



**FAIR POLITICAL PRACTICES COMMISSION**

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**To:** Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda

**From:** Zackery P. Morazzini, General Counsel

**Subject:** October Report on Legal Division Activities

**Date:** September 27, 2011

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During the period of August 1, 2011 to September 21, 2011, which includes the time period since the last Commission Meeting, the Legal Division received and responded to 27 Public Record Act requests and received 37 requests for written advice. Summaries of the advice letters issued from August 1, to September 21, 2011 are set forth below.

**Campaign**

**Jill Broadhurst**

**I-11-120**

If a committee supports or opposes candidates for elective office or makes contributions to support or oppose candidates for elective office, a candidate for elective state office may not serve as the president (or any other voting officer) of the committee under the one bank account rule so long as the candidate controls another open committee for elective office.

**David Bauer**

**A-11-121**

The Act does not prohibit a general purpose committee from investing a portion of its savings by buying an annuity contract through a life insurance company.

**Thomas A. Willis**

**A-11-130**

1. The Lieutenant Governor Host Committee may sponsor a panel discussion on California's economy without engaging in a political purpose when it uses funds left over from inauguration events because the Lieutenant Governor does not exercise significant influence on the actions or

decisions of the committee. 2. Free admission to the event is not reportable by the Lieutenant Governor nor is it subject to limits under Section 82028(b)(1) because it is “informational material” as defined in Regulation 18942.1(a). 3. Under Section 89506(a), refreshments served at the event are reportable gifts that are not subject to limits.

**Dennis P. McBride**

**A-11-138**

An elected school board member may control a primarily formed ballot measure committee supporting a parcel tax for schools and may serve as its treasurer, as long as the ballot measure committee does not support or oppose candidates, including himself.

**John R. Strout, and Heidi K. Abegg**

**A 11-143**

The Institute for Justice, a civil liberties public interest law firm, organized as a 501(c)(3) nonprofit corporation in the District of Columbia and located in Virginia, seeks to provide assistance to a California local ballot measure effort. The Act requires the nonprofit organization to disclose the sources of its funds equal to the contributions or expenditures it makes on the California ballot measure under Section 82013(a) and Regulation 18215(b)(1).

**Anthony Portantino**

**A-11-162**

Legislator may use funds from his campaign committee to pay for attorney’s fees and other costs related to efforts to compel the release of financial information from the State Assembly and Assembly Rules Committee because the action arises directly out of his activities, duties, or status as a candidate or elected officer.

**Behested Payments**

**Richard Chivaro**

**I-11-159**

Behested payment reporting is not triggered when a public official requests volunteers for a public volunteer tax-assistance program for low-income individuals. Companies that participate in such a program by encouraging their employees to volunteer in this program do not create a “payment” under the Act.

**Conflict of Interest**

**Charles A. Deschenes**

**A-11-085**

Where a consultant is retained by the city to assist management in maintaining financial records, preparing budgets and other analytical information, coordinating and insuring the completion of the annual audit and train staff regarding accounting and budget matters, the consultant’s position must to be listed in the city’s conflict-of-interest code. In performing these services, the consultant serves in a staff capacity and is participating in making governmental decisions by giving advice and making recommendations to decisionmakers without significant substantive review.

**Jeff Witte**

**I-11-092**

Executive officer of a Local County Agency Formation Commission is not disqualified from taking part in decisions regarding a city or a fire district merely because of his former employment with the city and participation, as the former assistant city manager, in the negotiation of a transition agreement between the city and fire district.

**Phillip A. Passafuime**

**I-11-116**

A public official who abstains from future governmental decisions does not have a conflict of interest in the governmental decisions abstained from, irrespective of whether a contracting firm owned by the official intends to bid on the project before the official's agency.

**Alison C. Neufeld**

**I-11-125**

A College Board of Trustees member may have a conflict of interest in participating in a governmental decision regarding a collective bargaining agreement only if it can be established that either the person who owns the house in which he resides, or the person who shares living arrangements with him, is a source of gift to him in the amount of \$420 or more over the 12-month period before the governmental decision takes place.

