



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

To: Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Wasserman

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: February 11, 2013

A. OUTREACH AND TRAINING

On December 12, 2012, Commission Counsel Scott Hallabrin spoke on gifts, honoraria and behested payments at an event providing an overview of various governmental ethics laws held at the Sacramento office of the law firm of Nossaman, LLP. The event was open to the public.

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 Jonathan Leone, FPPC No. 11/932. On January 13, 2013, probable cause was found to believe that Respondent Jonathan Leone committed two violations of the Political Reform Act, as follows:

Count 1: Respondent Leone failed to timely file a 2010 Annual SEI in violation of Government Code section 87203.

Count 2: Respondent Leone failed to timely file a 2011 Annual SEI in violation of Government Code section 87203.

**C. SUMMARIES OF ADVICE LETTERS ISSUED BETWEEN
NOVEMBER 1, 2012 TO JANUARY 31, 2013,**

From November 1, 2012 to January 31, 2013, the Legal Division received 30 advice letter requests and issued 32 advice letters.

Campaign

Dennis White

A-12-160

A non-candidate controlled committee affected by the investigation of Kinde Durkee and terminated with the Commission's approval, recovered funds in the related interpleader action. Since the action was started, the committee had terminated and opened a new committee. The recovered funds could be deposited into the account of the new committee and would be reported as a miscellaneous increase in cash with a notation that the funds were received upon the final disposition of the interpleader action. The previously terminated committee has no additional reporting requirements.

Evelyn F. Feidelberg

I-12-170

While an official's private law practice may ultimately implicate the Act's conflict-of-interests provisions, the Act does not prohibit an official from owning a law firm or practicing law while serving on the county's board of supervisors. However, the official must refrain from making, participating in making, or influencing governmental decisions that may have a reasonably foreseeable material financial effect on any economic interests the official may have including, but not limited to, the official's interests in his law firm and clients of the firm.

Michael Monasky

I-13-008

The Act generally permits an elected officer to spend his or her campaign funds to help defray a local agency's cost of holding a special election because the expenditure would be directly related to a governmental purpose. While it does not appear to be an issue under these facts, if the expenditure constitutes a campaign contribution to another candidate, or an independent expenditure supporting or opposing another candidate, the Act may impose additional duties and restrictions. Provisions of local law, if applicable, could impose restrictions that are outside the jurisdiction of the Act.

Conflict of Interest

Jim Thomas

A-12-149

Official may not participate in his governmental capacity on the development of an agreement on behalf of the County because he will be subject to the agreement in his private capacity. If the resulting financial effect of the decision on his personal interests will be at least \$250, he will have a conflict of interest.

Brian A. Peirik

A-12-159

The Act does not prohibit a city councilmember from serving on the board of a nonprofit or other private entity. Participation in decisions of the private entity that may affect the official's economic interests does not result in a conflict of interest because the entity is not a public agency. With respect to city council decisions involving the private entity, the councilmember may participate in such decisions since he has no economic interest in the private entity.

Douglas Holland**I-12-161**

So long as a planning commissioner continues to receive income from a non-profit downtown art museum he will have a conflict of interest in governmental decisions regarding the downtown redevelopment plan if the decision will have a foreseeable material financial effect on the museum. Advice supersedes prior advice letters to the extent that they are inconsistent.

Greg Rolen**I-12-164**

The Act does not specifically prohibit a board member from applying for employment with his or her own agency while serving as a member of the board, but Government Code Section 1090 has such a prohibition under certain circumstances. The Act's conflict-of-interest provisions apply to "public officials" making, participating in, or influencing governmental decisions. So long as the board member will not be making or participating in the future hiring decision (he will have left office at that time) he will not have a conflict of interest.

Patrick Enright**I-12-167**

Under the facts presented, the councilmember would not be making or participating in making a governmental decision she applies for city event permits in her private capacity. The city council does not make decisions regarding event permits. Moreover, she would not be attempting to influence the outcome of a governmental decision because she is appearing in the same manner as any other member of the general public before her agency in the course of its prescribed governmental function solely to represent herself on a matter which is related to her personal interests.

Phaedra A. Norton**A-12-168**

An official does not have a conflict of interest in decision regarding the city's agreement with the firefighters' association. While official's brother is a firefighter, the official has no economic interest in his brother, and he would not have a conflict of interest under the Act.

