

Fair Political Practices Commission

MEMORANDUM

To: Vice Chair Eskovitz, Commissioners Casher, Wasserman, and Wynne

From: Gary S. Winuk, Chief of Enforcement

Date: February 6, 2014

RE: Pro-Active Gift Non-Reporting Cases. Agenda Items 34-35

I. INTRODUCTION

This memo is to provide the Commission with information, in addition to that which is usually provided in a proposed streamlined settlement exhibit, due to the special circumstances and volume of the cases on this month's agenda related to a pro-active gift disclosure investigation.

II. BACKGROUND ON PRO-ACTIVE INVESTIGATION

In January of 2012, the FPPC Enforcement Division received information from the Ventura District Attorney's Office that they had executed search warrants throughout City Hall and uncovered evidence of unreported gifts. Our subsequent investigation confirmed the unreported gifts and revealed gifts received over the limit as well as several conflicts of interest for various city officials. This resulted in fines against the Mayor and four members of the City Council, the City Manager, Assistant City Manager, Chief Financial Officer, Financial Services Manager, and the Directors of Public Works, Community Development and Development Services.

As a result of this referral and investigation, the Enforcement Division began a pro-active investigation to determine if any other public officials within the State of California received unreported gifts over the Political Reform Act's (the "Act") \$50 disclosure limit from the same companies who provided gifts to the officials in Oxnard. Three companies were contacted to request their assistance in identifying officials who had received various gifts over the past four years. Two companies provided extensive lists, together naming numerous public officials, while the third found no records of gifts provided over the \$50 threshold.

A search was conducted to determine whether these officials were in office and had a reporting requirement at the time of the alleged gift, and whether the gifts were reported on the official's relevant Statement of Economic Interests ("SEI"). After this initial investigation, the Division was able to identify and locate a total of 221 officials who had reporting obligations and received reportable gifts. **Of the 221 public officials in question, only 16 had properly reported their gifts.**

The other 205 officials were asked to amend their SEIs to reflect the gifts received, or provide exculpatory or mitigating information regarding the alleged unreported gifts. The Enforcement Division worked with the various respondents to address the additional information provided.

No charges were brought against the companies providing the gifts as there was no indication of any wrongdoing on the part of any company. Additionally, each of the companies cooperated fully in the investigation.

III. PROPOSED SETTLEMENTS

For the 205 public officials with found violations, the Enforcement Division evaluated each case based on the following criteria:

- What was the total value of unreported gifts?
- What was the public harm? Although these are gifts received from entities doing business in the jurisdiction, the level of sophistication and decision-making power of each official or designated employee was considered.
- Was the conduct intentional, negligent, or inadvertent? There was insufficient evidence of intentional non-disclosure found. The conduct was concluded to be at worst negligent and at best inadvertent based on available information.
- Were there prior violations of the Act? Each Respondent was checked for prior violations of the Act.

Based on these criteria, gifts more than double the disclosure threshold, i.e. \$100, were charged; gifts closer to the \$50 threshold were considered for a warning letter.

IV. UPDATE – FEBRUARY COMMISSION MEETING

As of the January 2014 Commission meeting, the Enforcement Division had issued 105 warning letters, the Commission approved 93 streamlined settlements, one case was closed without violation, and six cases remained open. Since then, proposed settlements have been reached with an additional two Respondents and we are continuing to pursue the final four cases.

V. CONCLUSION

The Enforcement Division believes a streamlined settlement is appropriate for these cases, for those who did not receive a warning letter, and recommends adoption of the proposed settlements. The penalties assessed and warning letters issued are consistent with the criteria for evaluation of these cases in the past and with numerous prior approved Commission settlements.