having a list of 20 if we can avoid it but we'll see what happens so that that will be the approach we take on this so Commissioners who have any specific questions to just email John directly with those and John and Commissioner Hayward work together to flush out a process and bring it back to us okay thank you

27. Letter Regarding Closure of Eric Lucan Matter, Case 16/284. Staff: Galena West, Chief, Enforcement Division; Brian Lau, Assistant General Counsel, Legal Division. Eric Lucan, a councilmember in the City of Novato, sent correspondence to the Commissioners regarding his request for advice and an enforcement complaint filed against him. Pursuant to the FPPC's regulations and policies, the Legal Division declined to provide advice to Mr. Lucan when the advice involved governmental decisions affecting property in the same general vicinity of Mr. Lucan's real property interest that triggered the enforcement matter. After the Enforcement Division closed the investigation against him, Mr. Lucan was told that he could seek prospective advice from the Legal Division. Commissioner Audero requested that Mr. Lucan's correspondence be placed on the agenda for discussion and that Mr. Lucan be notified.

Lucan Correspondence dated 11/14/17

1:51:19 Chair Remke: so item 27 the letter regarding closure of Eric Lucan matter case 16/284 and this one Commissioner Audero you requested that it be placed on the agenda so I'm going to let you take the lead

Commissioner Audero: great thank you so I you know when I read the letter the reason I requested be put on the agendas is I wanted us to have a discussion somewhat about the ultimate conclusion but more about process because I was a little bit concerned about what appears to be an extremely lengthy process to resolve something that apparently we'd been giving verbal advice on in advance of when he actually asked and maybe even in advance of the complaint I don't remember exactly what the details were but I'd like to kind of talk through and kind of get the story the history of this from you Miss West so that we can use this as a basis you know not to not to change the result necessarily although I have some questions about that but to actually start a conversation that is that I would like to make the bigger picture conversation about process but before we get there that I'd like to talk about Mr. Lucan's concerns and what happened here

Galena West, Chief of Enforcement: Certainly Galena West Chief of Enforcement conflict of interest cases are time consuming they basically are when you read the regulations step one through four under the new regs you have to figure out reasonably foreseeable and materiality and trying to make those determinations and there's a huge difference between the advice function and the Enforcement function so with the advice function the advice function versus the Enforcement function so when you write an advice letter you take the facts as presented generally with few exceptions and you

answer the question asked when you have an Enforcement case you assume that you have to verify every fact you can't only ask answer the complaint you have to also look at the entire global holdings of the person as well as other decisions because I can't present a conflict of interest case settlement to you on one count that was in the complaint without looking to see if there were other possible votes or influencing or participating or other properties and so unfortunately otherwise you would get case after case because then a complaint will come in they saw that on the agenda oh but he also voted on this didn't you guys look at those minutes so in a case like this you have to look at I'll give you a great examples this is a case about a SMART station so we had to look at talk to the smart manager about the various elements track the infrastructure get the schedule for servicing to the downtown station figure out the ridership and where anybody else on any other smart planning boards and committees were there alternative station options where would it stop where would it start who would it benefit the reduction of the Marin Transit Authority of bus service in the downtown areas the funding sources the likelihood that the project will move forward the mapping data and the survey maps it's within four-minute walk but it's also within 800 feet so we have to look at all of those things we have to look at the comparison travel from the property on does this actually benefit it and then also we had been given a lot of different surveys that we had mapped in other jurisdictions whether public transport stops near a property is a benefit or detriment so we have to read all the studies decide which ones are applicable because of course they're not on this jurisdiction they're on other jurisdictions so you have to gather all of these facts you can't take the facts as presented to you so that's what we did and that's what we spent the time doing and we open this case in March of 2016 and closed it in November of 2017 and all the while Mr. Lucan was getting advice on other properties or other decisions but that that doesn't preclude us from having to look at everything that's going on in the case so conflicts cases when you're saying step 1 is it reasonably foreseeable the governmental decision will have a financial effect on the public officials financial interests you have to figure out what everything is what decision you're talking about and then go through the steps to apply those standards because within each standards there's 10 subdivisions that you have to figure out which one's apply and which ones don't and then look at public generally to make sure that it's not something that you can also foresee as a reasonable defense so conflict of interest cases they're complicated they have they're entirely fact dependent it takes a really great personality of an investigator to be able to follow through and to put all the pieces together and I think that the investigator and the attorney assigned to this did a great job and I think it was a reasonable amount of time

1:56:58 Chair Remke: but other than the difficulty of conflicts case which I understand and we could talk about that if people want to the standards and where we are now but was there any other thing particularly this case that drew it out or sped it along I mean

Galena West: well there was the original complaint and then there was an additional complainant and then the additional complainants and in extra information twice during the investigation the respondent Mr. Lucan had a attorney who presented quite a bit of information in defense nine or ten different advice letters with different fact patterns that

we had to go through to see if any were applicable then we also had to be then separated from his counsel than deal with Mr. Lucan individually and then start over from wherever you were and then getting individuals to contact you is sometimes a little more challenging

Commissioner Hatch: Who shut down his advice on other related projects

Galena West: on the related projects

Commissioner Hatch: he claims that he couldn't get advice anymore because of the pending

Galena West: he couldn't get advice on the smart station that he had proposed

Commissioner Hatch: he said he asked for advice on other projects. did he not write

Brian Lau, Assistant General Council: we generally decline advice anytime the factual underlying facts would be related to the matter and Enforcement and we generally

Chair Remke: Brian, why don't you introduce yourself.

Brian Lau: I'm sorry this is Brian Lau assistant general counsel so if the underlying facts are part or so if in this case we did decline advise three times once was on the exact same project so there was two other ones that were different projects but were similar sized projects within the similar distance from the exact same property interest that was subject to the Enforcement complaint so those were the two that were declined

Commissioner Hatch: but one he said was on the other side of town

Chair Remke: but did we provide any advice

Brian Lau: we do provide advice in one case on the the in the situation where it was the other side of different project different property interest on the other side of town we provided advice in that scenario

Commissioner Hatch: Okay

Commissioner Audero: so

Chair Remke: I'm sorry we did we just provide advice once I thought there were two formal letters advice

Brian Lau: during the Enforcement proceeding we invite we provide advice once we provided a second advice letter even nearly simultaneous with the closure as soon as the closure as soon as the Enforcement matter was over we provided advice rather quickly on

a set on the second question so and I also believe there was an email at one point that we provided advice that was because of the nature of the project was somewhat different while there was the same interest the nature of the project was much smaller so we provided an email advice assistance in one instance during the Enforcement proceeding as well

1:59:53 Commissioner Audero: so if I have just a kind of understand because I looked at his maps on property here okay project A is over here project B is over here project C is over there are you saying that because the question involves this same property you can't answer about project B or project C

Brian Lau: that is our current policy yes it's more of trying not to interfere with existing Enforcement and trying not to interfere with the Commission's oversight of Enforcement and Enforcement matters by issuing advice that is related to similar fact patterns those advice letters are essentially used by the attorney in this case the actual letter that we wrote that we did provide advice in was used by the attorney to argue why the Enforcement matter should be dismissed

Commissioner Audero: and that's okay there's nothing wrong with that in my mind why not if you're saying if what if what their argument is wait a minute you're telling me I can't do this but you're telling me I can do this which is the exact same thing only in the other direction why would that be bad why should we why would we not let somebody do that

