

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 **RICHARD HOVDEN**

13 Respondent.

FPPC No. 13/239

14 **STIPULATION, DECISION, AND ORDER**

15
16
17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission (Commission), and respondent Richard
19 Hovden (Respondent) hereby agree that this Stipulation will be submitted for consideration by the Fair
20 Political 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 by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondent.

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

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 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 failing to
4 timely report gifts of \$50 or more in violation of Government Code sections 87300 and 87302, and
5 accepting gifts over the applicable gift limits in violation of Government Code section 89503,
6 subdivision (c), all as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference
7 as 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 an administrative penalty in the total amount of
10 Three Thousand Dollars (\$3,000). Respondents submitted with this Stipulation a cashier's check from
11 Respondent in said amount, made payable to the "General Fund of the State of California," as full
12 payment of the administrative penalty that shall be held by the State of California until the Commission
13 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
14 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
15 after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent
16 in connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates
17 and agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before
18 the Commission becomes necessary, neither any member of the Commission, nor the Executive
19 Director, shall be disqualified because of prior consideration of this Stipulation.

20
21
22 Dated: _____
23 Gary S. Winuk, on behalf of the Enforcement Division
24 Fair Political Practices Commission

25
26 Dated: _____
27 Richard Hovden

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Richard Hovden,” FPPC No. 13/239, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Ann Ravel, Chair
Fair Political Practices Commission

Intentionally left blank

EXHIBIT 1

INTRODUCTION

Respondent Richard Hovden (“Respondent”) served as the Park Planning and Development Manager for the Recreation and Parks Department of the City of Santa Rosa from 2007 through February 2013. As a designated employee, Respondent was required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).¹ Respondent failed to report gifts over \$50 from Bennett Valley Municipal Golf Course (“Bennett Valley”) on his annual SEIs for 2008 through 2011. Also, the gifts received by Respondent exceeded the applicable gift limits in 2009, 2010, 2011 and 2012.

For the purposes of this Stipulation, Respondent’s violations of the Act are as follows:

- COUNT 1:** Respondent failed to timely report gifts from Bennett Valley in the amount of \$50 or more on his annual SEI for 2008, 2009, 2010, and 2011, in violation of Sections 87300 and 87302.
- COUNT 2:** Respondent accepted gifts in excess of the gift limit from Bennett Valley in 2009, 2010, 2011, and 2012, in violation of Section 89503, subdivision (c).

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a Conflict of Interest Code. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter. (Section 87300.)

Disclosure Provisions

Section 82019, subdivision (a), defines “designated employee” to include any member of any agency whose position is “designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” Each Conflict of Interest Code shall require that each designated employee file annual statements, disclosing reportable investments, business

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.

positions, interests in real property and sources of income. (Section 87302.) “Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or gift. (Section 82030, subd. (a).)

Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code and that Code shall have the force of law. In addition, any violation of that Code by a designated employee shall be a violation of the Act. Section 87302, subdivision (b), provides that an agency’s Conflict of Interest Code must require each designated employee of the agency to file annual statements of economic interests at a time specified in the agency’s conflict of interest code, disclosing investments, income, business positions, and interests in real property, held or received at anytime during the previous calendar year and that the information required to be disclosed describing these interests is the same as that required by Sections 87206 and 87207. An agency’s Conflict of Interest Code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

The City of Santa Rosa’s Conflict of Interest Code (“Santa Rosa Code”) lists the position of “Park Planning and Development Manager” under section “Recreation, Parks & Community Services Department” as designated employees who make or participate in making governmental decisions which may foreseeably have a material effect on their financial interests and includes the position in Disclosure Category A. The Santa Rosa Code states that Disclosure Category A requires that the designated employee complete all schedules of his annual SEI to disclose²:

All income, investment interests, management positions, and interests in real property within the City of Santa Rosa or within two miles of its boundaries, other than savings accounts, insurance policies, or government bonds and interest, premiums or dividends derived therefrom, and dividends or returns on securities registered with the U.S. Securities and Exchange Commission.

Disclosure of Gifts

Section 89503, subdivision (c), of the Act states that “No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or his statement of economic interests.” The \$250 gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503, subdivision (f). For 2009 through 2012, the applicable gift limit from a single source was \$420.

Section 82028, subdivision (a), provides that a “gift” means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Regulation 18941 states that “...a gift is ‘received’ or ‘accepted’ when the recipient

²This disclosure does not require the reporting of gifts from outside the agency’s jurisdiction if the purpose of disclosure of the source of the gift does not have some connection with or bearing upon the functions or duties of the position for which the reporting is required.

knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.” Regulation 18944 states that a gift confers a personal benefit on the official when the official enjoys a direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over who will use the gift or how to dispose of the gift.³ In addition, Regulation 18945, subdivision (a), states that a person is the source of a gift if the person either gives the gift directly to the official or the “person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials.” Regulation 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

SUMMARY OF THE FACTS

Respondent served as the Park Planning and Development Manager for the Recreation and Parks Department of the City of Santa Rosa from 2007 until he retired in February of 2013. From 2008 to 2012, Respondent received free course access, range access, cart use, and merchandise discounts from Bennett Valley, a municipal golf course in Santa Rosa. Respondent received gifts from Bennett Valley worth the following amounts: \$267 in 2008; \$982 in 2009; \$432 in 2010; \$1,452 in 2011; and \$1,346 in 2012.

