

Appendix I-1

**Appendix I**

Uncodified Sections of  
Proposition 34

This page intentionally left blank

**SEC. 83.**

This act shall become operative on January 1, 2001. However, Article 3 (commencing with Section 85300), except subdivisions (a) and (c) of Section 85309, Section 85319, Article 4 (commencing with Section 85400), and Article 6 (commencing with Section 85600), of Chapter 5 of Title 9 of the Government Code shall apply to candidates for statewide elective office beginning on and after November 6, 2002.

(Amended by Stats. 2001, Ch. 241, effective September 4, 2001.)

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18531.6  
2 Cal. Code of Regs. Section 18531.61

**SEC. 84.**

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**SEC. 85.**

(a) A special election is hereby called to be held throughout the state on November 7, 2000. The election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

(b) Notwithstanding Section 9040 of the Elections Code or any other provision of law, the Secretary of State, pursuant to subdivision (b) of Section 81012 of the Government Code shall submit this act for approval to the voters at the November 7, 2000, statewide general election.

**SEC. 86.**

This is an act calling an election pursuant to paragraph (3) of subdivision (c) of Section 8 of Article IV of the California Constitution, and shall take effect immediately.

This page intentionally left blank

**Appendix II**

Summary of  
Opinions

This page intentionally left blank

## Appendix II-3

Adams, Janet, California Coastal Alliance, Inc.  
(1976) 2 FPPC Ops. 127 75-173

A lobbyist may perform volunteer personal services on behalf of an elected state officer who is campaigning for election to local office so long as, while doing so, the lobbyist does not engage in any of the activities prohibited by Section 86202. The definition of contribution excludes volunteer personal services and this exclusion is applicable to lobbyists.

Alperin, Anthony Saul, Deputy City Attorney, Los Angeles  
(1977) 3 FPPC Ops. 77 76-084

Section 87309(c) prohibits code reviewing bodies from exceeding the requirements of Section 87302 by approving conflict of interest codes which designate positions that do not entail the “making or participating in the making of governmental decisions,” or which require disclosure of financial interests that may not foreseeably be affected materially by the decisions made or participated in by employees holding any designated position.

Atlantic-Richfield Co.  
(1975) 1 FPPC Ops. 147 75-078-A

The first lobbyist reports required to be filed under the Act must cover all of the activities of the lobbyist for the month in which the lobbyist first qualified or registered as a lobbyist.

Augustine, John H., Union Oil Co.  
(1975) 1 FPPC Ops. 69 75-064

A committee is required to have a treasurer. However, there is no requirement that the person designated “committee treasurer” of a corporation who qualifies as a committee be the same person who for corporate purposes holds the title “treasurer.” Any responsible person may be named for verifying and signing campaign reports.

Baty, David R., Municipal Court Judge, Marin County  
(1979) 5 FPPC Ops. 10 77-011

The corporations in question are headquartered outside the state but have manufacturing or distribution facilities in the state and sell products throughout the state on a regular basis. Their duties qualify them as doing business in the jurisdiction and thus make investments of \$1,000 or more in those corporations reportable.

Bell, Charles H., California Political Attorneys Assn.  
(1988) 11 FPPC Ops. 1 88-002

Proposition 73, enacted by a greater number of affirmative votes, prevails over Proposition 68 where the two measures conflict. Contribution limits of Proposition 68 do not survive passage of Proposition 73.

Note: The Court of Appeal in Taxpayers to Limit Campaign Spending v. FPPC (Case No. B039177) ruled that numerous provisions of Proposition 68 are not in irreconcilable conflict with Proposition 73, and therefore survive passage of Proposition 73. The California Supreme Court in Taxpayers to Limit Campaign Spending v. FPPC, 51 Cal.3d 744 (1990), reversed the court of appeal and held that only the provisions of the measure receiving the highest affirmative vote became operative upon adoption; thus Proposition 68 was inoperative in its entirety.

Biondo, Vincent F. Carlsbad  
(1975) 1 FPPC Ops. 54 75-036

A mayor who owns stock in a gas and electric company may not participate in decisions relating to the company. The mayor is prohibited from participating in decisions and from chairing meetings during consideration of such matters. Chairing the meeting would constitute participation pursuant to Section 87100 and would be prohibited.

Blenkle, Joe, Western Fairs Assn.  
(1975) 1 FPPC Ops. 37 75-023

A nonprofit organization which promotes fairs may continue to give gifts of lifetime fair credentials to public officials so long as the gifts are made by a board acting completely independently of the manager and executive secretary, who are registered as lobbyists for another organization. The lobbyists may not participate in the making of the gifts.

Board of Directors, Marin Municipal Water District  
(1975) 1 FPPC Ops. 198 75-089

Directors of a municipal water district who hold significant interests in business entities which may be affected by the district’s decisions on requests for variances and the lifting of a moratorium on new water connections must disqualify themselves when the decisions will have a foreseeable material financial effect, distinguishable from their effect on the public generally, on the directors’ interests.

Bonfa, Don, City Attorney, Huntington Beach  
(1976) 2 FPPC Ops. 146 76-033

A project area committee is not a “local government agency” since it can neither initiate nor veto governmental action, but rather only makes nonbinding studies and recommendations; it does not have decision-making authority within the meaning of 2 Cal. Code of Regs. Section 18700(a)(1).

OVERRULED by Rotman, Doreet  
10 FPPC 1 (No. 86-001, May 12, 1987)

## Appendix II-4

Boreman, Gilbert H., Registrar of Voters, San Francisco  
(1975) 1 FPPC Ops. 101 75-056

A registrar of voters should accept a declaration of candidacy which is filed without the required financial disclosure statement, but should notify the candidate of the requirement to file a disclosure statement and of the penalties for filing late.

Brown, F. MacKenzie, City Attorney, San Clemente  
(1978) 4 FPPC Ops. 19 77-024

Although ownership of land in a municipal improvement district may not result in disqualification in every case, under the facts of this case it is reasonably foreseeable that decisions concerning the formation of and assessment for the municipal improvement district will have a material financial effect, distinguishable from its effect on the public generally, on the financial interests of the council members who own property in the district. Therefore, the council members may not participate in any decisions concerning formation of or assessments for the district.

Downtown commercial property owners do not constitute a significant segment of the public generally in a situation in which approximately 50 percent of the commercial property in the city is located outside the proposed downtown assessment district and in which downtown commercial property owners will reap direct benefits and incur direct costs that will not be shared by other commercial property owners in the city.

Brown, Willie, Assemblyman  
(1975) 1 FPPC Ops. 67 75-055

Payments made to a legislator for transportation or attendance at various meetings connected with his political activities are not reportable on the candidate's campaign statements so long as they are made for bona fide political expenses and are reported by the campaign committee. Such payments are neither gifts nor income within the meaning of Section 87207.

Buchanan, Douglas, Attorney  
(1979) 5 FPPC Ops. 14 78-013

When a candidate uses his personal funds to pay expenses for litigation aimed at maintaining his status as a candidate, the payments should be reported by the candidate as a contribution to himself.

Bunyan, S. Wyanne, Secretary of State's Office  
(1976) 2 FPPC Ops. 10 76-003

If each voter receives a copy of the English language state ballot pamphlet, the minority language translations need not comply with the content and format requirements of the

Political Reform Act; if the minority language translations are part of the ballot pamphlet, the requirements of Section 88005 must be observed. The purpose of providing a clear and understandable ballot pamphlet to the average voter would be frustrated if English, Spanish and Chinese provisions were intermingled.

Burciaga, Donald C. The Friends of Alex V. Garcia  
(1976) 2 FPPC Ops. 17 75-161

A merchant who permits a candidate to distribute to the voters a coupon which provides price discounts when it is presented to the merchant in connection with the purchase of specific goods or services has not made a contribution because the merchant received full and adequate consideration in the form of free advertising, the prospect of volume sales and the possibility that customers will purchase other goods and services when redeeming their coupons.

All expenditures incurred in connection with the publication and distribution of the newsletter and accompanying coupons must be reported by the candidate on his campaign statement.

California Labor Federation, AFL-CIO  
(1975) 1 FPPC Ops. 28 75-004

Organizations like the California Labor Federation are not lobbyists and, as employers of lobbyists, are not prohibited from making political campaign contributions. Officers of the Federation who are lobbyists may not participate in the making of Federation endorsements of candidates because the endorsement process is so closely related to the ultimate contributions as to constitute arranging contributions. A lobbyist may not serve as the chairman or director of an organization whose chief activities include the making of political contributions.

Note: The California Supreme Court in FPPC v. Superior Court (IGA), 25 Cal. 3d 33 (1979), ruled that Section 86202 which prohibited lobbyists from making political contributions is unconstitutional.

California Republican Party  
(1999) 13 FPPC Ops. 1 0-99-047

Funds raised for a political party from an agreement with a credit card issuer may not be a "contribution" under the Political Reform Act if full and adequate "consideration" exists. Under these facts, consideration exists because as part of its agreement with the party, the credit card issuer receives mailing lists, a free booth at party conventions, and advertising space in party publications, and in exchange the party receives a licensing fee for each new account and a small percentage of each new customer's monthly credit card bill. This conclusion assumes that no



## Appendix II-5

party literature is sent with the credit card solicitations and the party does not receive terms more favorable than those received by other fund-raising sponsors involved in similar arrangements. There is no presumption that full and adequate consideration exists in business transactions such as the one between a political party and a credit card issuer.

### Callanan, Sands and Hill

(1978) 4 FPPC Ops. 33 77-036

Industry members of the Funeral Board are not required to disqualify themselves from consideration of a motion to require consent of next of kin before embalming because the funeral industry constitutes a significant segment of the public and, consequently, the effect of the decision will not be distinguishable from its effect on the public generally.