Brian Lau: I think our long-standing position is that it would be inappropriate for the legal division to ultimately determine or effect Enforcement actions based on providing advice and very similar circumstances

Commissioner Audero: how is that affecting an Enforcement action that has to do with a different project that's number one but number two you know we can have long-standing policies all we want and somewhere along the line something hits us in the face and we get to look at that again so I you know I get that until you know based on that policy that's how this case was reviewed and maybe we need to look at that going forward but I have to tell you I don't think that it's a valid reason to say first of all you're using I you're using two different terms you're using related and similar in the same sentence and I think that those need to be completely different standards right I mean if it's related right if it's related to project A and you're going to make it some sub part of project A okay all right but if it's a similar situation but in the other direction why not answer that question I mean here you have somebody who has the obligation to vote on things in the City Council right on measures on things that are brought before the City Council and we are basically saying not touching that one because we're busy with this one we know it's not related but it's similar and I just find that how does somebody then get what they need from us

Brian Lau: from a very practical matter if we allow for them to seek advice just because related to the same interest on a very similar project they would legal would be used as an avenue to undermine Enforcement actions

Commissioner Audero: well it would be presidential right you're saying you're saying we would make decision A and then decision A would be used to what support what they want in decision B that they didn't get I mean that's just that's how precedent works why do we I mean how do we take a position on something and then and then say you know but we don't want that to apply let's just kind of hide this one

Galena West: I believe the rationale has always been based on Enforcement does a more thorough looking at the actual facts of the case so legal division would be giving advice on the facts provided by a respondent in an Enforcement case mirroring an active Enforcement case as much as they possibly could crafting those facts getting immunity and then using it in the Enforcement action so I think that the precedent was set to not do that if it's similar enough in fact pattern in order to be an end-around of actually getting a full investigation and if it determines that there is something there a determination by an ALJ of all the facts

Commissioner Audero: but see I guess the I guess the concern and this maybe goes also to what you were saying you where you're explaining earlier that Enforcement is not going to just look at what the chart what a complaint is but you're going to go out looking for anything you can find and I find that in itself troubling because as I defend employers this is what I do for a living right it's a little bit different but you know my employers are go before agencies and if a complaint is sexual harassment right the EEOC or in California the DFEH isn't going to go sniffing around for disability discrimination they're going to they're going to look at what was charged so expanding the investigation into something that wasn't even brought to you I think is something that really needs to be looked at but I guess that's why then that's what kind of gives Enforcement the ability to say it's all kind of related because we're just looking at everything and that to me just kind of seems overly broad

2:05:49 Galena West: I understand your concern that is not what Enforcement does I think that's a slight misrepresentation of what I said what I meant was when it's a conflicts case you don't leave other conflicts on the table you don't turn a blind eye you don't say I know you voted on January 26 and you also voted on February 1st but we're not going to look at that because that wasn't in the complaint so if it's in the same realm of conflicts and disclosure then yes we're not going to look like an idiot the next day that we presented a complete case to you that we said this was the investigation of this case and yes he did it the next week but we didn't look at that because that would not be fulfilling what we're presenting to you as an actual complete case so am I going to go look at his campaign statements and am I going to go see you know the other parts is he registered as a lobbyist no probably not that is not really in the realm but I am going to be thorough and look at the decisions that relate to this and his other properties because if you own multiple properties in the same area and the allegation is you are voting to

benefit your property and came up with the whole scheme in order to benefit your property then I have to look at your other properties

Commissioner Audero: why

Galena West: because if they are also affected by the decision it is relevant

Commissioner Audero: oh I see you're saying that the scheme is to benefit all the properties not just the one that is brought to you as part of the complaint

Galena West: right so when you look at a case you can't just look at that one piece you look at it his SEIs and you say okay there's other properties in this area we should also look to see that as well that's what I meant

Commissioner Audero: okay so further question that I have is about all the investigation that has to go on because as I understood it and correct me if I misunderstood you but as I understood it you were saying we need to look at all you know the time travel and all those things that you listed that you know and I don't know but you have a list so that you can make a determination whether a reasonable person would believe that there's a conflict of interest but wasn't the conclusion did I understand that right

Galena West: Sure

Commissioner Audero: so but wasn't the conclusion that didn't we say we don't really know the effect that your vote might have had on the value of the property but that doesn't matter because a reasonable person could have concluded that your vote would have somehow added value and so added value to your property and so I guess my question is if we're going to disregard whether we can figure out if a reasonable person would think that the property value might have been affected positively why do we have to look at all that why do we spend the time looking at all of that if the answer is really let's just find the reasonable persons and ask them what do you think do you do you think it would have been affected because that seems to be the conclusion here

Galena West: that was not the intended conclusion of the letter and reading that paragraph it just talks about how it is unclear if the vote would have the effect on the value of the property and the rental income and then it just shows the alternative to that which is why we did not make a conclusion on the case so when you look at the standards of reasonably foreseeable and you look at what we need to determine you look at these factors of the extent to which the occurrence was contingent upon intervening effects whether the public official should anticipate a financial effect as a potential outcome would it's a decision that would be typically affected by the terms of the decision might it compromise the public officials ability to act in a manner consistent with their duties would it create an advantage or a disadvantage and that's only some of them and there's more and so when you're deciding an Enforcement case and whether to move forward or not these are every single factor that you have to go through to see if they apply that was

all my point was earlier so the letter does not make a conclusion one way or the other and that's why it has both sides

2:10:15 Commissioner Audero: so okay so now with having you read off the factors that's very helpful to me in understanding why you were looking at some of these other things because the second one I think was you know what was the second one

Galena West: would the (inaudible) of a potential outcome

Commissioner Audero: right so I can see where you're trying to figure out could there be right but then I guess the question for me becomes are we who are we to make that decision right I'm not an expert on this I have no idea you could conclude reasonably so I mean there are many situations where reasonable Minds could differ right and you could conclude reasonably so that having an Amtrak station you know eight hundred feet from your property would increase the value likely would increase or could increase the value of your property and I could come back to you and I could argue the complete opposite and say are you kidding with the noise that it makes who would want to live that close right so who are we to make that decision so I guess the question to you is what experts are we looking to to help us make these decisions are we just saying we're the experts

Galena West: we look to the legal division so basically those advice letters that you approve every month are our guidance as to what factors are the most important what is considered a conflict what is not considered a conflict what is the weight given to number three it what is that if there are similar decisions so many conflict decisions are based on property issues so it's zoning or it's a new station or it's Planning Commission's making decisions it's the financing of these programs it's the grants to get these programs and those all take research to even understanding what it is you're looking at and so when the legal division does a thorough analysis on these types of decision and we use those as the guide and then we gather the evidence to weigh it on each side to see where it falls

Commissioner Audero: but the decision that you're making is whether it would be reasonable to conclude that the property value would be affected one way or the other right

Galena West: certainly

Commissioner Audero: so are you saying that the do we have advice letters that say if it's 1,200 feet not nothing exactly but to the effect of if it's 1,200 feet not affecting it one way or the other if it's 600 feet affecting it and then you go or we're closer to 800 than we are to 1200 and so is that what we look at because that's the question that I'm asking you is because you would agree that if you thought like I did like who would live near an Amtrak station right the fear would be the property value is going to decrease right because it's a horrible it's noisy and dusty and whatever soot and whatever right so if the answer to that question could somebody reasonably conclude that the value of the

property is going to be affected positively turns on that opinion who are the experts that we're using is it us