**Wes White**

**I-11-128**

While the Act does not prohibit an official's private employer or its subsidiary from bidding on a public works project before the official's agency or performing work under a contract with the agency, the official's economic interests in these business entities are directly involved in these decisions, and the financial effect of these decisions on the official's economic interests in the entities is presumed to be material. Accordingly, the official may not make, participate in making, or influence the decisions unless the official can (1) rebut the presumption of materiality by showing that it is not reasonably foreseeable the decisions will have *any* financial effect on his economic interests in these business entities and (2) determine that there will be *no* reasonably foreseeable material financial effects on any other economic interest he may have.

**Ali Saleh**

**A-11-131**

Generally, the Act does not treat persons serving on the boards of nonprofit entities as recipients of donations received by the entity. When a public official received free legal services in connection with his work with a nonprofit entity and under a pro bono agreement between the nonprofit and the donor law firm, the official has not received a personal gift from the donor for reporting or conflict of interest purposes. The donor has provided the pro bono services to the nonprofit.

**Patricia Rodriguez**

**I-11-134**

While an official's business activities may ultimately implicate the Act's conflict-of-interests provisions and disqualify the official from governmental decision-making, in itself, the Act does not prohibit the official from operating a business entity for personal gain, nor prohibit the official from entering into an agreement with other private businesses to sell her products merely because the businesses are vendors under a program administered by the official's agency.

**Ana Maria Quintana**

**I-11-135**

General guidance advising that disqualification is personal as to a public official and does not prohibit an agency or other officials from acting. The mere participation in the decision would not constitute aiding and abetting the member with the conflict of interest under the Act. If a councilmember with a conflict of interest did take part in a city decision, any action taken by the city council may be void or voidable under Section 91003(b).

**Joseph A. Medrano**

**A-11-137**

City councilmember would have a conflict of interest under the Act in a decision if his source of income will be foreseeably and materially affected by the decision. However, if he has not received \$500 or more from the source within the 12 months before the decision, the councilmember will not have a conflict of interest.

**Jolie Houston**

**A-11-139**

A city mayor's real property is directly involved in a city council decision to adopt an ordinance for parking in-lieu fees. The "existing ordinance" exception to the general rule that decisions involving zoning or rezoning of real property are directly involved does not apply because the decision does not involve a zoning ordinance.

**Julie Pierce**

**A-11--141**

A city council member may vote to approve a project where the council member is a co-trustee and sole beneficiary of a revocable trust that owns real property located more than 500 feet from the project because, as a beneficiary who neither receives income from the trust nor has an irrevocable future right to receive trust income or principal, she does not have an economic interest in trust property.

**Jarrett Fishpaw**

**A-11-142**

An official does not have an economic interest in real property held in a trust established by the official's parents, despite being the named beneficiary of the trust, because the official's parents may revoke the trust at their discretion, and the official is not currently receiving income from the trust. Accordingly, the official does not have a disqualifying conflict of interest arising from the trust and may take part in a governmental decision regarding a housing development within 500 feet of the property unless additional facts indicate a reasonably foreseeable material financial effect on any economic interest the official may have.

**Jerry Scribner**

**A-11-145**

Agency counsel advised that an interest in a defined benefit pension plan is not considered "income" for purposes of the Act. Therefore, these interests are not reportable on the official's Form 700, nor do they form a basis for a conflict under the Act.

**Kathy Bennett**

**A-11-146**

Because a city planning commissioner's home is located 538 feet from the boundaries of a cell tower enhancement project site, he may participate in the Planning Commission decision regarding the tower enhancement project so long as there is no reasonably foreseeable material financial effect upon his personal residence or any other economic interests.

**Marcia H. Armstrong**

**I-11-148**

County Supervisor is not prohibited under the Act from holding a public position and also being employed by another entity such as a private business, firm or nonprofit. However, she may not make a governmental decision that would affect her economic interests, such as the nonprofit organization for which she works.

**Bruce Bartlett**

**I-11-151**

Because the owner of the Estrada Hotel is a source of income to a Planning Commissioner that served as architect for hotel, the Planning Commissioner is prohibited from participating in any decision that will have a material financial effect on this source of income.