### Cannon, W. Dean, Jr., Committee for Support of ACA31

(1976) 2 FPPC Ops. 133 76-001

Certain payments made in connection with the mailing of political advertisements by savings and loan associations to their customers are expenditures and, therefore, are includable for the purpose of determining whether a member association is a committee. Certain payments made in connection with displaying counter signs are expenditures and, therefore, are includable for the purpose of determining whether a member association is a committee.

### Carey, Scott T., Councilmember, Palo Alto

(1977) 3 FPPC Ops. 99 76-087

To determine the pro rata share of income from a real estate brokerage firm in order to determine whether the fee paid by any one client meets the \$1,000 reporting threshold: (1) the percentage the firm pays to the salesperson who produced the commission may first be deducted; (2) overhead expenses incurred by the firm may not be deducted; and (3) the ownership interest percentage should be used.

Note: The California Supreme Court in Hays v. Wood, 25 Cal. 3d 772 (1979), ruled that Section 87207(b)(2) which required attorneys and brokers to disclose certain clients at the \$1,000 threshold is unconstitutional.

### Carothers, Wayne T., California Teachers Assn.

(1975) 1 FPPC Ops. 122 75-123

A lobbyist who runs for state office does not create any legal liabilities for his employer but may impose additional reporting requirements on the employer. The salary paid to the lobbyist is an exchange with a state candidate and must be reported. Thus, if the lobbyist continues to work as a lobbyist during the time he is running for elective state office, his employer must report salary payments to him

both as exchanges with a state candidate and as a lobbyist's salary.

The unlawful gift prohibitions do not apply when a lobbyist running for elective state office makes, acts as an agent or intermediary in the making, or arranges for the making of a contribution to himself or his controlled committees.

### Carson, John M., Attorney

(1975) 1 FPPC Ops. 46 75-031

The process of trademark registration is "quasi-judicial" rather than "quasi-legislative." Thus, an attorney's activities in registering clients' trademarks do not constitute attempting to influence administrative action and the attorney need not register as a lobbyist.

### Christiansen, James R., Goleta Valley Today

(1975) 1 FPPC Ops. 170 75-082

A newspaper editorial is neither a contribution nor an expenditure. Therefore, a newspaper publisher is not required to file campaign statements by reason of publishing editorials. However, the costs of reproducing an editorial in an advertising circular, flyer or handbill which does not routinely contain news of a general character and of general interest may be reportable as an expenditure.

### Cline, Robert C., Assemblyman

(1975) 1 FPPC Ops. 150 75-093

An exchange between a lobbyist and an official involving the breeding of their dogs does not need to be reported because the contract was entered into before the effective date of the Act.

### Cohen, Les H., Advocation, Inc.

(1975) 1 FPPC Ops. 10 75-006

The selection of a contractor for the mailing of a legislator's newsletter does not constitute legislative action. Therefore, employees of the contract mailing firm are not required to register as lobbyists.

### Cory, Kenneth, State Controller

(1975) 1 FPPC Ops. 99 75-047

The receipt of a parking pass from the California State University for use while on official business at any university or campus is a reportable gift and is valued at the fair market value of the item.

### OVERRULED by Thomas

(1977) 3 FPPC Ops. 30

### Cory, Kenneth, State Controller

(1976) 2 FPPC Ops. 48 75-094-A

Gifts received by the spouse of an elected state officer are the separate property of the spouse and do not have to be

## Appendix II-6

disclosed. Gifts to the children are not income to the state officer and do not have to be disclosed. However, a gift ostensibly made to the spouse or dependent child of an elected official will be considered a gift to the official if the nature of the gift is such that (1) the official is likely to enjoy direct benefit or use of the gift to at least the same extent as the donee; (2) the official in fact enjoys such direct benefits or use; and (3) there are no additional circumstances negating an intent to make an indirect gift to the official.

Cory, Ken, State Controller  
(1975) 1 FPPC Ops. 153 75-094-B

A public official may determine the value of a unique gift by making a reasonable estimate based on a good faith effort; there is no need to retain the services of an outside appraiser.

Volunteer assistance received by a public official from a neighbor in repairing a fence or structure is not considered a gift.

Cory, Kenneth, State Controller  
(1975) 1 FPPC Ops. 137 75-094-C

A public official has no reporting obligations by virtue of attending a political fund raising dinner at the invitation of the sponsors without purchasing a ticket. This conclusion is not altered by the fact that the public official attends the dinner for the specified purpose of making a speech.

In determining the value of unique items received as gifts by a public official, a reasonable estimate based on a good faith effort to ascertain the value of the gifts will suffice. There is no need to retain the services of an outside appraiser.

Curiel, Robert D., Humboldt County Counsel  
(1983) 8 FPPC Ops. 1 83-003

An agency, other than a "legislative body" as defined in 2 Cal. Code of Regs. Section 18438.1(a), is a "quasi-judicial board or commission" within the meaning of Government Code Section 84308 when it engages in "quasi-judicial" proceedings, as that term has been defined by the courts.

Dennis-Strathmeyer, Jeffrey A.  
(1976) 2 FPPC Ops. 61 75-117

Candidates for federal office are required to file copies of campaign statements only with those persons specified by federal law.

Dixon, Elliott J.  
(1976) 2 FPPC Ops. 70 75-187

A lobbyist may perform volunteer personal services on behalf of an elected state officer who is campaigning for

election to local office so long as, while doing so, the lobbyist does not engage in any of the activities prohibited by Section 86202. The definition of "contribution" excludes volunteer personal services and this exclusion is applicable to lobbyists.

Note: The California Supreme Court in FPPC v. Superior Court (IGA), 25 Cal. 3d 33 (1979), ruled that Section 86202 which prohibited lobbyists from making political contributions is unconstitutional.

Elmore, Gilbert E., Administrative Law Judge  
(1978) 4 FPPC Ops. 8 77-021

Earnings of sums withheld from salary by the state pursuant to the retirement system and the various deferred compensation plan options held for ultimate distribution after retirement are not income.

Sums withheld by the state pursuant to the Public Employees Retirement System are not investments.

Evans, James L., United Transportation Union  
(1978) 4 FPPC Ops. 54 78-008-A

(1) In determining whether an employee of an entity has become a lobbyist pursuant to 2 Cal. Code of Regs. Section 18239 or determining whether an employee has spent 10 percent of his compensated time in lobbying activity pursuant to 2 Cal. Code of Regs. Section 18620, all the time spent attending an administrative hearing should be counted. (2) Pursuant to 2 Cal. Code of Regs. Section 18239(e)(3)(B), a person becomes a lobbyist by spending a total of 40 hours in administrative testimony before one or more agencies and a total of one hour in direct contact with the officials of the agency or agencies to which the administrative testimony was directed.

In determining whether an employee of an entity has become a lobbyist, the time spent by an agent or other employee of that entity should be attributed to the employee only if the agent or other employee acts under the direct supervision or direct orders of the employee in order to aid or promote the employee's lobbying activity.

A state agency should be listed on a lobbyist's registration statement if it is foreseeable that the lobbyist will attempt to influence that agency.

A lobbyist employer must report lobbying activity and expenses of an employee in connection with attempts to influence an agency not listed on the registration statement of the employer's lobbyist if the lobbyist employer also qualifies as a \$250 filer.

Note: Legislation has changed the Act so that only persons who spend \$5,000 in a quarter (rather than \$250 a month) need file.

## Appendix II-7

Evans, J. L., United Transportation Union  
(1978) 4 FPPC Ops. 84 78-008-B

Proceedings before the PUC involving Southern Pacific and Airporttransit passenger service are not administrative action. However, under the circumstances presented here, the PUC proceedings pursuant to an Order Instituting Investigation and examining Southern Pacific commuter services are administrative actions. Because the Southern Pacific discontinuance proceedings are combined with proceedings pursuant to the Order Instituting Investigation, the discontinuance proceeding must be considered administrative action.

Ferraro, John, Councilmember, Los Angeles  
(1978) 4 FPPC Ops. 62 78-009

The interests of owners of three or fewer rental units will not be affected by a rent control ordinance in a manner distinguishable from the effect upon a significant segment of the public generally, and therefore the councilmembers are not disqualified from participating in decisions regarding the rent control ordinance. Since each councilmember in this case owns only one rental unit, each may participate in and vote on the rent control ordinance.

Fontana, Mark, Isla Vista Community Council  
(1976) 2 FPPC Ops. 25 75-162

A reorganization proposal which is not placed on the ballot until approved by the local agency formation commission and board of supervisors does not become a measure until the supervisors order it placed on the ballot. Consequently, expenditures in support of the proposal made prior to that time do not have to be reported. This conclusion would be the same whether or not the proposal ultimately is placed on the ballot.

Galligan, Joe, City Councilmember, Burlingame  
(2000) 14 FPPC Ops. 1 0-00-045

On the facts presented, it was not reasonably foreseeable that a decision whether to certify an environmental impact report would have a material financial effect on a city council member's economic interest in the bank that held the mortgage on the subject property. Additionally, the Commission decided not to interpret Regulation 18706, which requires that the material financial effect occur *as a result* of the governmental decision, to require that the effect be one that would not occur but for the decision. Instead, the only causation required is that enunciated in *In re Thorner*: that a material financial effect be substantially likely. ((1975) FPPC Ops. 198.)

Gilchrist, John P.  
(1975) 1 FPPC Ops. 82 75-014

No reporting requirements apply to the spouse of a lobbyist who is engaged in a business which provides a reception attended by legislators and state officials so long as the spouse does not act as the lobbyist's agent and does not arrange for gifts to the officials.

Gillies, Dugald, Calif. Assn. of Realtors  
(1975) 1 FPPC Ops. 110 75-062

The California Association of Realtors is sponsoring a luncheon which will be attended by approximately 700 persons, including about 70 legislators. The legislators will be invited as guests of the association. The other attendees will pay for the cost of their luncheon tickets. The cost of the tickets will be set at an amount to offset the cost of the guests and other overhead. In reporting the cost of the luncheon, the association must report the name of each legislator who attended as a guest and the total amount paid for their benefit. The Act does not require an individual listing of the value accruing to each beneficiary. It is not necessary for the name of every person attending and participating to be listed as a beneficiary.