Galena West: it becomes you because that's exactly what the studies showed this is why the conclusion in this case is what it is the studies show a more affluent neighborhoods it's considered a detriment to property values and in less affluent neighborhoods it's not and it's considered a benefit so if for a rental income then you have to weigh that and then who goes out and judges which kind of property this is that we're talking about in Novato so

Commissioner Audero: so it's expert reports that you're relying on

Galena West: right so you pinned exactly what the issue is in this case and why we concluded it to say the legal division is the experts go get the advice we don't want to hinder that process

Chair Remke: because ultimately based on all the investigation you did with that laundry list in the beginning and the expert reports which you review if you can't come to an agreement which you present to us and then we become that arbitrators you'd have to take this case to an ALJ and they are going to decide whether or not a reasonable person

Galena West: correct they would apply our standards

Chair Remke: so also which leads to why these cases become more complex because if you can't reach a resolution you've got to prepare for trial which is to present it all of that information to an ALJ to make the decision but I would just say as far as procedure and the process goes I guess I'm not sure where the problem is and because I think the problem in this case is that Mr. Lucan asked for advice six days before he was going to vote despite from at least what some of the information we've been provided says that he was well aware that this was an upcoming issue and a potential vote long before that so

2:15:15 Commissioner Hatch: I don't think

Brian Lau: and also to seek advice six days before he voted

Chair Remke: which but the law says in the act not even our regulations the law the Act says minimum 21 days to request advice

Brian Lau: right that's the statutory deadline for providing advice

Commissioner Audero: (Overlapping) written advice

Brian Lau: written advice under the Act

Commissioner Hatch: and he was (inaudible)

Chair Remke: and he was quite

Commissioner Hatch: (inaudible) verbal advice

Chair Remke: another issue

Brian Lau: on other issues and he's also relying on advice that he received before the conflict of interest overhaul that started in 2013 and finished in 2015 so he had received prior advice under different rules and was informed of that in when he called that the in his initial request when he called I believe even spoke to me was told that the realm has that there was a (inaudible) overhaul the materiality rules had been changed and that he didn't need to seek advice because we don't have pass advice letters out there that are now controlling

Commissioner Audero: is it is his statement and his letter correct that he got verbal advice by phone and when he requested that somebody confirm it in an email that was denied

Brian Lau: I can't find I don't have any record of him requesting it by phone and did not or that he was denied or that I don't have a recollection of whether or not when he talked spoke to me initially whether or not he had mentioned that he received contract conflicting advice I do not I don't remember saying that I don't remember the conversation that well it's been several years now

Commissioner Audero: so in the two years I've been here this is not the first time I've heard of conflicting advice right people have called and said and gotten something over the phone and then when they asked for it and writing it was either denied or they got something different and it happens I understand I understand that it happens it raises a concern a little bit of a red flag for me because I don't I guess my question is are we giving ourselves the luxury of saying whatever we want by phone and hopefully we're giving good advice right but not willing to stand by it when somebody says hey can you just confirm that

Brian Lau: I mean we would stand by it if that was the actual determination we do not try to provide advice unless it's really verbally unless it's a clear-cut situation so but again mistakes are made other attorneys are involved I can't speak for what's been told

Chair Remke: is there a policy on providing phone advice for conflicts of interest questions as just particular circumstances

Brian Lau: we generally try very hard to only provide advice in those clear-cut circumstances

Chair Remke: I mean if I call up and say I have a house there's a project I want to vote that versus which regulations do I look to because I have property

Brian Lau: we can provide advice if is pretty clear-cut if previously we had the clear-cut 500 foot rule if somebody caught up and we're in within 500 we could clearly say no you should not participate if they're over 500 prior to the change of the 500 foot rule we probably would advise yes as long as you only have a house and you're more than 500 feet away he would be allowed to participate that was the previous rules going to this new I mean it's not there's a new standard it's the statutory standard the reasonable standard is to is pulled from the statute the statute said is there is be foreseeable material effect so it's not that we created a new standard it's that we went back to something more consistent with the statute now that that's because it can be a more difficult determination it's less likely that you're going to give phone advice in certain circumstances but it may be more likely that you but it's to certain circumstances it may be more likely for instance somebody within 500 feet who has a very minor project next to them previously you would have been absolutely disqualified at this point if it's a small enough project it could be a pretty clear-cut answer yes you're allowed to participate say it's a 100 somebody's remodeling a house and adding 100 square feet 400 feet from your property we will issue a verbal advice or an email advices those kind of circumstances

Commissioner Audero: so that was my question right I mean I understand I appreciate the standard that and I appreciate you articulating it and that's all very helpful but my question wasn't about the standard my question was do we have a practice of giving advice by phone and then declining to confirm it in an email

2:19:48 Brian Lau: we will generally will confirm it in an email have requested at the time of the verbal communication

Commissioner Audero: but he's saying that we didn't do that

Brian Lau: he's saying that he called back and spoke to somebody else who then didn't provide in the same answer

Commissioner Audero: hm that's not what he's saying

Chair Remke: but the answer is if someone calls asks for phone advice we give it and they say can you confirm that in writing that policy is to confirm it in writing

Brian Lau: yes we can't confirm that in writing

Chair Remke: if requested yeah

Brian Lau: if requested if we think there's enough there to confirm in writing I mean sometimes it's just general we're providing general advice and we're not going to provide a long primer on all the potential rules that may apply so those are the types of things that

if we provide very general assistance we might say you know you're speaking to you in such a general matter we're not going to provide you some sort of like direct quick

Chair Remke: and if you want that

Brian Lau: any confirmation of this general advice

Chair Remke: but if they wanted that then you would advise them to do what write in for

Brian Lau: write in with more specific facts

Chair Remke: to give it an advice letter

Brian Lau: provided to give an advice letter correct

Chair Remke: so it's really the phone and you know I think we really should pull back on the phone but I know I get a lot of grief from that because of some of these issues and I think the phone should be very technical advice because of all the potential problems and what he said she said because we're just trying to be helpful but someone's going to hear what they want to hear or just misunderstand what the answer is and then we have the email advice which is when we direct people to be a little bit more specific because they want it in writing but it's not going to provide immunity I'm just asking

Brian Lau: right that's correct

Chair Remke: and then the third level is you want immunity or you want this flushed out so you can rely on this go ahead and request written letter

Brian Lau: right

Commissioner Hatch: I have a record keeping

Chair Remke: okay Commissioner Hatch

Commissioner Hatch: yes, when we give

Chair Remke: you have to speak into the mic please

Commissioner Hatch: maybe that's why I didn't get recognized earlier the when we give oral advice do we document that and for what extent so if somebody calls back and says you know that advice you gave me I'd really like it in writing or an email confirmation or something do we have anything to look at to see what if anything we'd given

Brian Lau: sometimes we have the email confirmations and sometimes we do not

Commissioner Hatch: well I mean if this is assuming in this case that there was no request for an email confirmation at the time that they asked for the phone advice

Brian Lau: we generally do not it depends on I'll speak for the legal attorneys

Commissioner Hatch: you could go back to the December 5th he called and we told him this

Brian Lau: the legal division did we do not keep like a written call log of the calls and responses

