



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

June 5, 2023

James C. Harrison
Olson Remcho, LLP
o/b/o Former California Senator Robert M. Hertzberg
Sent via email at: jharrison@olsonremcho.com

Warning Letter Re: FPPC No. 2021-00615; Robert M. Hertzberg

Dear James Harrison:

The Enforcement Division of the Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”).¹ The Enforcement Division received a referral from the Commission’s Administration Division that alleged your client, Robert M. Hertzberg, failed to timely file two behested payment reports (Form 803).

The Enforcement Division has completed its review of the facts in this case. Specifically, we found that on May 8, 2018, the Berggruen Institute Think Long Committee made a payment to Blue Sky Consulting Group at Hertzberg’s behest.² Additionally on June 18, 2019, Action Now Initiative LLC made a payment to Safe Communities for All at Hertzberg’s behest. Both of these payments triggered behested payment reporting obligations under the Act. Once a source reaches the \$5,000 disclosure threshold in a calendar year, all payments from that source, regardless of the amount, must be disclosed.

The Act provides that payments that are made principally for a legislative, governmental, or charitable purpose are neither contributions nor gifts to the elected official.³ However, the payments made at the behest of an elected official must be reported by the official within 30 days following the date on which the payment or payments are made, if they equal or exceed \$5,000 in the aggregate, and are from the same source in the same calendar year.⁴

Hertzberg’s actions violated the Act because Hertzberg failed to timely file two behested payment reports (Form 803) within 30 days of the date of the payments. However, the Enforcement Division has determined that mitigating circumstances exist here: Hertzberg filed the outstanding reports before being contacted by the Enforcement Division; Hertzberg has no history of filing late behested payment reports; both reports were filed within 100 days of them being due; Hertzberg was notified of the payments 2 or 3 months after the payments were made, and Hertzberg filed the reports well within 30 days of receiving the information from the payors;

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² The statute of limitations for this violation is June 7, 2023.

³ Sections 82004.5 and 82015(c)(4).

⁴ Section 84224.

Hertzberg is no longer in office; and Hertzberg has no prior history of violating the Act. Based on the foregoing, and in accordance with the Enforcement Division Policy Directives formally adopted by the Commission on January 26, 2023, which requires the Enforcement Division to take all appropriate actions within their discretion to decrease the Division's annual carryover caseload, the Enforcement Division is closing this case with this warning letter.⁵ Discretion was used based upon mitigating or aggravating circumstances and the totality of the circumstances.⁶ This resolution may not be used as a comparable case for other enforcement matters.⁷

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourselves of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten days from the date of this letter.

If you need forms or a manual, or guidance regarding your obligations, please visit our website at www.fppc.ca.gov. Please feel free to contact me at abrereton@fppc.ca.gov or (916) 322-5771 (voicemail) with any questions you may have regarding this letter.

Sincerely,

Angela J Brereton

Angela J. Brereton,
Assistant Chief, Enforcement Division

⁵ <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2023/january/15.0-Enforcement-directives.pdf>

⁶ Regulations 18360.1 and 18360.3.

⁷ See Regulation 18361.5, subdivision (e)(3).