Note: The California Supreme Court in FPPC v. Superior Court (IGA), 25 Cal. 3d 33 (1979), ruled that former Section 86107(d) and (e) and former Section 86109(d) and (e), which required the reporting of exchanges, are unconstitutional.

Gillies, Dugald, Calif. Assn. of Realtors  
(1975) 1 FPPC Ops. 165 75-063

A payment of \$250 or more during a month made by a local board of realtors to reimburse individuals for expenses incurred in attending Legislation Day and an association board of directors meeting is a payment to influence legislative or administrative action. This conclusion is not altered by the fact that the legislator pays the cost of his own dinner.

Local real estate boards which spend \$250 or more during a month to reimburse their members for expenses incurred in attending a Legislative Day sponsored by the California Association of Realtors and an association board of directors meeting would not become employers of lobbyists but would be required to file reports pursuant to former Section 86108(b) (now Section 86115(b)).

Note: Legislation has changed the Act so that only persons who spend \$5,000 in a quarter (rather than \$250 a month) need file.

## Appendix II-8

Gillmor, Gary G., Mayor, Santa Clara  
(1977) 3 FPPC Ops. 38 76-089

Redevelopment zones are created for the precise purpose of upgrading portions of a community and creating a positive financial impact on investments and property values in the zone. Thus it is intended and anticipated that redevelopment will have a financial impact on real property and businesses located in and near the redevelopment zone and such positive financial effects are therefore reasonably foreseeable.

Goddard, Merle J., Institute of Governmental Advocates  
(1978) 4 FPPC Ops. 1 77-004

Luncheons sponsored by a lobbying organization do not constitute arrangement for gifts in excess of \$10 per month. This is based on the fact that attendance at the luncheons by legislators was a random and infrequent occurrence. However, if the facts indicated an explicit or implicit agreement or understanding among the members to make gifts to an official totaling more than \$10 per month, it would be a prohibited arrangement.

Goodwin, Robert E., Goleta County Water District  
(1975) 1 FPPC Ops. 24 75-032

The words "compensation" and "salary" are equivalent. Elected officers are exempt from filing reports only if their actual average income for the previous six-month filing period is less than \$100 per month.

Green, Donald C.  
(1975) 1 FPPC Ops. 86 75-098

A lobbyist who advises his employer concerning the making of political campaign contributions has not "arranged" for the making of a contribution unless (1) the lobbyist communicates with the employer with the intent of influencing the employer's decisions to make contributions and a contribution is made by the employer, and (2) the communication was an element in the making of the contribution. This test does not apply to factual material readily available to members of the public, such as voting and legislative records of public officials. Dissemination of factual information concerning a public official's voting record is not prohibited.

Grunsky, Donald L., Senator  
(1975) 1 FPPC Ops. 158 75-115

A lobbyist employer must report exchanges with a business entity in which an elected official is a partner when the total value of such exchanges is \$1,000 or more for that part of the calendar year that a lobbyist is employed.

Gutierrez, Annie M., Agricultural Labor Relations Board  
(1977) 3 FPPC Ops. 44 76-081

By attending a reception given by a group of friends to celebrate his appointment to the bench, a judge received a gift which was equal to the per capita cost of giving the reception. In this case, the gift is not reportable because the per capita cost was less than \$25 per person.

Hanko, Terilyn, Member, Mills Peninsula Healthcare District Board of Directors  
(2002) 16 FPPC Ops. 1 O-02-088

Incentive compensation payments received by a member of a healthcare district board from her employer were attributed to the purchaser of the employer's products where: (1) the board member was employed to purposefully direct sales or marketing activity toward the purchaser; (2) the board member had direct contact with the purchaser intended by the board member to generate sales or business; and (3) there was a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the board member. Because these requirements were met under the facts of this opinion, both the purchaser and the employer were found to be sources of income to the board member, and the board member was not permitted to participate in decisions that might have a reasonably foreseeable material financial effect on the purchaser.

Hardie, George G., Golden State Greyhound Assn.  
(1975) 1 FPPC Ops. 140 75-003

A person who receives no economic consideration, other than reimbursement for reasonable travel expenses, does not come under the definition of a lobbyist.

Hayes, Mayor Janet Gray, Dinner Committee  
(1975) 1 FPPC Ops. 210 75-145

The proceeds from fundraising dinners retain their classification solely as campaign contributions and expenditures and are not gifts so long as they are used to support those activities related to the officeholder's responsibilities as an elected official and a future candidate.

Herr, Robert C., Del Monte Corporation  
(1977) 3 FPPC Ops. 11 75-208

When salary payments to board members are reportable they are reportable as exchanges and not as payments to influence legislative or administrative action. Salary paid to an employee who serves on a board is an exchange if the board is a state agency because the member is an agency official. The exchange is reportable if the amount of salary paid to the employee exceeds \$1,000 in a calendar year. The employer must report exchanges with other business entities which are represented on boards by their

## Appendix II-9

proprietors, partners, directors, officers, managers or persons having more than a 50 percent interest if the board is one which the employer attempts to influence within the meaning of 2 Cal. Code of Regs. Section 18600 and if the value of an exchange or exchanges with any such business entity exceeds \$1,000 in a calendar year.

Public officials who are employees of Del Monte Corp. serving on agricultural boards and commissions are exempt, to the extent they are acting within the scope of their official duties, from the lobbyist reporting requirements. This exemption does not alter Del Monte's responsibility to report salary payments to such officials as exchanges.

Note: The California Supreme Court in FPPC v. Superior Court (IGA), 25 Cal. 3d. 33 (1979), ruled that former Section 86107(d) and (e), and Section 86109(d) and (e), which required reporting of exchanges, are unconstitutional.

Hicks, Joyce M., Assistant City Attorney, Oakland  
(1999) 13 FPPC Ops. 11 0-99-314

The "rule of legally required participation" in Section 87101 does not apply to certain decisions made by the Mayor of Oakland pursuant to the City's Charter.

WITHDRAWN on November 3, 2000, in accordance with the writ of mandate issued by the First District Court of Appeal in the matter *Jerry Brown v. Fair Political Practices Commission*, (2000) 84 Cal.App.4<sup>th</sup> 137.

Hollinger, Dana, CalPERS Board Member  
(2014) 21 FPPC Ops. 1 14-001

Ms. Hollinger, a board member of the California Public Employees' Retirement System (CalPERS) demonstrated sufficient cause for a limited exemption from the Act's general requirement that a CalPERS board member disclose every source of income on her Statement of Economic Interests, Form 700. The Commission considered the existence of federal privacy mandates regarding financial institutions and release of consumers' personal financial information under the Gramm-Leach-Bliley Act. The Commission concluded that limited nondisclosure in this case was justified and created no risk that undisclosed conflicts of interest might threaten the integrity of governmental decisionmaking.

Hopkins, William P., City Attorney, Anaheim  
(1977) 3 FPPC Ops. 107 77-022

Free tickets and passes which are customarily sent to city councilmembers and other city officials must be disclosed if they are worth \$25 or more, unless they are not used at all and are returned to the donor within 30 days. This rule

applies even if they are never used, used only occasionally or are given to some other person. The value of the tickets and passes is the fair market value; the Commission set forth factors to be considered in determining fair market value. The donor of a complimentary ticket which has a fair market value of \$250 or more is a source of income and, accordingly, the disqualification provisions would be applicable. The rule of necessity set forth in Section 87101 does not apply to a conflict of interest that arises because of gifts an official has accepted if it was reasonably foreseeable at the time the gift was received that the official would be asked to make or participate in a decision affecting the donor. The need for disqualification in these situations should be assessed under the standards set forth in Sections 87100 and 87103.

Horn, Rolf H., Del Monte Corp.  
(1975) 1 FPPC Ops. 126 75-029

The pro rata share of a lobbyist's registration fee for a seminar which is used for honoraria for legislators and agency officials is not a gift or contribution because the seminar represented equal consideration for the registration fee. Furthermore, the registration/ honoraria payments would not be reportable exchanges because they were independent transactions with the sponsors of the seminar. However, if the registration fee is paid through the lobbyist account it must be reported.

Hudson, Matthew, City Attorney, Anaheim  
(1978) 4 FPPC Ops. 13 77-007

If a board cannot, as a result of board member disqualification, obtain a quorum in order to make decisions it is legally required to make, the board may bring back as many disqualified members as is necessary to establish a quorum. The preferred means of selecting which disqualified member should participate is by lot or other means of random selection. However, nothing in the Act prevents the use of other impartial and equitable means of selection.

Institute for Governmental Advocates  
(1982) 7 FPPC Ops. 1 81-003

A lobbyist is acting as an agent in, or arranging for, the making of a gift by another when he or she: (1) takes any action involving contact with a third party which facilitates the making of the gift; (2) has any contact with the public official who is to be the recipient of the gift which facilitates the making of the gift.

## Appendix II-10

### Johnson, Ross

(1989) 12 FPPC Ops. 1 89-001

An Assembly member, who is a defendant in a civil lawsuit challenging the outcome of an election, will incur considerable legal expenses. Contributions raised to finance his legal defense are contributions subject to the limits of Proposition 73.

### Juinall, Ralph, Republican Consultants

(1976) 2 FPPC Ops. 110 75-018-A

Once a person is a candidate, the mass mailing sender identification provisions apply regardless of whether the person has officially made a declaration of candidacy. Nothing in the Act prevents a candidate from delaying the declaration of candidacy to the 83rd day prior to the primary election, the last possible day on which a declaration must be filed.

The official newsletter of the Republican Central Committee of Orange County does not fall within the definition of "mass mailing" because it is sent only to subscribers who have requested it.