Commissioner Hatch: I see

Commissioner Audero: that's scary

Commissioner Hatch: okay could you I know you touched on this but it didn't sink in how why is it that we ended up going from like a specific distance requirement to this more of weighing apparatus where we were a multiple factors was it statutory requirement that we change it or do we just I mean it's up what changed that made us decide to change the way we do this

Brian Lau: well it started in 2013 under a prior administration and it's just the direction of the Commission was going back to a more statutory basis for the regulations and trying to it was attempt to clarify it was attempt to solve other issues I mean there's pros and cons between the bright-line rules and the reasonable foreseeable rules

Commissioner Hatch: (overlapping) this was a prior Commission

Brian Lau: this was a prior to Commission

Commissioner Hatch: then we could go another way we ever thought about doing like a safe harbor provisions that could be relied on that are fairly definitive

Brian Lau: I mean I think that's what we had I can say there's pros and cons of both you won't find a unanimous consensus on which one which approach is better you'll find a lot of support for bright-line rules but at the same time I did do some extensive outreach to stakeholders about a year ago in regards to you know the attitude or need that for going back into the conflict of interest rules and I pretty unanimously was the direction was through the regulated community want some continuity and the rules at this point so there's that balance as well I mean but again that's kind of the direction of the Commission bright-line versus the reasonable standards

Commissioner Hatch: yeah I've only been reading these things every month for about eight or nine months now but my you know unwashed view of it is that we've put ourselves in a box here where we just have very labour-intensive on our part request to

fill for these advice letters because our rules are vague and in that term so each one has to be carefully weighed and then it results would vary based upon the multiple inputs to that whereas something that's reasonably bright a bright line guide even if it's like just a safe harbor where if it's if you're closer to the edge you can ask for that weighing measurement but if it's you know the higher bright-line rule then you can rest assured that you're okay it seems to me like we've put ourselves in an awful box with these advice letters and I know it's not exactly on topic although it was requested from him that the Commission consider bright-line rules on distance and so on good you know it's hard for the elected official at the local level to know where the line is under our current application so that pushes them to endlessly write us you know request for opinion excuse me advice on whether or not they can go ahead and vote on something in it it's probably backing up their agendas as well because if they don't have sufficient votes to take action on things and they have to delay them while they're waiting for us to you know do our weighing machine operation and it just kind of begs

2:26:13 Chair Remke: (Overlapping) can

Commissioner Hatch: maybe do some third course where you have a set of bright-line safe harbors it's that maybe not quite as tight as the old ones where it was if it's here it's okay period and here you could say well it's like let's say it's a your old rule would have been 500 feet is that you say okay well 600 feet out if you're within a 600 feet you're in our safe harbor and you don't have to think about all these other things we'll just you know pop around

Brian Lau: actually, you're actually argue approach that was the initial approach before the bright lines which was which was a dual approach we had of a safe harbor area where was pretty much okay yeah the second area where you need to see you know there's a more case-by-case determination and it would be more than like you're allowed to participate again there's just different ways of doing it over the years and pros and cons to each

Commissioner Hatch: right but you're stuck with all this work

Brian Lau: I can deny that (inaudible) a little labor intensive

Commissioner Hatch: I got the message before that you know your stretched kind of thin over in Legal and so I'm just maybe asking that you might think about giving us some reason input on how we might again change our process that would facilitate your workload and also provide clearer guidance for these local government officials that have to deal with this stuff

Chair Remke: Commissioner Hatch I agree and that is why about a year ago when Brian and I were talking about the impact of the changes from 2013 how they're working are there any areas that we think would improve it he started by reaching out to the regulated community to say would you like to reopen this and I think again the pushback is this is so new and it's been a moving target because even the way the changes to conflicts where

implemented was a very strange rolling system and I think you've heard Enforcement talk to this like any given month there's a different set of regulations that apply to you, you know on that day literally it's how many different packages of conflicts are there

Galena West: 16

Chair Remke: 16 different packages of what applies to you based on the period of time because of the way it was rolled out so if I'm and you can speak to this Brian because you talked to the different people who live by this the fairly overwhelming consensus was can you give us more time to live with it in one set way before you open it back up again but I do agree that we should open it back up again at some point I think it's when have we lived with it long enough to understand the full scope of potential problems and do we even have a proposed solution that would not just bring us right back to where we were before I mean it could just be this rotating issue

Commissioner Hatch: I would invite a staff memo from legal to give us you know what you think would be a better way to do this after some considered thought that we can then conjugate on and decide whether we institute a new rule making

Chair Remke: (Overlapping) but in which

Commissioner Hatch: incur the wrath of the regulated community

Chair Remke: so yeah and would we limit that issue or would you like Brian to look particularly at because again the issue on this is even more complex because it's not just the 500 property rule it's the business interest

Brian Lau: right there's multiple thresholds and materiality thresholds that were removed there's business thresholds there's personal financial affairs for every type of economic interest is potential there's there was previous bright more bright line materiality standards so I mean I guess the direction would be do we want complete comprehensive overhaul do we want

Chair Remke: (Overlapping) biggest problem areas

Brian Lau: do we want to just try to focus on the 500-foot rule

Commissioner Audero: can I just ask a question about the 16 because I think that'll inform kind of our thought on this issue are the six are there the 16 standards because things were being rolled out little by little but eventually we're going to catch up and there's going to be standard because just because of the statute of limitations were not going to go back to that standard

2:30:23 Galena West: we're down to 16 now so our statute of limitations is five years and so the packets were that's exactly what happened was every commission meeting that

something was adopted then it went into effect either as an urgency or as a regular 30-day and so the it was a rolling target as too so if you get a complaint and the complaint has three different dates for decisions you could be three different packets of conflict of interest regulations and so that I think we're down to sixteen now

Commissioner Audero: but I get that and I my heart bleeds for you but as to those sixteen when do they horizon out I mean when are we done with the sixteen and be left on

Galena West: it started in 2013 so it was the pre-2013 and as we get through 2018 we'll get rid of quite a few packets this year but the majority of them I think fell in 2014

Brian Lau: we finalized the entire thing in 2015

Chair Remke: yeah

Galena West: so most of that activity happened in 14 so it's going to be a while

Commissioner Audero: and the reason I ask is because I wonder maybe we wait until we get to one right and then we revisit because otherwise are we going to be revisiting 16 packets

Galena West: it will be May 2020

Commissioner Audero: May 2020

Chair Remke: no we wouldn't have to read that go back and revisit them all we would just start with where we're at but we would be starting the clock again of changes I do think there's a legitimate point to timing on this but I don't think that precludes us from starting the discussion that Commissioner Hatch requested

Commissioner Hatch: (Overlapping) and I would by the way I would I would leave it to your discretion to recommend whether you focus on a particular problem area or whether you want to tackle the whole thing I don't want to like tell you what to say you know i want guys to think about how this is affecting your operation and what could be done to make it make more sense for both the public as well as us

Chair Remke: I just want to add into the mix of the discussion on the advice and leaving people hanging or what I mean other than requesting a written letter again we know that it doesn't provide immunity and so short of that the telephone or the email I'm just curious what is your understanding of how active County or City Council is in providing advice to their very own members because it's kind of like our discussion earlier going to our own legal counsel now granted it's not going to provide them immunity but it's probably going to if they get advice from their own City Council or County Council I don't know who once answer this I'm assuming it's going to be pretty strong and perhaps preclude us or at least from going after Enforcement

