

Mr. Silver,

It is my pleasure to address this body once again. While I would like to publicly thank your executive director, Galena West, and your head of enforcement, Kendall Bonebrake, for meeting with me to discuss my complaint and educate me as to the restraints put on this commission, I am of the opinion, backed by facts, the FPPC has been bureaucratically hamstrung either by their own volition or by the bureaucracy itself.

Government Code sections 1090 to 1099 seem to provide direct detail as to the ability of the FPPC to go after individuals who violate this code section. Having read this section many times, I see nothing in it stating that the FPPC can not be part of a criminal investigation or indictment of individuals who break this code either blatantly, through ignorance, or due to the bad advice of their legal counsel.

My question at this point is why the county DAs are involved other than to give permission for the FPPC to proceed? The DA, in my case, stated she didn't have the information to proceed. This brings up another problematic situation: Why should a member of the public have to educate the DA when the FPPC found a violation of the code? This has all the appearance of passing the buck and keeping the public at bay while allowing the criminal to escape prosecution.

I received this response from Kendall Bonebrake, your chief of enforcement.

“Provisions that remove individuals from office or ban them from holding office are created using the criminal standard where the individual has willfully violated the provisions of those laws. Since willfully violating is the standard for criminal law and not civil law, it isn't a remedy available for a civil prosecution under these sections. Further, the Commission's permitted remedy is listed in § 1097.3, which reads in part:

‘(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.’ ”

Note that nothing in this section of code references “disqualification from office” or whether this action is termed criminal versus civil.

The code itself is quite clear.

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.

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.

(Amended by Stats. 2014, Ch. 483, Sec. 3. (SB 952) Effective January 1, 2015.)

Note that 1097 incorporates a fine or prison sentence in addition to disqualification. It would seem to me the term imprisonment is not usually associated with civil penalties but more for criminal acts. It does not state the process for how the FPPC gets this sort of conviction but it would seem to any reasonable person that your attorneys would have far more credibility in getting a DA to commence action than a member of the general public.

Given this logical conclusion, why would this commission shirk its duty to go after violators of the code to the full extent of the law by contacting and working with the county DA?

I want this commission to enforce the government code to its full extent. I am bringing this to your attention because you are being prevented from doing so. I am fully willing to address legislators to change this or any other agency which stands in your way. At this point, I am going to contact my county DA to set an appointment. I will be providing her with the 126 page document issued by your enforcement division, my recent complaint, and my request. I am prepared to go to the State Attorney General if she refuses to act for any reason. Considering that local elected officials helped her retain her elected office, I have my doubts as to whom she will ultimately serve. This points out another specific problem which is endemic within the superior court system as well.