### Kahn, Harry H., American Building, Maintenance Industries

(1976) 2 FPPC Ops. 151 75-185

When contributions are made by a parent corporation and its wholly owned subsidiaries, it is assumed that they are a "combination of persons." Accordingly, a parent corporation and its subsidiaries ordinarily must file campaign statements as a major donor committee if their combined contributions total \$5,000 or more in a calendar year. A contrary conclusion can be reached only when it is clear from the surrounding circumstances that the parent corporation and its subsidiaries acted completely independently of each other. If the parent corporation made no contributions, the conclusion would be the same.

### Kavanagh, Dennis, A-K Associates, Inc.

(1975) 1 FPPC Ops. 42 75-028

It is prohibited for four lobbyists to host one dinner per month for legislators, even though no lobbyist spends more than \$10 per legislator per month because the dinners are arranged by the lobbyists jointly and the lobbyists would therefore be arranging for the making of a gift by other persons aggregating more than \$10 per month per person.

### Kelly, Carl A., County Clerk, El Dorado

(1975) 1 FPPC Ops. 162 75-134

The deposit of money with the clerk's office is an advance payment for services to be rendered and must be reported pursuant to Sections 84200, et seq., unless the refund is

received by the candidate prior to the closing date for filing the first campaign statement.

A person seeking elective office under the uniform District Election Law who is subsequently appointed to office need not file campaign statements unless funds are received or expended by that person or on his or her behalf with a view toward bringing about the person's nomination or election to office.

### Kovall, Gary, Los Angeles County Bar Assn.

(1978) 4 FPPC Ops. 95 78-012

Expenses incurred by a county bar association in connection with direct communication with elective state or legislative officials concerning drafting or proposing legislation are reportable as payments to influence once there is direct communication with elective state or legislative officials concerning the legislation.

An employer's reimbursements for food, lodging and travel expenses of an employee who communicates directly with legislative officials as a member of a bar association's committee on legislation will not incur a reporting obligation if the employee's attempts to influence legislative action are not related to the work of the employer or if the employer has a uniform policy of allowing employees to engage in outside activities during normal working hours.

### Layton, Rex E., City Clerk, Los Angeles

(1975) 1 FPPC Ops. 113 75-072

Late filing fees should not be assessed if a campaign statement is submitted on an incorrect form so long as all required information is included and the correct form is filed promptly. However, late filing fees should be assessed if unsigned forms are filed.

### Leach, Charles F., Assistant City Attorney, Bakersfield

(1978) 4 FPPC Ops. 48 76-092

Neither the downtown business association nor the chamber of commerce is a local government agency. Therefore, neither organization need adopt a conflict of interest code. The employees and board members of these organizations are not consultants and need not be included in the city's conflict of interest code.

### League of California Milk Producers

(1975) 1 FPPC Ops. 13 75-015

The employer of a lobbyist has not engaged in an exchange when its insurance company settles a claim arising from an auto accident between one of its employees and a legislator so long as the employee took no part in the settlement negotiations.

## Appendix II-11

Legan, Thomas L., County Supervisor, Santa Clara County  
(1985) 9 FPPC Ops. 1 85-001

An official's employer, which was a major landowner in the hillside zone, would be affected in a manner distinguishable from the effect upon the general public with respect to a pending decision to double the permissible density on hillside property. The effect upon the value of the employer's property was sufficiently large so as to be considered material.

Leonard, Carl A., Bay Area Rapid Transit  
(1976) 2 FPPC Ops. 54 75-042

Persons engaged in representing Bay Area Rapid Transit in quasi-legislative proceedings before the Public Utilities Commission are attempting to influence administrative action. The safety director of BART is not a lobbyist as a result of communicating with the PUC staff in compliance with a PUC order.

Lucas, Steven S.  
(2000) 14 FPPC Ops. 14 0-00-157

For purposes of the permanent ban on certain types of post-government employment, a former Deputy Director of the Board of Equalization has "participated" in a decision when the official has taken part "personally and substantially" in it through various enumerated means. Where the official was responsible primarily for creation and implementation of general policies and had no personal involvement in the individual audits conducted by subordinate agency employees, the official will not be deemed to have "participated" in those audits for purposes of the permanent ban.

Lui, Elwood, Associate Justice, Court of Appeal  
(1987) 10 FPPC Ops. 10 87-001

A judge who, in 1985 or thereafter, makes any contributions from personal funds must file campaign statements for the year in which the contributions were made. Contributions made by the judge's spouse from community property funds are considered to be contributions made by the judge. The judge's campaign filing obligation exists regardless of whether the judge was running for office or whether the contributions were related to the judge's own candidacy.

Lumsdon, Thomas G., Attorney  
(1976) 2 FPPC Ops. 140 75-205

When an individual and a closely held corporation in which the individual is the majority shareholder make contributions of the type described in Section 82013(c), it is assumed that they are a "combination of persons" which is attempting to influence the voters for or against the

nomination or election of a candidate or the passage or defeat of a measure.

Accordingly, the individual and the corporation ordinarily must file campaign statements as a major donor committee if their combined contributions total \$5,000 or more. A corporation and an individual who is both the corporation president and a trustee in a foundation which owns the stock of the corporation need not cumulate contributions for the purpose of determining whether the corporation and the individual are a major donor committee unless there is an agreement or mutual understanding, expressed or implied, that corporate and personal funds will be contributed toward the accomplishment of a common goal.

Lunardi, Paul J.  
(1975) 1 FPPC Ops. 97 75-046

A golf tournament held by a lobbyist and attended by public officials who pay their own entry fees does not constitute a gift so long as the entry fees paid by the officials cover the costs of the tournament.

Maloney, R. J., District Attorney, Glenn County  
(1977) 3 FPPC Ops. 69 76-082

In performing engineering and survey work for the county on a contract basis, the county surveyor-engineer is not acting in the capacity of a "member, officer, employee or consultant of a state or local government agency," and therefore is not a "public official" subject to the conflict of interest provisions.

Masini, H. L., County Clerk, Fresno  
(1976) 2 FPPC Ops. 38 75-171-B

The governing board of a district which pays or offers to pay for the cost of candidate qualification statements would not become a committee. The district would not become a committee by virtue of purchasing space in a voters' pamphlet for the purpose of presenting arguments on both sides of a ballot measure. Therefore, the district would not be required to file a statement of organization or campaign statements.

McCarthy, P. H., State Building and Construction Trades Council  
(1975) 1 FPPC Ops. 50 75-035

The State Building and Construction Trades Council is a state body of affiliated local building and construction trade councils, craft councils and local unions which employs a lobbyist and participates in political activities and makes contributions. The council may continue its political activities. No restrictions are imposed on the elected officers of the council so long as they are not lobbyists. An employee who spends 40 hours lobbying in a two-month period is required to register as a lobbyist regardless of the amount of his compensation. The \$1,000 test is an

## Appendix II-12

additional one applied to a person not spending 40 hours in lobbying activities.

McCormick, W. A., Los Angeles County Almanac  
(1976) 2 FPPC Ops. 42 75-140

Donations received for the purpose of printing and distributing a political almanac are not contributions and, therefore, income from the sale of the almanacs should be reported by the committee as miscellaneous receipts.

Meyers, John, Republican Central Committee of Orange County  
(1976) 2 FPPC Ops. 110 75-018

Once a person is a candidate, he is subject to the mass mailing sender identification provisions of the Act regardless of whether he has officially declared his candidacy.

The official newsletter of the Republican Central Committee of Orange County does not fall within the definition of "mass mailing" because it is sent only to subscribers who have requested it.

Miller, Anthony L., Secretary of State's Office  
(1978) 4 FPPC Ops. 26 77-032

The Secretary of State is not prohibited from including signed arguments and rebuttals in the ballot pamphlet by virtue of the fact that she has filed a declaration of candidacy. With respect to materials bearing her name, the Secretary of State may include her own name on the "certificate of correctness" required to be inscribed in the pamphlet, but after she has filed a declaration of candidacy she is prohibited from including a signed letter to the voters in the pamphlet. A majority of the Commission was unable to reach agreement with respect to inclusion of the Secretary of State's name on the cover of the pamphlet and therefore the Commission gave no advice with respect to this question.

Miller, Edwin L., District Attorney, San Diego  
(1976) 2 FPPC Ops. 91 75-125

A chartered city does not have the authority to enact an ordinance which differs from and supersedes the campaign finance disclosure provisions of the Political Reform Act. A chartered city may, however, enact an ordinance which imposes additional disclosure requirements if such additional requirements do not prevent compliance with the Act.

Montoya, Joseph, Senator  
(1989) 12 FPPC Ops. 7 89-006

Funds received by an elected officer to defend against a criminal indictment, where the criminal charges alleged in the indictment concern the elected officer's conduct in his

capacity as an officeholder, are contributions, and subject to the limits of Proposition 73.

Moore, Richard J., County Counsel, Alameda  
(1977) 3 FPPC Ops. 33 76-074

Pension benefits are salary from a local government agency and therefore are not income. Thus, the agency providing the pension benefits is not a source of income to the retired member.

A retired member of a county retirement board would not be prohibited from voting on various specified issues because the pension benefits are "salary" from a local government agency and therefore are not "income." Thus, the agency providing the pension benefits is not a source of income to the retired member and the retired member does not have a "financial interest" in the decisions.

Morgan, Claude D., Church State Council, Pacific Union Conference of Seventh-Day Adventists  
(1975) 1 FPPC Ops. 177 75-005

The tenets of the Seventh-Day Adventist Church forbid members from joining labor unions. Thus, lobbying activities undertaken for the purpose of opposing the union shop are exempted from the reporting requirements of Chapter 6 because such activities protect the right of church members to practice the tenets of their religion. Lobbying activities or payments to influence legislative action directed at reducing penalties for marijuana possession are not within the exemption of Section 86300 because the law in question does not affect the right of church members to practice the tenets of their religion.

Morrissey, John C., Pacific Gas & Electric Co.  
(1975) 1 FPPC Ops. 104 75-065-C

A lobbyist is required to report the expense of a meal for another lobbyist if the expense is incurred in connection with his activities as a lobbyist.