Galena West: it's (inaudible) mitigating unless it's they completely misrepresented to their city attorney or something that's it's generally not something we want to pursue at an ALJ

Chair Remke: and Brian what's your understanding do you talk with the City and County Council to encourage them to be more actively involved do they just say just kick it to us what's their what's their thought

Brian Lau: I think the approach differs between each city I think some city attorneys are kick all of them to us and some give you see attorneys are much more active and at the same time it comes down to how much the official listens to the city attorney a lot of the time a lot of our requests for advice our officials that got the wrong answer from the city attorney so they're kind of coming

Chair Remke: the wrong answer being

Brian Lau: not the one they wanted so it's hard I mean so it's hard to really assess how effective the advice through the city attorney is all right it really comes down to

Chair Remke: not so much effective just more involved because to me as far as our workload and their direct relationship and especially as far as the phone and the email goes since it's not providing immunity anyhow I mean I'm just not clear why that's not coming more from their direct legal counsel but I don't know if you can answer that

Brian Lau: you know we've had different approaches over with the emails over the year I mean over the years when it's gone from you know hardly ever providing advice through emails or phone when it comes to any kind of questions of conflict of interest to trying to be more customer friendly and providing advice where we can so I mean it's all just a balance and we out front we try to take our lead from however the Commission wants from us as far as either being responsive and quick and good customer service and it's very appreciative when we can when they can call us and say we have a meeting this afternoon at this Tuesday we have a meeting this afternoon at 5:00 is this something we have a problem on we can the old approach would have been you know sit out because until you have a chance to talk to seek formal advice you need to sit out now like I said if it's more clear-cut we will try to but I mean that was essentially the direction that I've received over the years and the direction we were heading so I mean but again that that comes down to whatever direction receive as far as responsiveness versus accuracy and thoroughness I suppose

2:35:35 Chair Remke: well I mean again I know that we regularly receive positive response from our phone advice that's one of the things if you ever go to any conference city League of Cities or what they all love the fact that way they can pick up a phone and actually call us and get an answer so I understand that I guess I would I would lean

towards more cautious at least in anything that becomes difficult like conflicts but it sounds like you guys already do that and have that balancing a Commissioner

Commissioner Cardenas: I look forward to the day when I know enough about what's going on to be able to save myself when I say I what for my part what I think I'm hearing here is is a staff that that is struggling with a very difficult task there's a lot to be said perhaps for clear lines clear bright lines it's binary plus minus one zero but very often fairness is lost and that kind of you know a cookie cutter approach what you're struggling with what you should be struggling with and if it if you if you approach your responsibilities dutifully and ethically you should struggle with this and I sense that you that you genuinely are as these various factors that you have to take into consideration ultimately trying to figure out what is the right answer here and it's not readily apparent as a bright line you know cookie cutter approach might lend itself to and I just want to for my own part suggest that I appreciate what I gather is the work that you put into making these types of determinations and I don't know enough about enough about this to say anything other than my sense is that you are doing your best to stay in keeping with and in furtherance of the act in the best interest of everybody involved including the people that that you are quote-unquote investigating and so just remember that when I come down and you in the future I think I feel empathy way

Chair Remke: (overlapping) you'll confirm later

Commissioner Cardenas: to what I think you're having to deal with yeah

Galena West: wait until you read your first conflict case

Chair Remke: any other questions or comments from the Commissioners and I don't know Commissioner Hayward

Commissioner Hayward: for what it's worth I think the notion that our little Commission can be the mother may I for every potential financial conflict of interest of every state local and sub local official in this state is certifiably nuts and that's where we are and that's not your fault and you know there's so many different ways that we can be gamed people can you know file complaints understanding a person can't get advice while there is an active complaint open which means they have to recuse which means there's not that vote for something that this person doesn't like yadda yadda yadda and on and on and you've seen all that and you know what I mean probably better than me so I don't think there are good answers I think there's the binary which is efficient quick certain but potentially unfair and then there is the reasonable standard which takes a lot of work a lot of time and you know I don't I don't know that there's a good reason for picking one over the other except to the extent that we are trying to do this for a very large state and it's kind of an impossible task and maybe the efficiency arguments are important simply so the wheels of government can keep turning I don't know I'm not saying that that's necessarily after we think about this some more and talk about this some more where I be

but I think given the ridiculousness of the situation maybe bright lines are as best the best we can do to be reasonable to us

Chair Remke: Commissioner Audero

Commissioner Audero: I agree I think that we need to look at this and the appropriate time we'll we can figure that out but I'm going to go back to the specifics of this case and I want to ask why exoneration is not an option

Galena West: exoneration from Enforcement

Commissioner Audero: why we can't write a letter saying in sufficient facts to support the allegation and therefore no charge will come we're done which is basically what he's asking right he's saying thanks I appreciate the fact that you closed the case I appreciate the fact that there is that there is no penalty I appreciate all of that thanks very much but here's the thing

Galena West: (Overlapping) I missed the appreciation part that letter but okay I'll take your word for it

Commissioner Audero: again I am again I am grateful the case has ended so

2:40:45 Galena West: okay alright

Commissioner Audero: In any event we appreciate that but why is it that we can't say something more than closing the case I mean if I were charged with some I don't know some crime and it was investigated and it was a he-said she-said no witnesses no documents and the investigator had no reason to disbelieve me any more than the other person saying the opposite right and so that's kind of the inconclusive situation right I would like I like for somebody to say and therefore you are not guilty

Galena West: sure

Commissioner Audero: and I and I feel that the language and the letter and it's the concern that he raises is like you're leaving me hanging there's nothing to clears me here why can't we write a letter that says to the effect of you know maybe we can we don't have to say not guilty because that's not the standard but you know something that that clears him from this why can't we do that

Galena West: well this is a no action closure so it doesn't say you violated the act

Commissioner Audero: right

Galena West: and that's what I feel is appropriate in this case when you do these reasonable person tests and you go through all of these factors and it's 50/50 and you

don't have the resources to go to an ALJ to prosecute a case even though you have some factors that support prosecution you can't say you're exonerated you can say I have found I am not taking any action in this case because when you say no violation you're affirming that everything that you found is conclusively no violation what I am saying is that we are closing this and we are not finding a violation in the case similar wording different impact so the reason that it's not an exoneration letter is because back in the day we used to do no violation letters and long time ago but they were no violation letters even for de minimis violations because they were de minimis and we weren't going to prosecute them the appropriate title for these letters is no action which is what Enforcement is doing we are taking no action and we found no violations

Commissioner Hatch: and you found no violations or is it something else

Galena West: we found no we have not have had sufficient evidence in order to prosecute this case

Chair Remke: but in this case Miss West it does seem I guess it's the second part of the sentence that I'm kind of wondering about and how that played into your decision process because it says please note however this letter is not an exoneration this is interesting and you may wish to request advice before casting any related votes in the future I mean again that's we're not calling this one and we're not going to pursue it for various reasons that you list in the paragraph before time expense money changing law all of the above possible advice given whatever but we've before you do the same thing in the same context again go back to legal and get you our immunity

Galena West: right because our understanding during this whole case was that was the goal that he wanted he wanted to get advice from the legal department to move forward and that is what the letterers purpose was we were closing this case we are closing it without action we will no longer pursue it please go get the advice that you wanted

