

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11
12 In the Matter of) FPPC No. 11/096
13)
14 CHRIS CARLOTTI,) STIPULATION, DECISION and
Respondent.) ORDER
15)
16)

17
18 Complainant, the Fair Political Practices Commission, and respondent Chris Carlotti
19 (“Respondent”) agree that this Stipulation will be submitted for consideration by the Fair Political
20 Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by
4 participating in nine governmental decisions in which he knew or had reason to know he had a financial
5 interest, in violation of Government Code section 87100 (Count 1).

6 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
7 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of \$3,000. A cashier's check from Respondent in said amount, made payable to the "General Fund of
11 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
12 to be held by the State of California until the Commission issues its decision and order regarding this
13 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
14 become null and void, and within fifteen (15) business days after the Commission meeting at which the
15 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be
16 reimbursed to Respondent. Respondent further stipulate and agree that in the event the Commission
17 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
18 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
19 consideration of this Stipulation.

20
21 Dated: _____

Gary Winuk, Enforcement Chief,
On behalf of the
Fair Political Practices Commission

22
23
24 Dated: _____

Chris Carlotti, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties "In the Matter of Chris Carlotti" FPPC No. 11/096,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

Intentionally left blank

EXHIBIT 1

INTRODUCTION

This matter arose out of a California State Auditor Report in June 2010 claiming that a supervisor with the Department of Water Resources (“DWR”) received gifts from a vendor as a reward for awarding contracts to the vendor. The Fair Political Practices Commission’s (the “Commission”) Enforcement Division (“Enforcement Division”) investigation into the matter revealed that on February 16, 2008, and February 17, 2008, Respondent Chris Carlotti (“Respondent”), an employee of DWR, accepted approximately \$1,050 in gifts from a vendor, and within the next two months participated in nine DWR decisions in which the same vendor was directly involved in, in violation of the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: Between February 26, 2008, and April 7, 2008, Respondent Chris Carlotti, a California Department of Water Resources employee, participated in making nine governmental decisions in which he knew or had reason to know he had a financial interest, by listing Valley Parts Service as the “Desired Vendor” on nine purchase requisitions for parts totaling \$7,028.25, when Valley Parts Service was the source of gifts totaling approximately \$1,050 received by Respondent Chris Carlotti on February 16, 2008 and February 17, 2008, in violation of Government Code section 87100.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

Conflict-of-Interest

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

In furtherance of this goal, Section 87100 prohibits public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on a recognized economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include an employee of a state agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review. (Regulation 18702.2.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. In 2008, a public official had a financial interest in any donor of a gift or gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision was made. (Sections 87103, subd. (e), and 89503, subd. (c); Regulation 18940.2.)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.1, subdivision (a), a person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official’s agency when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request, or; (2) is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person. (Regulation 18704.1, subd. (a).)

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under Regulation 18705.4, subdivision (a), if a source of gifts is directly involved in a governmental decision, *any* reasonably foreseeable financial effect on the source of the gift to the public official is material.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

² Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

SUMMARY OF THE FACTS

1. Respondent was a Public Official:

At all times relevant to this matter, Respondent was an employee of DWR, and thus a public official under the Act.

2. Respondent Participated in a Governmental Decision:

One of Respondent's duties as an employee of DWR was to requisition parts needed to maintain and repair automotive, nautical, heavy construction and maintenance equipment. His requisitions were submitted to a buyer, who sought the lowest bid for the parts requested and made the purchases. By submitting a requisition to the buyer, Respondent participated in a government decision to contract with a vendor for those parts.

3. Respondent had an Economic Interest:

On or about February 16, 2008, Respondent accepted at least two gifts from Valley Parts Service, a Napa Auto Parts dealer. Respondent accepted round-trip airfare from San Jose, California, to Orlando, Florida, departing on February 16, 2008, and returning on February 18, 2008, which Valley Parts Service paid approximately \$750 for. Respondent also accepted an admission ticket to the Daytona 500 Race on February 17, 2008, including admission to the Front-Stretch Hospitality Village, which Valley Parts Service paid approximately \$300 for.

Because Respondent accepted gifts aggregating \$390 or more in value from Valley Parts Services on February 16, 2008, and again on February 17, 2008, Respondent had an economic interest in Auto Parts Services from February 16, 2008, until February 16, 2009.

4. Respondent's Economic Interest was Directly Involved in the Governmental Decision:

Between February 26, 2008, and April 7, 2008, Respondent listed Valley Parts Services as the "Desired Vendor" for parts on nine separate requisitions. Each time that Respondent listed Valley Parts Services as the "Desired Vendor" on a requisition for parts, he participated in a government decision by recommending that DWR award the contract to Valley Parts Services without seeking lower bids.

Because Valley Parts Services was the subject of each of the governmental decisions, it was directly involved in each of the governmental decisions. Because Valley Parts Services was also an economic interest of Respondent's at the time of each of the governmental decisions, Respondent had an economic interest directly involved in each of the governmental decisions.

5. Any Reasonably Foreseeable Financial Effect on Valley Parts Service Meets the Materiality Standard:

Because Valley Parts Services was the source of the gifts to Respondent, *any* reasonable foreseeable financial effect on Valley Parts Services meets the materiality standard under Regulation 18705.4, subdivision (a).

6. It was Substantially Likely that the Government Decision would have a Financial Effect on Respondent's Economic Interest:

It was reasonably foreseeable, at each of the nine different times that Respondent submitted a requisition for parts with Valley Parts Service as the "Desired Vendor", that the government decision would have a material financial effect on Valley Parts Service, because it was certain that whether to contract with Valley Parts Services or with another vendor would either increase or not increase Valley Parts Service's revenue, and therefore certainly have a financial effect on Valley Parts Service.

COUNT 1

Participating in a Governmental Decision Concerning the Donor of Gifts Accepted in Excess of the Annual Gift-Limit

Between February 26, 2008, and April 7, 2008, Respondent, in his capacity as an employee of DWR, participated in making nine governmental decisions in which he knew or had reason to know he had a financial interest, by listing Valley Parts Service as the "Desired Vendor" on nine purchase requisitions for parts totaling \$7,028.25, when Valley Parts Service was the source of gifts totaling approximately \$1,050 received by Respondent on February 16, 2008, and February 17, 2008, in violation of Section 87100.

As a result of Respondent's aforementioned actions, DWR awarded Valley Parts Service eight contracts for a total of \$6,821.18. On November 4, 2011, Respondent retired from DWR.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Participating in a government decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict-of-interest. Recent penalties concerning conflict-of-interest violations include:

In the Matter of Dr. Thomas Holden, FPPC No. 12/026: In August 2012, the Commission fined a mayor \$3,500 for voting to twice on agenda items related to a contract between the city and a source of a gift to the respondent over the gift limit to build a multiplex theater and a park. The respondent took full responsibility for his actions and cooperated with the Enforcement Division by agreeing to an early resolution of the matter.

In the Matter of Louie Martinez, FPPC No. 09/261: In June 2011, the Commission fined a project manager of a city \$4,000 for approving an invoice for payment of approximately \$86,000 to a company that provided him with gifts over the gift limit. The respondent took full responsibility of his actions and cooperated with the Enforcement Division by agreeing to an early resolution of the matter.

In this matter, Respondent has no history of violating the Act, and has cooperated with the Enforcement Division by agreeing to an early resolution of the matter. Additionally, Respondent retired from DWR in 2011 and is no longer a public official. Therefore a \$3,000 fine is recommended.

PROPOSED PENALTY

Accordingly, the imposition of an administrative fine of \$3,000 is recommended.

* * * * *