Morrissey, John C., Pacific Gas and Electric Co.  
(1975) 1 FPPC Ops. 130 75-066

Salary payments made by PG&E to its employees, some of whom may be legislative officials, agency officials, state candidates, or members of their immediate families, are not payments to influence legislative or administrative action.

Salary payments to company employees who are also legislative officials, agency officials, state candidates or members of the immediate families of such officials are reportable exchanges if the total salary paid exceeds \$1,000 in a calendar year. Routine fringe benefits are not included in determining whether the employee has received in excess of \$1,000, although benefits in lieu of wages are included. Salary payments are not payments to influence legislative and administrative action. The employer has no



## Appendix II-13

affirmative obligation to determine which employees are specified persons but must report on the basis of information in possession of the employer at the time of filing.

Morrissey, John C., Pacific Gas & Electric Co.  
(1976) 2 FPPC Ops. 84 75-099

A member of the Bay Conservation and Development Commission's citizens advisory committee is not an agency official; therefore, salary payments to a member of the committee are not payments to influence legislative or administrative action. An employee who serves as a member of the committee is not a lobbyist in this case because the employee's duties are solely advisory.

Morrissey, John C., Pacific Gas & Electric Co.  
(1976) 2 FPPC Ops. 120 75-120

The term "consultant" as used in the definitions of "legislative official" and "agency official" includes any natural person who, under contract, provides information, advice, recommendation or counsel to the Legislature or a state agency, but does not include a person who (a) conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and (b) beyond the rendition of information, advice, recommendation or counsel. Accordingly, independent contractors may be "consultants" if they are not excluded by the foregoing exceptions.

Naylor, Robert, Standard Oil Company of California (1976) 2 FPPC Ops. 65 75-172

Salary payments and reimbursed expenses paid to an employee who participates on an engineers' advisory committee are not payments to influence legislative or administrative action because the employee's participation in the committee is not direct communication with an agency official carried out for the purpose of influencing administrative or legislative action.

Nejedly, John A., Senator  
(1976) 2 FPPC Ops. 46 75-190

A state legislator is not prohibited from soliciting contributions of food, money or services for nonprofit organizations nor obligated to report such activities. A lobbyist may not, however, make a gift to the organization in order to obtain influence with the legislator.

Nida, Robert H., Automobile Club of Southern California  
(1976) 2 FPPC Ops. 1 75-075-A

(1) Reporting hazardous traffic locations by an automobile club to state agencies and recommending corrective action

does not constitute an attempt to influence administrative action; (2) the furnishing of data or factual materials will be reportable under certain circumstances; (3) commenting on proposed regulations constitutes an attempt to influence administrative action regardless of whether the comment is in response to a request from the agency; (4) discussion of enforcement policies with Highway Patrol personnel may constitute an attempt to influence administrative action.

Collection of an insurance premium is not a reportable exchange. Payments of claims may be reportable exchanges when made to specified persons in amounts of \$1,000 or more.

Note: The California Supreme Court in FPPC v. Superior Court (IGA), 25 Cal. 3d 33 (1979), ruled that former Section 86107(d) and (e), and former Section 86109(d) and (e), which required the reporting of exchanges are unconstitutional.

Nida, Robert H., Automobile Club of Southern California  
(1977) 3 FPPC Ops. 1 75-075-B

The occasional giving of publications and maps to legislators and agency officials does not constitute a gift because the materials are informational. Under some circumstances, however, the material could involve a reportable payment to influence legislative or administrative action.

The occasional giving of publications and maps to legislators and agency officials would involve a payment to influence under the following circumstances: providing the materials to support or assist the club's lobbyist when he is attempting to influence a matter pending before the Legislature or a state agency; providing the material to a state agency (including the Legislature) or to an agency official at the request or suggestion of the lobbyist when it is related to an attempt to influence; providing the materials as part of an effort to influence some specific legislative or administrative action pending, regardless of whether the club's lobbyist is involved in the effort; providing the materials directly to an official for his or her personal benefit; or providing the materials to the official for distribution to the public.

Nielsen, Vigo G., Dobbs & Nielsen  
(1979) 5 FPPC Ops. 18 79-002

A major donor committee that makes in-kind contributions to a recipient committee is not required to report the names, addresses and salaries of the employees whose services constituted the in-kind contribution. The contribution must be reported as a payment to the recipient.

## Appendix II-14

Nord, Steven F., Merced City Attorney  
(1983) 8 FPPC Ops. 6 83-004

A limited partner has an investment in the controlling general partner of the limited partnership, if the limited partnership is "closely held." This can require disqualification both as to decisions affecting the general partner personally and as to decisions affecting "otherwise related business entities," which includes businesses also controlled by the controlling general partner.

Oglesby, Thomas W., City Manager, Antioch  
(1975) 1 FPPC Ops. 71 75-083

A councilmember would be disqualified from participating in a decision regarding adoption of a redevelopment plan based on his ownership of property within the redevelopment plan combined with ownership of property near the plan and a financial interest in a real estate firm which may be involved in selling property within the plan.

Olson, Lance H., Esq., Counsel for the California Democratic Party  
(2001) 15 FPPC Ops. 13 O-01-112

Local Los Angeles ordinances requiring the political parties to disclose "member communications" prior to an election are preempted by the Political Reform Act because they impose "additional or different" filing requirements on the state party committees in areas of statewide concern.

Olson, Thomas F., California Farm Bureau Federation  
(1975) 1 FPPC Ops. 107 75-067

Lobbyists may attend a dinner given for elected officers and legislative and agency officials, but may not participate in making arrangements for the dinner. Lobbyists may participate in delivering gift packs of agricultural products to invitees who did not attend so long as the value of the gift packs does not exceed \$10.

Overstreet, Martin, Berkeley Rent Stabilization Board  
(1981) 6 FPPC Ops. 12 80-010

A Rent Control Board Member should not make, participate in making or use his official position to influence decisions which have a material financial effect on rental properties he owns distinguishable from their effects on a significant segment of the public generally. However, the rental property industry constitutes a significant segment of the public generally. The Commission also found that another board member should not make, participate in making or use her official position to influence decisions which would have a material financial effect on property she leases, distinguishable from the effect the decisions will have on a significant segment of the public generally. Tenants also, however, constitute a significant segment of the public with respect to decisions implementing the rent control measure.

Owen, William L., City Attorney, Davis  
(1976) 2 FPPC Ops. 77 76-005

Effect of downtown "core area" redevelopment on residential property owners is speculative and may be spread among residential properties throughout the city as well as those near the "core area." Consequently, the effects of decisions concerning the "core area" on owners of residential property in or near the "core area" cannot be said to be distinguishable from the effects such decisions will have on a significant segment of the public generally. However, as the number of people owning buildings leased for commercial purposes is much smaller and as the effects on such persons and their interests will be much more direct and particular, the effects on such persons and their property are distinguishable from the effects on the public generally. Retail merchants lie somewhere between these two, but under the facts of this case, the official with such an interest may participate unless a particular aspect of the core area plan would have a singular effect on his business.

A planning commissioner who is a partner in a partnership which owns a vacant lot within the existing commercial zone of a core area and is in the process of constructing a commercial building thereon is disqualified from participating in decisions concerning the core area. A planning commissioner who owns a home which he uses as a residence across the street from one boundary of the core area in a neighborhood which is viewed as inextricably tied to the area in terms of planning considerations is not disqualified; and (3) a councilmember in a limited partnership in a retail business which leases space within an existing commercial building in the core area is not disqualified.

Pelham, LeeAnn, Executive Director, Los Angeles City Ethics Commission  
(2001) 15 FPPC Ops. 1 O-00-274

1. A Los Angeles campaign ordinance prohibiting the deposit of campaign contributions until all donor information has been obtained does not conflict with Section 85700 ordering recipients of contributions to return the contribution within 60 days if all donor information has not been obtained. The Los Angeles ordinance does not conflict with the Act because it does not impede compliance with the Act.

2. An elected state officer or candidate for elective state office may establish a legal defense fund under Section 85304 regardless of the individual's status as a local candidate or officeholder. However, if the individual establishes a legal defense fund created under the Los Angeles ordinance, that particular defense fund will be subject to the rules of that ordinance.

3. Under certain circumstances, the presumption that contributions received from minors are actually from the

## Appendix II-15

child's parents under Section 85308 may be overcome and a minor may be a contributor in his or her own right.

4. The City of Los Angeles may deposit laundered funds into its general fund when the action is brought under its local campaign finance law. The City of Los Angeles' ordinances are not preempted by state laws concerning the distribution of laundered funds because the state law only applies to violations of the state statutes.

Petris, Nicholas C., Senator  
(1975) 1 FPPC Ops. 20 75-039

A candidate's controlled committee need not amend its statement of organization if it makes contributions to other candidates or propositions if the contributions are incidental to the general purposes of the controlled committee. The phrase "supports or opposes" in Section 84102(d) does not mean "incidental" support or opposition.

Pirayou, Ash  
(2006) 19 FPPC Ops. 1, O-06-016

Under the extraordinary facts of this case, including the gross negligence of the candidate's treasurer, a candidate for elective state office was allowed to transfer funds from her Assembly committee account, which had already been deemed "surplus campaign funds" under section 89519 of the Act, to her Senate committee account with attribution.

Presley, Robert, Senator  
(1975) 1 FPPC Ops. 39 75-027

No conflict of interest arises because of an investment in a realty company unless at some time in the future the public official votes on a matter affecting his financial interest.

Rawlings, Katherine, Sacramento County Democratic Central Committee  
(1975) 1 FPPC Ops. 62 75-053

It is unlawful for a registered lobbyist to contribute to or participate in a check-debiting plan which involves contributions to a political committee, and it is unlawful for the committee to knowingly receive such a contribution.