Commissioner Audero: but it but it says but before you do X go get advice which to me has a different tone if I if I think a reasonable person could interpret that to mean we're not we're not pursuing this but by the way don't do anything which implies whether he were to vote it would be wrong

Galena West: we're deferring to legal division that was what the sentence was meant to imply or infer or any of those I words but it's it was meant to say go get advice you say you want to get advice go get advice

Chair Remke: (Overlapping) and we know he's quite capable of getting advice

Galena West: (inaudible) a determination that we are going to

Brian Lau: he has one that just went out and one currently in the process

2:45:15 Chair Remke: so he's back with advice

Brian Lau: right

Chair Remke: okay

Commissioner Hatch: well he can't hardly do his job at all seeking advice after advice after advice because you have all these (inaudible) graphic (inaudible)

Chair Remke: I'm sorry I just want you to be picked up

Commissioner Hatch: okay thank you

Chair Remke: they can't you can't be heard and a lot of times you're

Commissioner Hatch: not on the record with a long silence

Chair Remke: exactly okay and I'm just because we received in addition to Mr. Lucan's letter two public comment letters on the matter I will ask if there's any public comment or anyone in the public who wishes to speak on this

Eric Lucan, City of Novato Council Member: Chair Remke, Commissioners first I'd like to thank you for reviewing my letter I'm Eric Lucan who council member in the city of Novato I also want to thank you for placing this matter on today's agenda and the discussion that is ensuing in the six years that I've been an elected council member in the city of Novato this is my first time attending one of your Commission meetings but I felt it was important for me to come and share some of the feedback and the experience that I had from this last case in my time on the council my involvement with the FPPC has historically been limited to filing my Form 700 every year completing my ethics training every other year and reaching out to the advice department for occasional conflict of interest questions for nearly the past two years though I've spent a significant amount of time awaiting resolution on two conflict of interest complaints filed against me following a City Council vote back in January of 2016 based on my experience I just like to share some feedback I provided you with a lot of detail in my letter and I think I could sum it up in just four main points the first one number one to please consider moving back to a set distance radius for conflict of interest matters I believe that my situation shows that there is a lack of clarity on real property material financial interests and it's even more unclear when dealing with rental property where business material interests are introduced under the old 500-foot rule it was crystal clear for myself my colleagues city staff and city attorneys most cities and towns published their council agendas five calendar days in advance and that's usually over a weekend but the formal advice requires 21 business days to weigh in on a conflict of interest matters given the lead time needed and the lack of a defined radius I'm now having to request formal written advice from the FPPC on hypothetical projects and decisions up to a half mile away from real property interests I don't know that that's really in the in the best interest of efficiency and time

number two if the rules can't be amended the advice and the Enforcement is divisions need to have their staffing increased so that they can provide time-sensitive decisions sooner and more quickly resolve complaints number three I believe that a pending complaint should never result in a council member being refused advice on what I call unrelated projects on two occasions while I was waiting for my case to be resolved over a span of twenty two months I asked for advice on two different projects which were unrelated to the complaints that had been filed against me and both times the advice was denied because the subject property was the same even though the project was in a different location this left me and the city in a bad situation and potentially cost the city an economic development opportunity since I could not participate or since I could not participate with the benefit of guidance number four while I am glad and I am appreciative that this case has been resolved and that it was eventually resolved with a closure letter there is still some confusion on this matter as you can tell by the comment letters that you received on this item today the letter specifically stated it was not a letter of exoneration at the end that the information in the case will be retained and may be considered I was not offered any administrative due process to challenge the finding I believe that this is unfair and potentially unconstitutional the closure letter was also sent to both of the sworn complainants since the letters and since the letter states it is not a letter of exoneration the interpretation is still in the eye of the beholder I think the letter is inconsistent with prior FPPC practice where warning letters allow for due process and closure letters say that the law wasn't violated so somewhere in between I couldn't find any other letters like the one that I received on the FPPC website glad to share that feedback with you I want to thank you for hearing this matter and the discussion that ensues I certainly hope that I can be a resource in any way to help craft clear regulations moving forward that will make it easier for local elected officials like myself to do our job and to participate in the votes that we need to with regards to my specific closure letter I'm asking that you rescind the letter that was sent and either provide me with a hearing or a letter that says I did not violate the law thank you

2:50:19 Chair Remke: okay any further public comment on this matter okay thank you Thank You Mr. Lucan all right so the next matter is item 28 which are our staff reports any questions or comments from the Commissioners

Commissioner Audero: wait wait wait can we can we make a motion on this matter

Chair Remke: no

Commissioner Audero: why not

Chair Remke: there's no it's not an action item there is no

Commissioner Hatch: what

Commissioner Audero: how is it not an action item

Chair Remke: what would you describe the action as as it has been listed here

Commissioner Audero: a response to Mr. Lucan's request that we rescind a letter and issue a letter that didn't violate the law I thought that was a part of the hold on I think that is in his letter and then he just reiterated it

Chair Remke: I don't believe and if nothing else I would propose that we put this over and put that as the action I don't even know if we have in our regulations and maybe Miss West or someone could tell me if we have the authority to set aside a closure letter and I don't even know what that would be and again we've come up with against this before and I have a certain concern so if we're going to take there's the request is to take actual action on this we'll have to put this over with a statement of what the requested action from the Commission is because it is not listed as an action item and then we could perhaps pursue the legal authority for the Commission to set aside a closure letter to reissue a closure letter

Commissioner Hatch: point of order

Chair Remke: yes

Commissioner Hatch: I was told by the Chair at a previous meeting that all of these items are action items including the reports

Chair Remke: well then I must have misspoke

Commissioner Hatch: we don't we don't say on any of these items action from item 3 on down none of them tell you whether it's an action item or not and I believe that you can't distinguish and call this an item that's not subject to action I would my point of order is that a request to make a motion on this item is well taken

Chair Remke: I guess there are two questions right now whether we can take action at this time and then I would insert the additional question whether we have the authority to take what I'm understanding the proposed action to be

Commissioner Hatch: my point of order

Chair Remke: right I've added to it thank you

Commissioner Hatch: not for next month

Jack Woodside, General Counsel: yeah I don't think we necessarily listed it as action or discussion we do say it's in the last sentence it's placed on well we do we say it's placed on the agenda for discussion and that Mr. Lucan be notified so we have put it in the category of discussion item only and I think my recommendation would be then to bring it back next meeting and so we can take action on it

Commissioner Hatch: again I press my point of order my point of order is that this is in fact an action item just as much as all of the previous items ahead of it on this agenda are and that I would like a ruling from the Chair and if I don't agree with that I want to press for a challenge if the Chairs ruling

Chair Remke: right I say it is a non-action item as listed it clearly says is placed on the agenda for discussion

Commissioner Hatch: okay I challenge the Chairs ruling and it would ask for a vote on that as is prescribed in Robert's Rules of Order

Chair Remke: correct is there a second on the challenge of my ruling

Commissioner Audero: I second

Commissioner Hatch: It doesn't require a second

Commissioner Audero: okay

2:54:53 Chair Remke: It does require a second okay please take the roll

Ayes: Commissioner Audero, Hatch and Hayward.

Nays: Commissioner Cardenas and Chair Remke.

The challenge passes.

