



FAIR POLITICAL PRACTICES COMMISSION

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

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: April 10, 2013

A. OUTREACH AND TRAINING

On February 25, 2013, Senior Commission Counsel Heather Rowan was a guest lecturer at the University of California Berkeley Goldman School of Public Policy. The class is a mix of graduate and undergraduate students who focus on policy-making in California, and nationally. After discussing the role of the FPPC in the state of California and discussing current political events, Ms. Rowan provided more specific information about the Commission's oversight of lobbyists and their employers and engaged with the class regarding the challenges and successes in this area.

Commission Counsel Scott Hallabrin served as a panelist at the lobbyist ethics training course held by the Legislative ethics committees on February 28th in Sacramento. The training was attended by approximately 150 lobbyists and was part of the biennial ethics training required for all registered lobbyists.

B. FINDINGS OF PROBABLE CAUSE

Please note:

- This finding of probable cause does not constitute a finding that a violation has actually occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding.
- The following case was decided based on the papers submitted since the respondent did not request a probable cause conference.

In the Matter of Aide Castro, Friends to Elect Aide Castro and Matthew Lemcke, FPPC No. 11/253. On March 14, 2013, probable cause was found to believe that Respondents Aide Castro, Friends to Elect Aide Castro and Matthew Lemcke committed two violations of the Political Reform Act, as follows:

Count 1: Respondents Aide Castro, Matthew Lemcke and Friends of Aide Castro Committee failed to disclose information regarding a contribution received and expenditures made of \$100 or more on a semi-annual campaign statement for the reporting period ending December 31, 2007, in violation of Section 84211, subdivisions (a), (b), (f), and (k), of the Government Code.

Count 2: Respondents Aide Castro, Matthew Lemcke and Friends of Aide Castro Committee failed to timely file a semi-annual campaign statement for the reporting period ending December 31, 2007, in violation of Section 84200, subdivision (a), of the Government Code.

In the Matter of James McGhee, FPPC No. 12/321. On March 4, 2013, probable cause was found to believe that Respondent James McGhee committed one violation of the Political Reform Act, as follows:

Count 1: As a designated employee and a member of the California Board of Psychology who left that position on June 1, 2011, Respondent James McGhee was required to file a leaving office statement of economic interests by July 1, 2011. By failing to file a leaving office statement of economic interests by July 1, 2011, Respondent James McGhee violated Government Code section 87300.

In the Matter of Tim Do AKA Think Thien Do, individually, and DBA Catering Food Supply, FPPC No. 10/740. On March 4, 2013, probable cause was found to believe that Respondent Tim Do AKA Think Thien Do, individually, and DBA Catering Food Supply committed three violations of the Political Reform Act, as follows:

Count 1: On or about December 31, 2009, as part of a money laundering scheme to support Kevin McCarty's candidacy for the California State Assembly, Respondent made a contribution in the amount of \$2,000 to the committee known as McCarty for Assembly 2010, but the true source of the contribution was concealed. This was accomplished by making the contribution in the name of another, Design Copy Print, LLC, thereby creating the false appearance that Respondent was not the true source of funds – when in fact, Respondent was the true source of funds. In this way, Respondent violated Section 84301, which prohibits the making of a contribution in the name of another.

Count 2: On or about December 31, 2009, as part of a money laundering scheme to support Kevin McCarty's candidacy for the California State Assembly, Respondent made a contribution in the amount of \$1,500 to the committee known as McCarty for Assembly 2010, but the true source of the contribution was concealed. This was accomplished by making the contribution in the name of another, Entrust Realty Services, Inc, thereby creating the false appearance that Respondent was not the true source of funds – when in fact, Respondent

was the true source of funds. In this way, Respondent violated Section 84301, which prohibits the making of a contribution in the name of another.

Count 3: On or about December 31, 2009, as part of a money laundering scheme to support Kevin McCarty's candidacy for the California State Assembly, Respondent made a contribution in the amount of \$1,500 to the committee known as McCarty for Assembly 2010, but the true source of the contribution was concealed. This was accomplished by making the contribution in the name of another, Kevin Nguyen, thereby creating the false appearance that Respondent was not the true source of funds – when in fact, Respondent was the true source of funds. In this way, Respondent violated Section 84301, which prohibits the making of a contribution in the name of another.

