



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Cardenas, Hatch, Hayward, and Wilson

From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel

Subject: Advice Letter Report and Commission Review

Date: June 26, 2020

The following advice letters have been issued since the May 29, 2020, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the July 2020 Commission Meeting. Full copies of FPPC Advice Letters, including those listed below, are available at:

<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Campaign

Thomas Mackel

[I-20-053](#)

There are no additional disclosure requirements for using the postal service's non-integrated Informed Delivery service because the mailer appearing in the recipient's email is simply a scan of the item arriving in their mailbox that day. However, because senders can alter the mailer by utilizing the postal services integrated Informed Delivery campaign service in such a way that is not simply a scan of what the recipient will be receiving in the mail, there could be additional disclosure requirements for senders using integrated Informed Delivery.

Conflict of Interest Code

Kenneth Hayashida

[A-20-020](#)

Despite being formed as a condition of the sale of several nonprofit health facilities to a private business, an all-volunteer community advisory board responsible for ensuring continuity of service and culturally sensitive care at elder care facilities is not a government agency under the Act, since it receives no government funding, is not treated as a public agency by other statutory provisions, and primarily performs services that a public agency has not traditionally performed. The community advisory board is therefore not required to adopt a conflict of interest code or be included within an existing code.

Conflict of Interest

Christopher J. Diaz

[A-20-039](#)

The Act's conflict of interest provisions prohibit a city councilmember from taking part in governmental decisions relating to a project to improve and maintain a publicly accessible pathway located on the real property of a private country club located in the city because the

councilmember is a member of the country club, with an ownership interest in the club's property, and it is reasonably foreseeable that those decisions would have a material financial effect on the councilmember's financial interest in the country club's real property.

Shawn Hagerty[A-20-066](#)

The Act's conflict of interest provisions do not prohibit either a city councilmember who owns a local insurance brokerage, or a city councilmember who works for a retail mortgage lender, from taking part in decisions relating to a residential development project located in the city because it is not reasonably foreseeable that those decisions would have a material financial effect on either the insurance brokerage or the mortgage lender.

Jolie Houston[A-20-070](#)

A mayor does not have a conflict of interest as the result of her position as Chief Executive Officer with a Joint Powers Authority that operates in a neighboring county providing electrical power, because "income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction or salary from a governmental agency. Further, there is no indication that the decision regarding a local ordinance would have a foreseeable personal financial effect on the official.

Mark D. Hensley[I-20-077](#)

A city councilmember may be disqualified under the Act from taking part in a decision involving amendments to a Downtown Specific Plan, including rezoning decisions, where the official leases commercial real property, which he uses as a commercial office as a real estate agent, in the Downtown Specific Plan area. Without additional details regarding the underlying projects, however, a definitive determination cannot be made. In the event that the city councilmember, and other councilmembers, were disqualified, such that a quorum could not be convened with respect to the decisions, Regulation 18705 provides the process by which an otherwise disqualified public official may take part in decisions when their participation is legally required.

Mass Mailing**Shawn Hagerty**[A-20-063](#)

The Act's mass mailing provisions prohibit a city's chamber of commerce from publishing and distributing a mailing which includes the name, title and photograph of an elected official where the city contracts with the chamber to purchase advertising space for events and news in the quarterly publication because the city expressly funds the mailing in an amount greater than \$50 in violation of Sections 89001 and 89002.

Revolving Door**Patrick Chung**[A-20-061](#)

Where a former state treasurer's participation in a cannabis banking report and study was of a general policy nature, he is not prohibited under the permanent ban from representing a private company seeking a bill pay license relating to cannabis industry payments from a department in a separate agency.

Section 1090

Lance Olson

[A-19-221](#)

For a city with a contract with a private company to provide a contracting management program, Section 1090 will prohibit subsequent contracts by the city with other independent contractors, in which the company has an interest in other than the subscription fee paid by the city, if the company is in a position to influence future contracts between the city and the independent contractors who use the program. Similarly, the Act's conflict of interest provision will apply if any company employee qualifies as a consultant and public official under the Act.

Joshua Nelson & Mark Dowd

[A-20-059](#)

Where an engineering firm which lacks the authority to contract on behalf of a public agency has previously advised the agency by providing preliminary design services, and that work is overseen by the agency's chief engineer, neither the firm nor its subcontractors are making or participating in making a subsequent contract for the final design while acting in an official capacity, and are not prohibited by Section 1090 from bidding on this subsequent contract.

Tom Schroeter

[A-20-062](#)

Under the Act and Section 1090, a city councilmember may take part in decisions related to a real property development, despite the developer having pledged \$250,000 to the councilmember's non-profit hospital employer, where the councilmember works raising funds for hospital projects. To the extent the pledged donation is in no way contingent upon any particular outcome for a governmental decision or a successful development process, and her employment position and income would be unaffected by securing the donation, governmental decisions pertaining to the development would not have a reasonably foreseeable, material financial effect on the councilmember's source of income or personal finances under the Act, and the councilmember's source of income would not be implicated in any contract between the city and the developer under Section 1090.

Glen R. Googins

[A-20-065](#)

Under the Act and Section 1090, a city councilmember has a disqualifying financial interest in a contract between the city and bank for a loan to purchase firefighting equipment, where that councilmember's spouse works for and owns stock in the bank. However, because the bank has more than 10 other employees, and the councilmember's husband (1) has worked for the bank for more than three years, (2) owns less than 3 percent of the bank's stock, (3) is not a bank officer or director, and (4) did not take part in formulating the bid for the contract, the councilmember's financial interest is "remote" under Section 1091(b)(2) and the city may contract with the bank if the disqualified councilmember properly recuses herself.