Reinhardt, Stephen, Winner/Wagner Assoc.  
(1977) 3 FPPC Ops. 83 76-091

A consulting and campaign management firm which employs a lobbyist and has a lobbyist as a principal shareholder may manage a campaign of an elected state official seeking state office, and no prohibition exists so long as the firm and its employees adhere to the following conditions: (1) the firm must receive full and adequate consideration for any services it renders to the campaign; (2) the firm, acting through its employees, must not engage in any activities which would violate the prohibitions contained in Sections 86202, 86203 and 86205. This

conclusion is applicable regardless of whether the candidate involved presently holds an elective office.

Note: The California Supreme Court in FPPC v. Superior Court (IGA), 25 Cal. 3d 33 (1979), ruled that Section 86202 which prohibited lobbyists from making political contributions is unconstitutional.

Riemer, Davis  
(2013) 21 FPPC Ops. 1 13-001

Mr. Riemer, a member of the Board of the Alameda-Contra Costa Transit District Retirement Plan (AC Transit) demonstrated sufficient cause for a limited exemption from the Act's general requirement that a member of AC Transit disclose every source of income on his Statement of Economic Interests, Form 700. The Commission considered the existence of federal privilege and privacy mandates regarding the investment practices of private individuals. The Commission concluded that limited nondisclosure in this case was justified and created no risk that undisclosed conflicts of interest might threaten the integrity of governmental decisionmaking.

Roberts, David W.  
(2004) 17 FPPC Ops. 9 04-093

Mr. Roberts requested an opinion as to whether his registered domestic partner would be considered a "spouse" for purposes of the Act's reporting and disqualification provisions. The Commission determined that since it had applied family law concepts when analyzing when a public official has a community property interest in his or her spouse's income, consideration was given to Assembly Bill 205, which extended the rights and obligations of spouses to registered domestic partners as of January 1, 2005. Therefore, the Commission concluded that, if elected, as of January 1, 2005, Mr. Roberts would have an economic interest arising from his registered domestic partnership as a result of his domestic partner's investments and real property, and resulting from any personal financial effects on his domestic partner. The Commission also stated that its conclusion is limited to the provisions of the Act, and that the issuance of this opinion did not create a marriage nor confer the status of being married upon any person.

Rosenstiel, Paul  
(2012) 20 FPPC Ops. 1 12-001

Mr. Rosenstiel, a member of the California State Teachers' Retirement System (CalSTRS), demonstrated sufficient cause for a limited exemption from the Act's general requirement that a member of CalSTRS disclose every source of income on his Statement of Economic Interests, Form 700. The Commission considered the existence of federal privilege and privacy mandates regarding the investment practices of private individuals. The

## Appendix II-16

Commission concluded that limited nondisclosure in this case was justified and created no risk that undisclosed conflicts of interest might threaten the integrity of governmental decisionmaking.

### Rotman, Doreet

(1987) 10 FPPC Ops. 1 86-001

Members of redevelopment project area committees are “public officials” of a local governmental agency and are subject to the Act’s disclosure and disqualification provisions. A statutory change requiring a two-thirds vote by legislative bodies to overrule recommendations by a project area committee makes the individuals who sit on project area committees “members” of local government agencies.

### Rundstrom, Robert, Deputy County Counsel, Yolo County

(1975) 1 FPPC Ops. 188 75-084

Filing officers have discretionary authority in assessing late fines so long as their discretion is exercised on an impartial basis. However, once the filing officer provides written notice to the tardy filer he must, beginning five days after the mailing of the notice, assess a fine of \$10 per day from the filing deadline to the date the statement is filed.

### Russel, Blanche, Holiday Inn of Hollywood

(1975) 1 FPPC Ops. 191 75-135

There are no restrictions or reporting requirements imposed on those who offer discounts to all state employees or on public officials who take advantage of such discounts if the discounts are uniformly offered to all state employees. The state government rate offered in this case has not been offered on a uniform basis and is, therefore, income to the elected officers who receive it.

### Russell, Newton, Senator

(1975) 1 FPPC Ops. 135 75-085

A legislator may not keep a contribution which was arranged by a lobbyist prior to the effective date of the Act but which was not delivered until after the effective date of the Act. By analogy to the California Gift Law, “delivery” of the contribution is required to complete the gift. Because the contribution remained in the association’s office until after the effective date of the Act, the gift was not properly completed prior to the effective date of the Act.

### Sampson, Patrick J., City Attorney, Pomona

(1975) 1 FPPC Ops. 183 75-058

When a special, general or runoff election is held less than 60 days following the primary election, candidates for an office contested in the primary election whose names do not appear on the ballot in the special, general or runoff

election are not required to file a campaign statement seven days before the special, general or runoff election. They must file campaign statements not later than 33 days before the primary election, seven days before the primary election, and 65 days after the general or runoff election. If the special, general or runoff election for an office is not held, candidates for that office who were required to file for the primary election must file a post election campaign statement not later than 65 days after the primary election.

The anniversary statement of economic interests filed in 1975 by a city councilmember who was elected to office before the effective date of the Political Reform Act should cover only the period from January 7, 1975 (the effective date of the Act) to the officeholder’s anniversary date of assuming office.

### Sankey, Iris, State Board of Equalization

(1976) 2 FPPC Ops. 157 76-071

A public official who has a 50 percent equity interest in a parcel of property which is leased to a utility company must disqualify herself from participating in the assessment of the parcel of property in which she has the interest, and she must also disqualify herself from participating in the assessment of other property owned by the company.

### Schabarum, Peter F., Los Angeles County Supervisor

(1975) 1 FPPC Ops. 95 75-041

The disclosure of the book and page number of a deed is not an acceptable method of designating the location of a principal place of residence which is required to be reported on a statement of economic interests. In order to comply with the Act, the street address or lot number or precise location of the principal place of residence must be disclosed.

Note: The requirement of reporting the location of the principal place of residence on a statement of economic interests has been repealed by legislative amendment to Section 87206.

### Sherwood, Richard E., Los Angeles County Museum of Art

(1976) 2 FPPC Ops. 168 76-038

The receipt of salary supplements and other monies from a non-profit museum corporation by employees of a county museum of art will not preclude those employees from making, participating in making or using their official position to influence most of the decisions related to the management and operation of the museum.

### Siegel, Samuel, City Attorney, Pico Rivera

(1977) 3 FPPC Ops. 62 76-054

Members of a water development corporation, a non-profit corporation formed for the purpose of providing a financing

## Appendix II-17

mechanism for acquiring portions of the water system serving a city, are public officials because the water development corporation is a local government agency. The following criteria have been developed for determining whether a non-profit corporation is a local government agency: (1) whether the impetus for formation of the corporation originated with a government agency; (2) whether it is substantially funded by, or its primary source of funds is, a government agency; (3) whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and (4) whether the corporation is treated as a public entity by other statutory provisions.

Sloan, Edwin F., California Hotel and Motel Assn.  
(1976) 2 FPPC Ops. 105 75-169

The fire safety coalition of California is not an industry, trade or professional organization within the meaning of Section 86109(b)(3), but rather a group of organizations with a common economic interest within the meaning of Section 86109(b)(4) and is therefore not required to list the names of its members on lobbyist employer reports. Dues or similar payments for membership in a bona fide association, some portion of which is used to influence administrative or legislative action, need not be included in determining whether a person must file reports pursuant to Section 86108(b). In this case, however, because the coalition is not a bona fide association, payments to it are not "dues or similar payments for membership in a bona fide association," and these payments, therefore, must be counted in determining whether the coalition member is required to file reports pursuant to Section 86108(b). Any organization already filing reports pursuant to Section 86108 must report the pro rata share of payments that the coalition utilizes to influence legislative or administrative action if that pro rata share is \$25 or more.

Smithers, Charles L., San Diego Gas & Electric Co.  
(1975) 1 FPPC Ops. 42 75-028

It is prohibited for four lobbyists to host one dinner per month for legislators, even though no lobbyist spends more than \$10 per legislator per month because the dinners are arranged by the lobbyists jointly and the lobbyists would therefore be arranging for the making of a gift by other persons aggregating more than \$10 per month per person.

Sobieski, Ken, Long Beach Voter Registration Committee  
(1976) 2 FPPC Ops. 73 75-204

The costs of distributing a voter registration mass mailing are expenditures when the materials are distributed by an official committee of a political party.

If 200 or more of voter registration materials are sent in a calendar month, the mailing is a "mass mailing." Moreover, the costs of distributing the mailing are expenditures because the materials are distributed by an official committee of a political party. Accordingly, the mass mailing must be identified and mailed as required by Section 84305. However, the mass mailing is not "in support of or in opposition to a state candidate," and a copy need not be mailed to the Commission.

Note: The requirement of sending copies of mass mailings to the Fair Political Practices Commission has been repealed by legislative amendment to Section 84305. A mass mailing is now over 200 pieces.

Solis, Hilda, L., State Senator  
(2000) 14 FPPC Ops. 7 O-00-104

An elected state officer may accept a silver lantern worth from \$8,000 - \$10,000 as the recipient of the Profile in Courage Award from the John F. Kennedy Library Foundation, a nonprofit organization. The award meets the exception to the restrictions on gifts under FPPC Regulation 18946.5, because the award was won in a bona fide nationwide competition among statesmen unrelated to the recipient's status as a California official.

Spellman, John Stephen  
(1975) 1 FPPC Ops. 16 75-026

A legislative official's participation in a tour of a nuclear power plant, arranged at the official's request, falls under the "informational material" exception of "gift," because informational materials include both tangible materials and intangible services which supply information in a useful form.

The entertainment of a lobbyist by a public official is not reportable.

Spero, Robert K., Addresses Unlimited  
(1975) 1 FPPC Ops. 64 75-054

No filing requirements would be imposed on a company which provides mailing services to the Legislature by virtue of the fact that the company employs a sales representative who is also a registered lobbyist.