**Kristina Raspe**

**A-11-166**

A member of the Los Angeles Coliseum Commission does not have a conflict of interest under the Act regarding a lease in which the University of Southern California was a party by virtue of the member's uncompensated position on the Board of Trustees of the University of Southern California. Under the facts presented, the advisee did not have a economic interest in the University of Southern California ("USC") for purposes of the Act that would result in a conflict of interest.

**Gifts**

**Thomas E. Montgomery**

**A-11-099**

Parking cards issued by an Airport Authority that allow the cardholders to use parking facilities at the airport at no charge, provided the cardholder is on official business, are not gifts to the county officials to whom the county provides these cards when the official would be entitled to reimbursement for any parking expenses incurred absent the use of the cards. In such cases, the parking cards do not provide a personal benefit and therefore do not meet the definition of "gift" under the Act.

**Paula Garcia**

**A-11-113**

A gift of engraved bookends falls within the exception to "gift" for "plaques and trophies" if they have a value of less than \$250. A scholarship received by a justice of the California Court of Appeal to attend an education workshop is not a gift because the justice was awarded the scholarship in a bona fide competition, but the scholarship may be considered income.

**Lobbying**

**Thomas W. Hiltachk**

**A-11-048**

Whether the placement agent registration and disclosure requirements apply to limited partnerships that manage fund of fund vehicles in which CalPERS is a limited partner is a fact-specific inquiry. Assembly Bill 1743 makes a key change to the Act that includes "placement agent" in the Act's definition of "lobbyist." The rules and regulations regarding lobbyists

therefore now apply to placement agents, and registration requirements apply in particular circumstances.

### **Mass Mailing**

#### **Lance Olson**

#### **I-11-103**

Generally, items mailed with public funds can contain all of the following: a “constituent” meeting notice, the name of the official in the return address of the mailer, and the name of the official in the destination address of a self-mailer without violating the mass mailing prohibition of the Act. Items that are not mailed, but distributed in other ways may include a “constituent” meeting notice and the name of the official in the destination address of a self-mailer. The “return address” permitted under the “envelopes” exception in Regulation 18901 would not apply to items that are not mailed.

### **Personal Use**

#### **Assemblymember Anthony J. Portantino A-11-150**

In the absence of operating funds, staffing, operational support, postage, travel, and other expenses necessary to conduct the business of an assembly member’s district, including the payment of wages to legislative staff continuing to perform duties equivalent to the duties of their employment, are directly related to a political, legislative, or governmental purpose. Thus, the Act does not prohibit an assembly member from using campaign funds to make these payments.

### **Revolving Door**

#### **Mark Stephenson**

#### **A-11-104**

The Act’s post-governmental employment provisions do not prohibit former state employee from working on contracts that he was not involved in while working for the state, nor from contacting other state agencies where he was not employed.

#### **Joan Robbins**

#### **I-11-107**

A designated employee who qualifies as a state administrative official that is interested in separating from State service to work in the private sector is subject to the Act’s Revolving Door Provisions.

#### **Sherry Mediati**

#### **I-11-109**

A state administrative official who engaged in judicial, quasi-judicial or other proceedings implicated by the Act’s permanent ban must refrain from working on projects in the private sector that involve items the official worked on as a state administrative official.

#### **Sara Wan**

#### **I-11-136 and I-11-149**

A former Coastal Commissioner may: (1) communicate with Coastal Commission staff on the opening or prosecution of an enforcement action by the Coastal Commission; (2) communicate with personnel of agencies unrelated to the Coastal Commission on administrative or legislative

actions; and (3) notwithstanding the Act’s lifetime ban on “switching side,” assist a third party in an enforcement action by the Coastal Commission growing out of alleged non-performance of permit conditions, because a performance-related action is a proceeding distinct from the proceeding in which the permit was originally granted.

**Richard A. VanCuren**

**A-11-157**

The revolving door provisions of the Act do not prohibit a former official of the California Air Resources Board from representing the University of California, because the University is a “state agency” under the Act and the revolving door provisions do not apply to representation of another state agency.