



(Unapproved and Subject to Change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, April 25, 2024
10:00 a.m.

Present: Chair Silver, Commissioner Baker, Commissioner Ortiz, Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
James M. Lindsay, Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Jue Wang, PhD, Acting Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Silver called the meeting to order at 10:01 a.m.

Chair Silver opened the meeting by thanking the Governor for the appointment of Chair of the Fair Political Practices Commission and thanked staff for the great work building a foundation to work from. He further discussed his broad approach to recusal regarding any matter that mentions an Assembly staff or member that he will be practicing as Chair.

1. Public Comments for items not on the agenda.

Micheal Ceremello, Dixon Informer, gave public comment discussing the length of time the Enforcement Division is taking to resolve multiple complaints filed by himself and anonymous complainants and discussed the complaints are against people running for re-election in the City of Dixon.

James Rowan gave public comment to discuss the complaints against Jed York and Santa Clara Now.

Stephen Petzold gave public comment reiterating his request that the Commission look into the conflict of interest codes of the Bond Oversight Committees.

Mathew Morris gave public comment to discuss a potential conflict of interest between the Attorney General and the University he attends.

2. Approval of Commission Meeting Minutes.

MOTION: To approve the March 2024 meeting minutes. Moved by Commissioner Ortiz, seconded by Commissioner Wilson. The motion passed 5-0.

3-5. Consent Calendar.

Commissioner Ortiz pulled item three for discussion.

MOTION: To approve the consent calendar; items 4 and 5. Moved by Commissioner Ortiz; seconded by Commissioner Wilson. The motion passed 5-0.

Chair Silver asked James Lindsay, Chief of Enforcement, to discuss item three, specifically, how the matter came from a state auditor report. Mr. Lindsay stated the auditor report is a public document and the matter came from a state whistleblower complaint. Mr. Lindsay stated Mr. Anderson did projects for the CalFire unit prior to Mr. Anderson being employed.

Commissioner Ortiz stated she's conscious that conflict of interest can cause great public harm, but Mr. Anderson was not required to file a Form 700 and told his superiors about the possible conflict showing he acted in good faith, and asked if that has been taken into consideration. Mr. Lindsay stated there are eight instances that Mr. Anderson signed contracts, and he could have been charged for all eight infractions but there are two counts because of the mitigation. Because it's a conflict case and a 1090 case, the normal procedure is to charge the maximum.

Commissioner Wilson asked if the division chiefs had to file a Form 700 and asked whether the division chiefs could be fined under the Act. Mr. Lindsay stated yes, the division chiefs filed Form 700s and there is an opportunity to file for aiding and abetting in 1090 cases but due to how the audit report came in, the choice was made to only fine Mr. Anderson. Commissioner Wilson asked what the maximum fine could have been in theory. Mr. Lindsay stated \$40,000 based on the eight signed invoices. Commissioner Wilson asked where the source of payment comes from. Mr. Lindsay stated from personal funds.

Chair Silver discussed the option for our conflict of interest code team to reach out to the agency to assist with any necessary changes that should be made to their code.

Commissioner Baker asked if the Commission could require an individual take training. Mr. Lindsay stated Mr. Anderson is retired now so that isn't applicable to this situation however we could refer this to our code reviewing team to open the conversation. Dave Bainbridge, General Counsel, stated the FPPC is the code reviewing body for CalFire so there has been some contact with the agency, but staff can reach out to the agency to discuss who should be included in the code. Mr. Bainbridge also stated there is state mandated ethics training. Mr. Lindsay stated there is evidence Mr. Anderson did have training.

Commissioner Baker stated she would have mitigated this differently for comparable purposes since now this is a two count, full fine stipulation instead of the full eight counts at lower amounts. Mr. Lindsay stated the division tends to reduce counts rather than penalty numbers.

Commissioner Wood discussed the comparables and the possibility of mentioning how many counts a matter could have been for future reference.

MOTION: To approve item 3. Moved by Chair Silver; seconded by Commissioner Wood. The motion passed 5-0.

6. Prenotice Discussion of Proposed Repeal and Adoption of Regulation 18932.3, Determining the “Predominant Activity” of a Business, Trade or Profession.

Karen Harrison, Senior Commission Counsel, presented the prenotice regulation package.

Chair Silver asked about proprietary work and if it would cover an article published in a medical journal or a CTO working on a piece of technology; specifically, an individual that does not have the right to manufacture or sell the product. Ms. Harrison stated exclusive means the individual has the right to sell the product and there is something concrete that has been created.

Commissioner Baker discussed previous conversations about this item and the desire for the language to be narrow. She further asked if Ms. Harrison felt this to be a stretch or well within the

honorarium ban. Ms. Harrison stated she is comfortable the proposed regulation is within the authority.

Commissioner Baker discussed a columnist who then gets elected and then starts doing op-eds and getting paid honorarium for it and asked if this is a potential loophole. Ms. Harrison stated the rolling time determination helps in this situation because you're always addressing the speech in the future, but the same analysis would happen and does not see opportunities for abuse.

Commissioner Wilson described a situation where an official acting in good faith accepts an honorarium payment and asked what is the course of action. Ms. Harrison stated it the predominant activity needs to be determined prior to the anticipated activity anticipating the payment so it would be a question of how Enforcement handles the case.