In the Matter of Bruce Q. Tran and Bruce Tran For Mayor Of Westminster 2010, FPPC No. 12/180. On November 26, 2012, probable cause was found to believe that Respondents Bruce Q. Tran and Bruce Tran For Mayor Of Westminster 2010 committed four violations of the Political Reform Act, as follows:

- Count 1: Respondents Bruce Q. Tran and Bruce Tran for Mayor of Westminster 2010, failed to file a semi-annual campaign statement for the reporting period of October 17 through December 31, 2010, by the January 31, 2011 due date, in violation of Government Code Section 84200, subdivision (a).
- Count 2: Respondents Bruce Q. Tran and Bruce Tran for Mayor of Westminster 2010, failed to file a semi-annual campaign statement for the reporting period of January 1 through June 30, 2011, by the August 1, 2011 due date, in violation of Government Code Section 84200, subdivision (a).
- Count 3: Respondents Bruce Q. Tran and Bruce Tran for Mayor of Westminster 2010, failed to file a semi-annual campaign statement for the reporting period of July 1 through December 31, 2011, by the January 31, 2012 due date, in violation of Government Code Section 84200, subdivision (a).
- Count 4: Respondents Bruce Q. Tran and Bruce Tran for Mayor of Westminster 2010, failed to file a semi-annual campaign statement for the reporting period of January 1 through June 30, 2012, by the July 31, 2012 due date, in violation of Government Code Section 84200, subdivision (a).

C. LEGAL ADVICE

- **Email Requests for Advice:** In February and March, Legal Division attorneys responded to more than 70 email requests for legal advice.
- **Advice Letters:** From February 11 to April 5, 2013, the Legal Division received 32 advice letter requests and issued 32 advice letters.

D. ADVICE LETTER SUMMARIES

Campaign

Michael Derr

I-13-011

1. Mass mailing rules do not prohibit a public official from advertising his business in a chamber of commerce newsletter even though the chamber receives a small portion of its funding from the city.
2. Advertisements for an official's business merely containing his name and photograph are for personal purposes and payments for the advertisements are neither an "expenditure" nor a "contribution" reportable under the Act.

Amar Shergill

A-13-014

The Act does not prohibit California-registered PACs from making donations to support out of state candidates so long as the expenditure is related to a political, legislative, or governmental purpose.

Bianca Pirayou

A-13-028

Where a new Senate District encompasses approximately 80 percent of the old Senate District, the Senator may amend his current Form 501 and corresponding Form 410 for the Senate 2014 Committee to reflect the new Senate District. For purposes of Section 85317, the Senator is considered to be seeking a subsequent election to the same elective state office. Therefore, he may carry over all or a portion of the campaign funds remaining in the Senate 2010 Committee account to the Senate 2014 Committee without attribution.

Conflict of Interest

David Fleishman

A-12-178

Advisee has a conflict of interest with regard to a land use development project that is to come before the city council and she will recuse herself from voting on the project to avoid a conflict of interest. However, advisee's supervision of subdivision map preparations by others will not be considered prohibited influencing of the decision within the meaning of the Political Reform Act.

John A. Ramirez

A-13-004

Advisee is prohibited from appearing before planning commission to advocate for a project on behalf of his private employer when the official is a current member of the planning commission. Advisee can appear before the city council so long as he does not act or purport to act on behalf of, or as the representative of, the planning commission.

Jesse Mainardi

A-13-005

A former Assemblymember's officeholder account that has debt may accept contributions prior to its termination, under applicable limits, for the sole purpose of paying off debts incurred for officeholder expenses before the Assemblymember's last day in office.

Anthony Silva

A-13-006

Official may not make, participate in making, or attempt to use his position to influence a governmental decision regarding a grant to a non-profit organization for which the official is a paid employee.

Blaise J. Jackson**A-13-010**

A hospital board member has an economic interest when she accepts rent payments for property owned by her niece, even if she does not profit from the arrangement. When the subject of the upcoming decision is the renter, the board member has a conflict of interest based on that income.

John Underwood**A-13-015**

There is no reasonably foreseeable financial effect on advisee's business entity interest or source of income, therefore he is not disqualified from participating in decisions regarding a local public access station for which the advisee produces some content.

Wendy House**I-13-016**

Commissioner, also employed by the chamber of commerce, may take part in a land use decision involving a business entity he has solicited to sponsor the chamber if the entity has responded to the solicitation prior to the decision coming before the planning commission. However, in light of the commissioner's offer of future employment, the commissioner is prohibited under the personal financial effect rule from taking part in a land use decision involving a business entity if (1) he has previously solicited the entity to sponsor the chamber and the entity has not yet responded to the solicitation or (2) the entity has implied in any way that the decision may influence whether the entity may sponsor the chamber.