Chair Remke: okay so what is the motion and who made the motion

Commissioner Audero: no one's made it yet

Chair Remke: what's the motion

Commissioner Audero: we were trying to make it and I have to kind of think this through and I'm happy to have a collaborative effort on this motion but I do move that we rescind the closure letter either rescinded or let me take that back I withdraw that I move that we revise the closure letter to include language that there is insufficient evidence to support the allegation at the very yeah I think I would say that there's insufficient evidence to support the allegation as made in the complaint and however you want to identify the complaint

Commissioner Hatch: second

Chair Remke: I don't know if this is a point of order a point of information do you have authority for our ability to direct Enforcement to redraft their closure letters I'm just

concerned about crossing the line of prosecutorial discretion so I'm just wondering where the authority in the regulations or the Act come from this motion

Commissioner Audero: are you asking me

Chair Remke: yes

Commissioner Audero: I don't have it do you have the opposite

Chair Remke: I know it doesn't exist there's nowhere that it says this is appropriate action so that's why I'm asking where does the authority

Commissioner Audero: well if there's I don't have anything that says it's not

Chair Remke: Okay

Commissioner Hatch: well I do have precedent perhaps on a case I think it was called the Sears case where we asked that they change it from a proposed fine to a

Galena West: warning letter warning letter

Commissioner Hatch: a warning letter yes

Chair Remke: which again I did raise the concerns but at least there we were voting on the proposed fine rejecting it with direction so here I again it's because it wasn't presented here

Commissioner Hatch: may be talking semantics here

Chair Remke: well I think either something's presented from Enforcement to us for a vote on an Enforcement action that we approve or deny I'm again I'm unclear personally I don't know the authority and I'm unaware of the authority to direct Enforcement to redraft a closure letter as it is not before us the case is closed

Commissioner Hatch: but we have a we have a closure letter that's in dispute as to its impact I would ask what Galena what of the other requests that was made relative to giving him his day in court over whether or not he had violated the Act

Galena West: well since we found no violation there was no day in court we did not pursue the violation and we allowed him to receive advice so if you're not doing a warning letter or a fine or proposing anything to an ALJ make it probable cause or an accusation there is no allegation pending against Mr. Lucan

Commissioner Hatch: right but mr. Lucan is in a position of having kind of a black cloud hanging over him over this and he is in the political realm which means that someone can

use this against him in a future date and it sounds like he's guilty the way it reads so I appreciate Ms. Audero's efforts to try and ameliorate this in some way and I'm getting a sense that that's not going to be easily digested

3:00:09 Commissioner Cardenas: may I?

Chair Remke: yes Commissioner

Commissioner Cardenas: maybe I'm missing something maybe I'm missing a lot and whatever I'm missing it appears to be material to at least a couple of members of this board but if I'm not mistaken this is an elected official this guy this is a politician

Commissioner Hatch: right

Commissioner Cardenas: a professional black cloud are we in the business of removing shades of grey or even blackness from individuals if a reasonable person or maybe even a somewhat unreasonable person can read this on its face I suggest not at all malevolent rather vanilla a letter as being a black cloud he's in the wrong business I don't I don't think it's I don't think it's our business to be concerned about that and in the absence of a real castigating indictment a statement in the letter which is beyond my cognizance I just don't think that's our role what the hell do we have staff for if they're going to spend all of this time and we're going to substitute our judgment now the two of you have been here longer so maybe you have you know the expertise and whatever it takes to substitute your judgment for all of theirs but in the 24 hours or so since I've been sworn in I don't have what it takes to substitute my judgment for theirs and I won't

Commissioner Hatch: okay

Commissioner Audero: then don't

Chair Remke: any other comments or questions from the Commissioners on the pending motion

Commissioner Hayward: I would just say I think once the matter is closed and gone it is in fact closed and gone I do wonder his representations that this was an unusual letter I can't imagine that you came up with wording just for him but maybe you did in any case I do think that the sort of you're okay but you're not okay tone toward the end of this letter on page three is a little I don't know we might think about that in the future that's all but for now what's done is done

Chair Remke: any further comments before we take roll any further comments before we take roll take roll please

Ayes: Commissioner Audero and Hatch.

Nays: Commissioner Cardenas, Hayward, and Chair Remke.

The motion fails.

Commissioner Hatch: I had an alternative thought which I could convert into a motion that Enforcement staff right a further letter clarifying that this letter didn't constitute that this letter constituted did not constitute a conviction and that it was there was not sufficient evidence to do so or words to that effect

Chair Remke: so you're making another motion

Commissioner Hatch: yes ma'am

Chair Remke: is there a second

Commissioner Audero: I'll second it

Ayes: Commissioner Audero and Hatch.

Nays: Commissioner Cardenas, Hayward, and Chair Remke.

The motion fails.

28. Executive Staff Reports. (Information Item)

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: all right so now moving on to item 28 the executive staff reports any questions or comments from the Commissioners

Commissioner Audero: I do

Chair Remke: Commissioner Audero.

Commissioner Audero: so on the Enforcement report which give me a second so I can bring it up I appreciate all the data I think it's very helpful and it's nice to have and it gives us a nice history I have a question about the referrals from the Secretary of State so I think we're going to revisit an old subject you may recall

3:05:15 Galena West: I do

Commissioner Audero: and this is the situation of where this the there's an annual fee of \$50 and then there was a fine of 150 dollars if the annual fee isn't paid and then if that \$200 isn't paid then it gets as I understand it from our last conversation months ago we it comes to us for Enforcement right

Galena West: yes

Commissioner Audero: okay and we had a lengthy discussion in one particular case where there was like I don't remember the exact numbers but where the I think it was like \$600 multiplied into thousands of dollars

Galena West: it was a default yes

Commissioner Audero: yeah and so since then we haven't seen any cases like that and I think in an earlier meeting you mentioned that yeah because I'm not going to bring any

Galena West: I did say something to that affect yes

Chair Remke: until it was clarified

Galena West: until it was clarified

Commissioner Audero: yeah fair enough but we never circled back on that and the other thing I recall from the conversation that we had that day was that we appear to have some kind of an agreement and obligation to the Secretary of State that we are going to do Enforcement on those and I think Chair Remke at that point said well fine then we'll just tell the Secretary's day we're not going to do anymore which was a knee-jerk reaction that we needn't

Chair Remke: I don't I would prefer if you did not restate what I said months ago

Commissioner Audero: that's okay the record will show what it was I mean it is what it is but the point is we never revisited it and we if we have an obligation to the Secretary of State and it seems that we do I think that we need to figure out what we're going to do because I also have questions about we have you have a list of the number of cases from the various years let me see if I can find that of these types of cases oh yeah and here it is and how many are remaining and so in 2015 we received 24 almost 2,500 annual fees referrals for the year 2013 and of those 29 remain pending and then for the year 2014 there were almost 1,800 of which 42 remain pending and then it says we're receiving 2015 16 and 17 referrals periodically so my question is are we enforcing these and we the Commission is just not seeing this anymore have we stopped enforcing what are we doing with the ones that can you kind of bring us up to date on what we're doing here

Galena West: sure there's I just wanted to reassure you there's no backroom Enforcement of this not going through the Commission but I'm actually going to defer to Erin Peth, the Executive Director because she's been working on this since it was pending before the Commission