Respondent failed to timely report the gifts from Bennett Valley on his annual SEIs from 2008-2011. In March of 2013, Respondent filed a SEI for 2012, as well as amended SEIs for 2008 through 2011. On these SEIs he disclosed the gifts he received from Bennett Valley over the years. Respondent named Bob Borowicz, who is responsible for day-to-day operations of Bennett Valley, as the source of the gifts in question.

The City of Santa Rosa owns Bennett Valley and contracts with Mr. Borowicz to manage the day to day operations of the course. As a city-owned facility, Bennett Valley falls under the jurisdiction of the Department of Recreation and Parks. As a result, Mr. Borowicz has dealings with the Recreation and Parks Department, including negotiating service agreements with the department.

COUNT 1

Failure to timely disclose gifts on a Statement of Economic Interests

Respondent failed to timely report gifts from Bennett Valley in the amount of \$50 or more on his annual SEI for 2008, 2009, 2010, and 2011, in violation of Sections 87300 and 87302.

³ Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

COUNT 2
Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent accepted gifts in excess of the gift limit from Bennett Valley in 2009, 2010, 2011, and 2012, in violation of Section 89503, subdivision (c).

CONCLUSION

This matter consists of two counts, which carry a total maximum administrative penalty of Ten Thousand Dollars (\$10,000).

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“Commission”) 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): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

SEI Non-Disclosure: Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI deprives the public of important information about a public official’s economic interests and it has the potential to conceal conflicts of interest.

Regarding the failure to disclose gifts received over the \$50 reporting threshold on SEIs, the typical penalty amounts varies depending on the circumstances of the case. Recent prior penalties concerning similar SEI disclosure violations include:

- *In re Bryan MacDonald*, FPPC No. 12/028 (Approved December 13, 2012). Bryan MacDonald, as a member of the Oxnard City Council, failed to disclose gifts received from a developer who does business in the city on his SEI. No evidence was found to show that the gifts were intentionally omitted from his SEI. Further, he stated that he was unaware of the requirement to disclose the gifts. The gifts were also over the applicable limit. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,000 for the violation of the gift limit provisions of the Act.
- *In re Andres Herrera*, FPPC No. 12/027 (Approved December 13, 2012). Andres Herrera, as a member of the Oxnard City Council, failed to disclose gifts received from a developer who does business in the city on his 2007, 2008, and 2009 SEIs and failed to disclose gifts received from a municipal bond underwriter who does business with the

city on his 2008 SEI. The Commission approved a \$1,000 per violation regarding the non-disclosure of the gifts. Respondent Herrera stated that he was unaware of the reporting requirements and no evidence was found that the gifts were intentionally omitted. The gifts were also over the applicable gift limits for which a \$2,000 penalty per violation was approved.

Gifts Over the Limit: Penalties for gifts received over the applicable limits violations in the last couple of years range between \$1,500 for gifts of low amounts with little possibility of causing a conflict of interest to \$2,500 depending on the circumstances of each case. Recent prior penalties concerning gifts received over the applicable limits violations include:

- *In re James Cameron, FPPC No. 12/027 (Approved April 25, 2013).* James Cameron, as the Chief Financial Officer of Oxnard, failed to disclose gifts received from a developer who does business in the city on annual SEIs and failed to disclose gifts received from a municipal bond underwriter who does business with the city. The gifts received were \$496.81 over the applicable gift limit. The Commission approved a \$2,000 penalty for exceeding the applicable gift limit.
- *In re Louie Martinez, FPPC No. 09/261 (Approved June 9, 2011).* Louie Martinez, a senior project manager for the City of Irvine, received discounted landscaping service from a company who contracted with the City. The approved stipulated settlement was \$2,000 per count for the violations of receiving gifts over the limit.

In this matter, Respondent accepted gifts over the applicable gift limits and did not disclose gifts received from Bennett Valley, which is under the purview of the Department of Recreation and Parks where Respondent held a management position. Respondent stated that he did not believe the free and discounted rates on golf and merchandise constituted gifts because the course was owned by the City of Santa Rosa. Shortly after the City of Santa Rosa informed Respondent that his actions were illegal, Respondent filed amended SEIs and reported the violations to the Commission. Additionally, Respondent reimbursed Bennett Valley in full for the gifts.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$1,000 for Count 1 and \$2,000 for Count 2 for a total penalty of \$3,000 is recommended.

Intentionally left blank