Teresa Arballo Barth**A-13-019**

Based on the unique facts presented, the public official does not have a disqualifying conflict of interest when participating in a city decision regarding issuance of a permit to hold a one-time running event even though the route would pass within 500 feet of the common property of official's condominium association. Regulations 18704.2(a)(1) and 18705.2 (a)(1) were intended to apply to decisions that affect such things as the character, nature, value, improvements to, or overall permanent use of a particular parcel of real property, none of which are presented under these facts.

Marian M. Johnston**A-13-023**

Executive director is not prohibited from fundraising for his agency, which is mandated by state law to fundraise, because the director's salary is not determined or benefited by the fundraising efforts.

Steven Lucas**A-13-024**

When a governmental decision will not have a reasonably foreseeable financial effect on the official's compensation by \$250 or more in any 12-month period, the official will not have a disqualifying conflict of interest in the decision based on his or her personal finances.

Elvera Berson**A-13-026**

Once an official has identified a disqualifying conflict of interest, he or she must: (1) publicly identify each type of economic interest involved in the decision as well as details of the economic interest, (2) recuse him or herself, and (3) leave the room. There are, however,

levels of participation that are allowed under the Act as required by the First Amendment. Disqualified officials may: (1) discuss the project with the press, friends, neighbors or other members of the community, (2) comment as a member of the public before his or her agency if he or she has a personal interest that would not otherwise be adequately represented, and (3) engage in other communications such as personal participation in neighborhood groups, signing petitions, and contributing in local causes.

Richard A. Teaman

A-13-029

Generally, when a municipality contracts with an accounting firm to perform independent audits (subject to industry regulations), that in itself will not result in the shareholders or employees of the firm becoming “consultants” under the Act.

John G. Barisone

A-13-032

A public official is not disqualified from making, participating in making, or using his or her official position to influence a governmental decision that directly involves the public official’s real property leasehold interests when it is not reasonably foreseeable that the decision will impact the terms of the lease or the use and enjoyment of the property.

Carlyn M. Drivdahl

A-13-033

1. When an official’s real property is covered by a decision that would affect the potential for development, it is reasonably foreseeable that the value of the real property would be increased more than “one-penny.” Therefore, the official is disqualified from participating in the decision.
2. Even though an official has a conflict of interest in a decision, an agency may segment a decision in which a public official has a financial interest to allow participation by the official, provided that the decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest.
3. A disqualified official may speak as a member of the public before her agency so long as she complies with the rules set forth in Regulation 18702.5(b)(1) and (b)(2).

Phaedra A. Norton

A-13-034

When a public official’s source of income is directly involved in a governmental decision, the financial effect is deemed material if the source of income is affected by even “one-penny.” Therefore, the official is disqualified from participating in decisions regarding the source of income.

Arnold M. Alvarez-Glasman

A-13-038

When real property owned by councilmembers is more than 500 feet away from real property that is the subject of a decision before the city council, the effect of the decision is presumed not to have a material financial effect on the properties owned by the councilmembers.

C/I Code

Paul J. Mehnert

I-12-102

Members of planning groups whose recommendations to the board of supervisors have been regularly approved, without significant changes by the board of supervisors, over an extended period of time are deemed public officials within the meaning of the Act.

Superseded Letters: *Harmon* Advice Letter No. I-92-84, to the extent that it is inconsistent with the assistance provided herein.

Wendy L. House

A-13-018

The City, as Code Reviewing Body, may exempt a city agency from inclusion in the city conflict-of-interest code so long as the city uses the same or similar criteria used by the Commission as set forth out in Regulation 18751.

Miscellaneous

Wendy L. House

I-13-017

A payment by an annual donor to a non-profit organization is a behested payment when a reasonable person would perceive the payment was in response to a solicitation that features an elected official.

Revolving Door

John K. Guhl

A-13-007

Permanent ban applies to certain aspects of projects advisee worked on while employed by the state; the one-year ban applies in limited circumstances involving communications with advisee's former agency.

SEI

Joe Guzzetta

A-13-013

Officials are required to report real property within the jurisdiction of their agency, which includes real property within two miles or less of the jurisdiction boundaries or within two miles of any land owned or used by the agency.

DiAun Burns

A-13-020

When a public official's position is designated in a category of the agency's conflict-of-interest-code, which only requires reporting of economic interests in sources who have requested and/or obtained a license or who the official knows or has reason to know will request/obtain a license from the agency, the official is not required to report travel expenses paid by an entity that is not a current or future licensee of the agency.

Patricia Forsyth

A-13-036

Funds raised into the official's Legal Defense Fund are considered gifts to him, and he must therefore disclose the source of any gifts aggregating \$50 or more on his annual SEI.