St. Croix, John, Ethics Commission City and County of San Francisco  
(2005) 18 FPPC Ops. 1 04-226

For elections in San Francisco using the Ranked-Choice Voting system, mailings funded and sent by a candidate (or multiple, coordinating candidates) urging voters to rank one candidate in the first-choice position and two other candidates as the second and third choices in an election where there is only one winner are not prohibited by

## Appendix II-18

section 85501. They are not independent expenditures to support or oppose other candidates if the mailings are sent for the purpose of promoting the mailing candidate's own candidacy in a single-seat election and not the candidacy of another. The applicability of section 85501 is dependent on whether the mailing candidate is using the mailing as a strategy to promote his or her own candidacy. Where the purpose of the expenditure was to support or oppose the other candidates in the mailing, section 85501 would apply and the mailing would be prohibited.

### Stern, Ralph, The Big Five Association of Public School Districts

(1975) 1 FPPC Ops. 59 75-040

An association of five large school districts which is composed of members of their boards of education and their superintendents is not a lobbyist but is engaged in lobbying activity and must report under Section 86108(b).

### Stone, Peter G., City Attorney, San Jose

(1977) 3 FPPC Ops. 52 77-003

Free air transportation provided to a public official may be a gift to the official's agency, rather than to the official if the agency accepts the gift in accordance with specified procedures. To determine the value of a gift of free air transportation provided to an official, the official should attempt to estimate the fair market value of the trip. Depending on the circumstances, the official may utilize the commercial air rate or the charter rate divided by the number of passengers as guideposts in estimating the value of the flight. If the filer believes that this amount standing alone is misleading, he may attach an explanation to his statement of economic interests. Providing free transportation to an official may be a gesture of neighborliness or friendliness, but will be a "gift" within the meaning of the Act if the costs of the trip are deductible as a business expense, if the donor has or will have business before the official, or if the transportation is normally the subject of an economic transaction.

### Stull, John, State Senator

(1976) 2 FPPC Ops. 110 75-049

Once a person is a candidate, the mass mailing sender identification provisions apply regardless of whether the person has officially made a declaration of candidacy. Nothing in the Act prevents a candidate from delaying the declaration of candidacy to the 83rd day prior to the primary election, the last possible day on which a declaration must be filed.

### Taylor, A. Lavar

(2004) 17 FPPC Ops. 1 04-103

A. Lavar Taylor, an unsuccessful candidate for Governor in the October, 2003 statewide special election, sought

exemption from the requirement that he identify on his Statement of Economic Interests (Form 700) certain clients of his wholly owned law firm. His request was based on the unusually sensitive nature of his law practice, which specialized in "tax controversies," a circumstance under which public identification of certain clients might expose them to an enhanced risk of investigation and prosecution by state and federal taxing authorities. Regulation 18740 provides that an official need not disclose under Government Code section 87207(b) the name of a person who paid fees or made payments to a business entity, if disclosure of the person's name would violate a legally recognized privilege under California law. The Commission concluded that, under the peculiar circumstances of this case, the identification of some of these clients would violate the statutory lawyer-client privilege, and that Mr. Taylor was entitled to the disclosure exemption provided under Regulation 18740.

### Thomas, William, Assemblyman

(1977) 3 FPPC Ops. 30 76-085

A parking pass received by an official for use while on official business would be a gift if it is used for personal purposes unrelated to the official's duties.

The value of the gift will be determined by the value derived from the use of the pass for personal purposes and the gift will be reportable if its value is \$25 or more.

If used only in connection with official business a parking pass given by a state agency to a legislator would not constitute a gift. If used for personal purposes, however, it would be a gift and would be reportable if its value is \$25 or more.

NOTE: The threshold for reporting gifts was increased by legislation from \$25 or more to \$50 or more.

### Thorner, Tom, Marin Municipal Water District

(1975) 1 FPPC Ops. 198 75-089

Directors of a municipal water district who hold significant interests in business entities which may be affected by the district's decisions on requests for variances and the lifting of a moratorium on new water connections must disqualify themselves when the decisions will have a foreseeable material financial effect, distinguishable from their effect on the public generally, on the directors' interests.

### Tobias, Kathryn J., California Integrated Waste Management Board

(1999) 13 FPPC Ops. 5 0-99-156

The spouse of a member of the California Integrated Waste Management Board owns stock in companies that may be subject to a board program that sets recycling rates. Under the Public Resources Code, the board is the only agency authorized to set the recycling rates, and must do so

## Appendix II-19

annually. At the time the recycling rates were to be set, the six-member board had two vacancies. Out of caution, the potentially disqualified member abstained from the decision to set the recycling rates. By abstaining, the board lacked the quorum necessary to set the recycling rates.

Under the “Rule of Legally Required Participation,” which is a narrow exception to the Political Reform Act’s conflict of interest rules, the member of the board may participate in the decision when there is no alternative source of decision. Here, there is no alternative source of decision because the decision cannot be delayed; the board is the only body authorized to make the decision; there is no indication when the vacancies will be filled; and the board has no authority to fill the vacant positions. This opinion is limited to the facts described therein.

### Torres, Art, Assemblyman

(1976) 2 FPPC Ops. 31 75-163

Wedding gifts should be considered the property of both spouses unless they are peculiarly adaptable to the personal use of one spouse or specifically and unequivocally intended for use by one spouse. Therefore, wedding gifts may be reportable by the official even if they were received by the spouse prior to the wedding. The official must disclose only those gifts in which his interest exceeds the \$25 threshold for reporting gifts. Therefore, only gifts, the total value of which is \$50 or more will be reportable. When a single gift worth \$50 or more is given by many donors, it is sufficient to describe in general terms those who gave it. The official must only report the name of each donor who contributed \$50 or more.

### Tuteur, John, Supervisor, Napa County

(1976) 2 FPPC Ops. 110 75-071

Payments made from personal funds by a public official for a newsletter to his or her constituents do not constitute an expenditure so long as the newsletter makes no reference to an upcoming election or to the official as a candidate.

### Valdez, Joyce, Golden Circle of California

(1976) 2 FPPC Ops. 21 75-167

A copy of a mass mailing soliciting membership dues or campaign contributions, which money will be used in support of state candidates, must be sent to the Commission.

Note: The requirement of sending copies of mass mailings to the Fair Political Practices Commission has been repealed by legislative amendment to Section 84305.

### Vonk, James J., State Compensation Insurance Fund (1981) 6 FPPC Ops. 1 80-008

The State Compensation Insurance Fund is an agency within the meaning of Section 87300 and it makes governmental decisions within the meaning of Sections 87100 and 87302(a).

### Wallace, L. T., Director of the Department of Food and Agriculture

(1975) 1 FPPC Ops. 118 75-087

Payments made by Del Monte Corp. to an employee of the Department of Food and Agriculture as compensation for research conducted on the employee’s personal time and not directly related to his work for the agency are not reportable by Del Monte because the employee is not an agency official.

Salary payments by a lobbyist employer to a state employee retained on a part-time basis are not reportable because the employee is not an agency official since he does not participate in any administrative action.

### Welsh, Melinda, Valley Oak Institute for Voter Registration

(1978) 4 FPPC Ops. 78 78-011

Organizations do not incur reporting obligations under the Political Reform Act by reason of nonpartisan voter registration activities.

### Willmarth, Francis, California Democratic Council

(1976) 2 FPPC Ops. 130 75-188

Dues received by political clubs whose primary purpose is other than supporting candidates and/or ballot measures are not contributions unless the dues are “earmarked” for the making of contributions or expenditures. A payment is “earmarked” when the donor knows or has reason to know that the payment will be used to make contributions or expenditures.

### Witt, John W., City Attorney, San Diego

(1975) 1 FPPC Ops. 1 75-044

Local government agencies are “persons” within the meaning of Section 86108, and local government agencies which employ lobbyists or which make payments to influence legislative or administrative action of \$250 or more in value in any month, unless all of the payments are of the type described in Section 82045(c), are required to file statements under Section 86109.

Note: Legislation has amended the Act so that only persons who spend \$5,000 in a quarter (rather than \$250 a month) need file.

Appendix II-20

Witt, John W., City Attorney, San Diego  
(1975) 1 FPPC Ops. 145 75-057

A gift of food and beverages to another lobbyist is reportable if it is made in connection with influencing legislative or administrative action. The lobbyist's employer must report the total amount of the payment to the lobbyist but need not duplicate the lobbyist's itemization of expenses.

Wood, William P., Chief Counsel, Secretary of State  
(1999) 13 FPPC Ops. 21 O-99-315

For purposes of imposing penalties for late filing of a statement or report under Section 91013 of the Act, the paper version and the electronic version of a statement or report are each considered to be an original. The deadlines set out in Section 91013(a) apply to both the original electronic filing and the original paper filing submitted by a file.

Zenz, Robert L., California State Employees Assn.  
(1975) 1 FPPC Ops. 195 75-156

An employee of a legislative advocate who is supervised by a lobbyist may not make or arrange a contribution or gift which the lobbyist would be prohibited from making unless it is clear that the contribution or gift is not intended to further the goals of the lobbyist and is outside the scope of the agency relationship.

Note: The California Supreme Court in FPPC v. Superior Court (IGA), 25 Cal. 3d 33 (1979), ruled that Section 86202 which prohibited lobbyists from making political contributions is unconstitutional.



This page intentionally left blank

**Appendix III**

Government Code Sections 1090 – 1097.5,  
following the passage of AB 1090 (Stats.  
2013, Chapter 650; effective Jan. 1, 2014)

This page intentionally left blank

**SEC. 1090.**

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

**SEC. 1090.1.**

No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.

**SEC. 1091.**

(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in

computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to

#### Appendix III-4

the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of, or a person having an ownership interest of, 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, architect, or planner employed by a consulting engineering, architectural, or planning firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

(15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

(A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.

(B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.

(C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

(16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:

(A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.

(B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.

(C) The person has recused himself or herself from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which he or she is a member.

(D) The contract implements a program authorized by the Public Utilities Commission.

(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

#### **SEC. 1091.1.**

The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.