Commissioner Audero: sure

Executive Director Erin Peth: yes I'm happy to bring you guys up to speed so since that discussion which I'm now forgetting what month it was maybe April or May of last year we have been attempting to get seek clarification both from the Secretary of State's office and or alternatively the legislature in terms of what was the legislative intent at the time the bill was enacted obviously in terms of whether it's the \$50 plus the 150 and that's it or is it the 50 and the 150 as a late fee for to use the term and then we also would have an Enforcement penalty on top of that so I can tell you that I personally have met with both committee consultants on both the Senate and Assembly and at the Secretary of State's office so there is some effort to seek clarification and in the meantime as it says in the memo the Secretary of State's office is referring over some of the cases so they are being administratively up until the point where we can't act until we have clarification one of the things that's talked about in this memo and I believe in it yeah I'm here like it says there in December we administratively terminated 29 committees that's the regulation that allows essentially non-active committees to be closed so that the clerks and ourselves don't waste a lot of time trying to go after people that are they just forgot to file the last statement or something those are definitely being processed that's ongoing in terms of when we'll have a resolution on the question I don't know but I can assure you we're doing our best as staff to try to get some sort of direction from I hope potentially the legislature if that's something that they're willing to give us for the direction one further complication I would just add is that the author of the bill is currently in prison and so in theory there's opportunity in a different situation to ask the author of the bill what he intended but that's not available to us so that's where we're at

3:10:15 Commissioner Audero: well yeah although you're it's just like what we went through in AB 249 I think it was where we got one of the authors of the bill saying here's what I intended and we all agreed that that was kind of

Executive Director Erin Peth: correct that's not it's not determinative of legislative intent entirely I mean there is case law that says an individual members viewpoint however it might at least in theory could shed some sort of light

Chair Remke: or he or someone else then would be more likely to carry legislation to create that one

Executive Director Erin Peth: correct

Chair Remke: now I just don't think there's much interest it's part of the problem

Executive Director Erin Peth: correct that appears to be the case

Commissioner Audero: so in the meantime we have all this stuff that's kind of pending subject to an agreement that we're not fulfilling and I'm just wondering Mr. Woodside is there a way that you're the Legal Division can tell us the answer to this at least I get not binding

Jack Woodside, General Counsel: I mean we can bring it back in front of the Commission with our recommendation and I think that was the direction earlier on it's just a matter of timing when it's going to happen

Commissioner Audero: I mean because if what we're doing is we're asking the Secretary of State to tell us what the legislative intent was

Executive Director Erin Peth: No, that's not I said I said I went to the legislature we were working we were working with the Secretary of State's office because they also care about this and want to have some sort of resolution so we've been talking as many people as possible to figure out how do we how what are our possible options to move forward to get this resolved one way or the other and I think you know again as staff we have we would like clarification we would like to move the cases and so that's and just to be honest we were also you know we obviously had had an absent Commissioner or spot open I should say and so now we have a full complement on our committee I didn't mean to imply that you were absent personally but anyway now we have a full complement on the Commission and that is also potentially a better option to bring forward a basically a policy determination on how the Commission sees this

Commissioner Hatch: (Inaudible)

Executive Director Erin Peth: yes it is in the streamline memo

Commissioner Hatch: It currently is

Executive Director Erin Peth: correct

Commissioner Hatch: (Inaudible)

Executive Director Erin Peth: well I think it's a legal question that Commissioner Hayward raised as to whether we have authority to do both collect so there's sort of three pots of money to make it simple there's the \$50 everyone's supposed to pay annually the legislation says if you fail to pay that you pay up to 150 penalty I believe it says and then so and then basically we would have our up to \$5,000 per violation so there's a legal question I think that was raised as to whether the sole remedies available are to make them pay the \$50 plus the 150 and that's it or do we have jurisdiction to make them pay the 50 the 150 and you know up to \$5,000 for each calendar year they didn't pay the fee and so I think that's so the streamline memo as adopted by the Commission took the latter approach that

there's three plots of money I think Commissioner Hayward correct me if I'm mischaracterizing but I think

Commissioner Hayward: (overlapping) and the statute

Executive Director Erin Peth: and the statute potentially anyway so she asked the question can we just is it only the 50 and the 150 if that makes sense

Chair Remke: yep so it's that Secretary of State's for \$50 collection and then they can tack on a 150 fine for not paying the \$50 and if they still don't get it they referred to us for enforcement

Executive Director Erin Peth: correct

Chair Remke: and then we interpret that as staff and pursuant to the streamline memo that we could seek Enforcement penalties as well

Executive Director Erin Peth: correct

Chair Remke: it was raised that the final pot of money might be in question

Executive Director Erin Peth: yes

Chair Remke: so that's

Commissioner Hatch: (inaudible)

Chair Remke: no just Commissioner Hayward

Commissioner Cardenas (inaudible)

3:14:20 Commissioner Hayward: and the statute. just to remind everyone since there seems to be a little bit of amnesia on this point the statute says no fees for filing except that there is this \$50 annual fee that people have to pay that goes to fund Cal Access it is constitutionally problematic to impose a filing fee unless you have it going to something that has a close nexus to filing like Cal Access and so you shouldn't read the statute in a way that brings up constitutional problems that's a good statutory construction principle plus the statute says no fees except we have we've carved out this little exception and I just pointed out that the little exception is a little exception it's not a little exception that then bounces over into our venue where the fees can go into the thousands and thousands and people will say well that's not really a fee that's an Enforcement fine and I don't see anything in the statute that supports that kind of parcing and that's my point

Chair Remke: and i'm not even going to do a counter-argument at this point so the issue is it's still being worked out I guess the question is can we give staff another month or so to try to work it out with the powers that be for clarification and if not we come back with a legal memo with a recommendation to us

Executive Director Erin Peth: yes that's

Commissioner Audero: that makes sense

Chair Remke: okay any other questions on the staff report okay hearing none it will be submitted

29. Proposed Future Agenda Items.

Note: The Commission may not discuss or take action on any matter raised during public comment that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).)

Chair Remke: as for future agenda items are there any new ones that are not already in the pipeline

Commissioner Audero: I have a couple

Chair Remke: yes

Commissioner Audero: I don't know if it needs to be an agenda item but I would really appreciate if you could send to me or circulate it especially now with the new Commissioner the May 2015 streamline memo that would be that would be the only thing I would ask and then I would like for us to put on the next agenda the beginnings of a discussion for us to do a process review of Enforcement so that we can review it take a look at it get public comment on what works what doesn't work what's helpful what's not helpful and then make some I don't know if there's even anything that's written I don't know that there was an Enforcement manual for example so I know I'm familiar with the Department of Labor Standards Enforcement here in California has an Enforcement manual this is how we're going to enforce things and you know it has some substantive rules etc and I'm not suggesting that we go into the substantive issues but I would like a thorough review of our Enforcement process with public comment and you know just kind of put that idea on the next agenda so that we can discuss how to go about doing that and whether that is the creation of a committee like the Governance Committee that we created or the you know we do this without a committee and I do completely open in public comment without having a committee that makes a recommendation to the Commission so I would like that put on the agenda

Chair Remke: okay any other items for future agendas that have not already been discussed okay thank you. motion to adjourn

Commissioner Hayward: I'll move

Ayes: Commissioners Audero, Cardenas, Hatch, Hayward, and Chair Remke.
The motion passed 5 to 0.

The meeting adjourned at 1:19 pm.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved February 5, 2018

Joann Remke, Chair
Fair Political Practices Commission