Chair Silver asked what the reasoning was behind the three time thresholds was. Ms. Harrison stated the idea is that 30 days gives an accurate picture of predominate activity for new businesses and 12 months for a long standing business for the original time periods and the longer time periods are based on research regarding book publishing and promotion.

7. Prenotice Discussion of New Regulation 18450.10 and Amendment of Regulation 18450.9, Website Advertisements Disclosure Requirements.

Katelyn Baeta-Orick, Commission Counsel, presented the prenotice regulation package.

Commissioner Wood discussed the research her student has done on influencers and stated she has anecdotes showing that state politicians want to start using influencers a lot more.

Commissioner Ortiz asked when the regulation would take effect if adopted in June. Mr. Bainbridge stated the rule is already in place through statute and this package is just to clarify our current regulation.

Commissioner Wood stated it would be most helpful to have the disclaimer in the beginning and asked if we have statutory authority to require that. Mr. Bainbridge stated he doesn't think so but would confirm.

8. Adoption of Proposed Amendment of Regulation 18537.1; Refunding of General Election Contributions

Dave Bainbridge, General Counsel, updated the Commission that the regulation is now represented in pending legislation and stated the best action is to pull this agenda item and potentially bring it back if the pending legislation does not pass. The Commission agreed.

9. Legislative Update.

Lindsey Nakano, Senior Legislative Counsel, presented her legislative update.

Commissioner Wilson asked Ms. Nakano to explain what the suspense file is for the benefit of the public. Ms. Nakano stated if a bill reaches a certain monetary threshold that it will cost the state it is held in the Appropriations Committee with all the other bills that reach those thresholds, and the Appropriations Committee votes all at once in one day which bills will pass out according to the fiscal situation of the state. The Senate threshold is if the bill has \$50,000 or more in General Fund costs or \$150,000 or more in special fund costs and the assembly the threshold is \$150,000 regardless of the funding source.

Commissioner Baker discussed SB 1404 and whether the fee is applied only to lobbyists who are randomly drawn and audited or are any other classes of lobbyists excluded. Ms. Nakano stated it would apply to anyone subject to the drawing and would exclude placement agents, lobbying employers who only employ placement agents and lobbying employers who have less than \$1 in payments.

Chair Silver asked Ms. Nakano to give background on the SB 1404. Ms. Nakano discussed the workload of the Franchise Tax Board and the fact that almost no lobbying audits have been completed recently due to workload issues. Chair Silver asked how long that has been happening.

Galena West, Executive Director, stated that in the 2013/2014 session, 183 lobbying firms and lobbying employers were drawn and less than 3% were completed that year. The numbers only gets lower and zero audits are completed for the following sessions.

Commissioner Baker emphasized how important this bill is and wanted to reiterate how many enforcement matters come before the Commission due to audits.

Commissioner Wilson asked if the agency is confident in the funding should this bill pass. Ms. West stated the fee proposed in the bill would cover the costs and the delayed implementation would allow staffing prior to the audits happening.

In discussing AB 2803, Chair Silver asked if a candidate who used funds for the prohibited purposes would be required to reimburse their campaign committee. Ms. Nakano stated yes, if convicted.

Commissioner Baker discussed the campaign committee reopening rules that would be used if a reimbursement needed to happen to a closed committee. General Counsel Bainbridge stated that a regulation is already in place to handle this situation.

Commissioner Wilson asked if there has been an in depth analysis of the cost to the FPPC if AB 2990 is implemented. Ms. Nakano stated the bill is headed to appropriations and the cost analysis is still happening and would be numerous positions.

Ms. West stated the bill would significantly tie Enforcements' hands and would put at least ten more positions in the division to meet the deadlines. She also discussed the additional impact to the Legal and Audit divisions.

Commissioner Baker asked if AB 948 applies to someone who wins the Primary outright as opposed to someone who wins the General and has left over funds. Ms. Nakano stated it applies to someone who wins outright in the Primary and does not advance to the General.

Commissioner Ortiz discussed the reporting of the mental health issue in SB 1170 being a concern because it could cause further issues or allow the opponent to use that information against them.

Commissioner Baker discussed the difficulty seeing mental health costs as not a personal benefit and believes this about the support animal bill as well.

Commissioner Wood discussed allowing for a salary to be taken to be used for mental health benefits like the FEC does instead of multiple carve outs.

Commissioner Wilson stated that if there's a way to use campaign funds for security then it should be allowed to be used for mental health purposes.

Chair Silver agreed and asked if there is any subsequent reimbursement. Ms. Nakano stated no.

When discussing the three 84308 bills, Chair Silver asked for public feedback and input on the legislation so that issues can be tackled earlier in the process rather than after the bills are law.

Commissioner Baker asked how the membership provision affects labor organizations.

Chair Silver reiterated his concerns with the contribution amount and using arbitrary numbers.

Commissioner Wilson asked if there is a cost of living adjustment factored in. Ms. Nakano stated there is not a cost of living adjustment in the bill.

The Commission adjourned for break at 12:14 p.m. and reconvened at 12:25 p.m.

10. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

11. Commissioner Comments and Proposed Future Agenda Items.

Commissioner Baker discussed public commenters who ask about enforcement matters and asked if there is a way for the Commissioners to be updated.

MOTION: To Adjourn the meeting. Moved by Chair Silver; seconded by Commissioner Wilson. The motion passed 5-0.

The meeting adjourned at 12:34 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved May 6, 2024

Adam E. Silver, Chair
Fair Political Practices Commission