#### **SEC. 1091.2.**

Section 1090 shall not apply to any contract or grant made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a local workforce investment

## Appendix III-5

board or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

### **SEC. 1091.3**

Section 1090 shall not apply to any contract or grant made by a county children and families commission created pursuant to the California Children and Families Act of 1998 (Division 108 (commencing with Section 130100) of the Health and Safety Code), except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

### **SEC. 1091.4.**

(a) As used in Section 1091, "remote interest" also includes a person who has a financial interest in a contract, if all of the following conditions are met:

(1) The agency of which the person is a board member is a special district serving a population of less than 5,000 that is a landowner voter district, as defined in Section 56050, that does not distribute water for any domestic use.

(2) The contract is for either of the following:

(A) The maintenance or repair of the district's property or facilities provided that the need for maintenance or repair services has been widely advertised. The contract will result in materially less expense to the district than the expense that would have resulted under reasonably available alternatives and review of those alternatives is documented in records available for public inspection.

(B) The acquisition of property that the governing board of the district has determined is necessary for the district to carry out its functions at a price not exceeding the value of the property, as determined in a record available for public inspection by an appraiser who is a member of a recognized organization of appraisers.

(3) The person did not participate in the formulation of the contract on behalf of the district.

(4) At a public meeting, the governing body of the district, after review of written documentation, determines that the property acquisition or maintenance and repair services cannot otherwise be obtained at a reasonable price and that the contract is in the best interests of the district,

and adopts a resolution stating why the contract is necessary and in the best interests of the district.

(b) If a party to any proceeding challenges any fact or matter required by paragraph (2), (3), or (4) of subdivision (a) to qualify as a remote interest under subdivision (a), the district shall bear the burden of proving this fact or matter.

### **SEC. 1091.5.**

(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.

(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the

## Appendix III-6

contract, and provided further that this interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is “noncompensated” even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

(9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(11) Except as provided in subdivision (b), that of an officer or employee of, or a person having less than a 10-percent ownership interest in, a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower, depositor, debtor, or creditor.

(12) That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, “agreement” includes contracts and grants, and “park,” “natural lands,” and “historical resources” shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the

public agency may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

(13) That of an officer, employee, or member of the Board of Directors of the California Housing Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:

(A) The loan product or program is or may be originated by any lender approved by the agency.

(B) The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.

(14) That of a party to a contract for public services entered into by a special district that requires a person to be a landowner or a representative of a landowner to serve on the board of which the officer or employee is a member, on the same terms and conditions as if he or she were not a member of the body or board. For purposes of this paragraph, “public services” includes the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

### **SEC. 1091.6.**

An officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain shall not vote on any matter affecting that organization.

### **SEC. 1092.**

(a) Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.

(b) An action under this section shall be commenced within four years after the plaintiff has discovered, or in the

## Appendix III-7

exercise of reasonable care should have discovered, a violation described in subdivision (a).

### **SEC. 1092.5.**

Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.

### **SEC. 1093.**

(a) The Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any state, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof.

(b) An individual shall not aid or abet the Treasurer, Controller, a county or city officer, or their deputy or clerk in violating subdivision (a).

(c) This section shall not apply to evidences of indebtedness issued to or held by an officer, deputy, or clerk for services rendered by them, nor to evidences of the funded indebtedness of the state, county, or city.

### **SEC. 1094.**

Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such officers to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who wilfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

### **SEC. 1095.**

Officers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

### **SEC. 1096.**

Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause

the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may proceed to settle, audit, or pay the account as if no affidavit had been filed.

### **SEC. 1097.**

(a) Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of those laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

(b) An individual who willfully aids or abets an officer or person in violating a prohibition by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

### **SEC. 1097.1.**

(a) The Commission shall have the jurisdiction to commence an administrative action, or a civil action, as set forth within the limitations of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, against an officer or person prohibited by Section 1090 from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who violates any provision of those laws or who causes any other person to violate any provision of those laws.

(b) The Commission shall not have jurisdiction to commence an administrative or civil action or an investigation that might lead to an administrative or civil action pursuant to subdivision (a) against a person except upon written authorization from the district attorney of the county in which the alleged violation occurred. A civil action alleging a violation of Section 1090 shall not be filed against a person pursuant to this section if the Attorney General or a district attorney is pursuing a criminal prosecution of that person pursuant to Section 1097.

(c) (1) The Commission's duties and authority under the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) to issue opinions or advice shall not be applicable to Sections 1090, 1091, 1091.1, 1091.2,



Appendix III-8

1091.3, 1091.4, 1091.5, 1091.6, or 1097, except as provided in this subdivision.

(2) A person subject to Section 1090 may request the Commission to issue an opinion or advice with respect to his or her duties under Section 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5, and 1091.6. The Commission shall decline to issue an opinion or advice relating to past conduct.

(3) The Commission shall forward a copy of the request for an opinion or advice to the Attorney General's office and the local district attorney prior to proceeding with the advice or opinion.

(4) When issuing the advice or opinion, the Commission shall either provide to the person who made the request a copy of any written communications submitted by the Attorney General or a local district attorney regarding the opinion or advice, or shall advise the person that no written communications were submitted. The failure of the Attorney General or a local district attorney to submit a written communication pursuant to this paragraph shall not give rise to an inference that the Attorney General or local district attorney agrees with the opinion or advice.

(5) The opinion or advice, when issued, may be offered as evidence of good faith conduct by the requester in an enforcement proceeding, if the requester truthfully disclosed all material facts and committed the acts complained of in reliance on the opinion or advice. Any opinion or advice of the Commission issued pursuant to this subdivision shall not be admissible by any person other than the requester in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any opinion or advice that it issues pursuant to this subdivision a statement that the opinion or advice is not admissible in a criminal proceeding against any individual other than the requester.

(d) Any decision issued by the Commission pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) shall not be admissible in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any decision it issues pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) a statement that the decision applies only to proceedings brought by the Commission.

(e) The Commission may adopt, amend, and rescind regulations to govern the procedures of the Commission consistent with the requirements of this section and Sections 1097.2, 1097.3, 1097.4 and 1097.5. These regulations shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

(f) For purposes of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, "Commission" means the Fair Political Practices Commission.

**SEC. 1097.2.**

(a) Upon the sworn complaint of a person or on its own initiative, the Commission shall investigate possible violations of Section 1090, as provided in Section 1097.1. After complying with subdivision (b) of Section 1097.1, the Commission shall provide a written notification to the person filing a complaint in the manner described in Section 83115.

(b) The Commission shall not make a finding of probable cause to believe Section 1090 has been violated unless the Commission has notified the person who is alleged to have violated Section 1090 in the manner described in Section 83115.5.

(c) If the Commission determines there is probable cause to believe Section 1090 has been violated, it may hold a hearing to determine if a violation has occurred, subject to the requirements of subdivision (b) of Section 1097.1 and in the manner described in Section 83116.

(d) If the Commission rejects the decision of an administrative law judge made pursuant to Section 11517, the Commission shall state the reasons in writing for rejecting the decision, as required by Section 83116.3.

(e) The Commission shall have all of the subpoena powers provided in Section 83118 to assist in the performance of the Commission's duties under this section.

(f) The Commission may refuse to excuse any person from testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Commission notwithstanding an objection that the testimony or evidence required of the person may tend to incriminate the person. A person who is compelled, after having claimed the privilege against self-incrimination, to testify or produce testimonial evidence, shall not have that testimony or the testimonial evidence the person produced used against that person in a separate and subsequent prosecution. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The Commission shall not compel any person to testify or produce testimonial evidence after the person has claimed the privilege against self-incrimination unless the Commission has obtained written authorization from the Attorney General and the district attorney of the county in which the alleged violation occurred.

(g) The Commission shall not commence an administrative action pursuant to this section against a person who is subject to Section 1090 alleging a violation of that section if the Commission has commenced a civil action pursuant to Section 1097.3 against that person for the same violation. For purposes of this subdivision, the

commencement of the administrative action shall be the date of the service of the probable cause hearing notice, as required by subdivision (b), upon the person alleged to have violated Section 1090.

(h) An administrative action brought pursuant to this section shall be subject to the requirements of Section 91000.5.

**SEC. 1097.3.**

(a) Subject to the requirements of Section 1097.1, the Commission may file a civil action for an alleged violation of Section 1090. A person held liable for such a violation shall be subject to a civil fine payable to the Commission for deposit in the General Fund of the state in an amount not to exceed the greater of ten thousand dollars (\$10,000) or three times the value of the financial benefit received by the defendant for each violation.

(b) The Commission shall not commence a civil action pursuant to this section alleging a violation of Section 1090 if the Commission has commenced an administrative action pursuant to Section 1097.1 against the person for the same violation.

(c) A civil action brought by the Commission pursuant to this section shall not be filed more than four years after the date the violation occurred.

**SEC. 1097.4.**

In addition to any other remedies available, the Commission may obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to Section 1097.1, 1097.2, or 1097.3. Penalties shall be collected in accordance with Section 91013.5.

**SEC. 1097.5.**

(a) If the time for judicial review of a final Commission order or decision issued pursuant to Section 1097.2 has lapsed, or if all means of judicial review of the order or decision have been exhausted, the Commission may apply to the clerk of the superior court for a judgment to collect the penalties imposed by the order or decision, or the order as modified in accordance with a decision on judicial review.

(1) The application, which shall include a certified copy of the order or decision, or the order as modified in accordance with a decision on judicial review, and proof of service of the order or decision, constitutes a sufficient showing to warrant issuance of the judgment to collect the penalties. The clerk of the court shall enter the judgment immediately in conformity with the application.

(2) An application made pursuant to this section shall be made to the clerk of the superior court in the county where the monetary penalties, fees, or civil penalties were imposed by the Commission.

(3) A judgment entered in accordance with this section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court in which it is entered.

(4) The Commission may bring an application pursuant to this section only within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.

(b) The remedy available under this section is in addition to those available under Section 1097.4 or any other law.