Roxanne Diaz**I-12-169**

If an official sells her real property she will not have an economic interest in the property. This would be the case whether she used a broker or not. The purchaser of the real property will be a source of income that could result in disqualification if the decision will have a foreseeable material financial effect on that source of income.

Bobby Duncan**I-12-171**

The Act would not preclude the official from continuing to provide graphic design services to the city and city personnel. However, in cases where a decision will have a foreseeable material financial effect on his economic interests, disqualification is required. Also, because the business is a retail store there is a specialized form of the "public generally" exception that may be applicable in this case.

Michael Barnes**A-12-172**

A city council member does not have a conflict of interest in decisions regarding a development project proposed by the University of California despite his employment with the university. Salary from a public agency is not an economic interest under the Act. The councilmember also has real property which is located more than 500 feet from the university's property. Thus, it is presumed that his property will not be materially affected.

Mark S. Manion**I-12-173**

An official's economic interest in his residence is directly involved in decisions regarding a project within 500 feet of the residence. Accordingly, any reasonably foreseeable financial effect is presumed to be material, and the official may not make, participate in making, or influence the decisions unless he can (1) rebut the presumption of materiality by showing that it is not reasonably foreseeable the decisions will have even a one-penny financial effect on his residence and (2) determine that there will be *no* reasonably foreseeable material financial effects on any other economic interest he may have.

Anthony W. Farrington**I-12-174**

While an official's private law practice may ultimately implicate the Act's conflict-of-interests provisions, the Act does not prohibit an official from owning a law firm or practicing law while serving on the county's board of supervisors so long as the official refrains from making, participating in making, or influencing governmental decisions that may have a reasonably foreseeable material financial effect on any economic interests the official may have including, but not limited to, the official's interests in his law firm and clients of the firm.

David G. Lim**A-12-175**

A councilmember does not have a conflict of interest in a rezoning decision due to the same city staff working on a permitting issue for his property and also working on a re-zoning issue on property that is three miles from his property.

Brian A. Pierik**A-12-176**

The Act does not prohibit a city council member whose business is a member of a county visitors' and conference bureau from voting to (1) appoint himself as the city's representative to the bureau, or (2) appropriate funds to pay the city's membership dues.

Mark Tillemans**A-12-179**

A member of the board of supervisors has economic interests in his private employer who is seeking an encroachment permit from the county. Therefore, he is prohibited from making, participating in making, or influencing the outcome of that governmental decision, unless he determines that there will be no reasonably foreseeable material financial effects on any of those economic interests.

Ignacio Velazquez**A-12-180**

The vice mayor of the City of Hollister may vote on the city's possible funding of an annual motorcycle rally so long as the rally will not foreseeably and materially affect the vice mayor's business as set forth in Regulation 18705.1.

Larry Bergman**A-12-182**

The Act does not prohibit an official from participating in decisions regarding contracts between the City of Atwater and CAL FIRE despite the official being elected to the Atwater City Council and being concurrently employed by CAL FIRE as a Fire Captain. State agencies, such as CAL FIRE, are not within the definition of business entities under the Act. Moreover, government salaries are not considered income under the Act, and official did not provide any facts to indicate that the personal financial effects rule applies. Accordingly, the

official does not have an economic interest that would disqualify him from participating in decisions regarding contracts between the City of Atwater and CAL FIRE.

Ryan O. Hodge

A-13-002

Based on facts provided, the Mayor does not have a disqualifying conflict of interest based on his family trust, which is revocable and provides him no income. Note that this letter was not for the same official as A-12-126.

COI Code

Kai Ruess

A-12-163

Based on the facts provided and under the *Siegel* analysis, the Bay Area Governments Pooled Liability Assurance Network Corporation (PLAN) is a local public agency under the Act. Accordingly, PLAN must adopt a conflict-of-interest code pursuant to Sections 87300 and 87302. Members of the Board must file statements of economic interest as required and must also comply with the Act's conflict-of-interest provisions.

Honoraria

Trudy K. Thomas

A-12-165

Payments an official receives for the practice of a bona fide business, trade, or profession as a minister, while reportable, would not be prohibited honoraria.

Lobbying

M. Eli Underwood

A-12-142a

Seeking attorneys' fees for legal services provided in connection with a lawsuit to compel the State to open a hiking trail, other than time spent communication with legislative staff regarding a bill to open the hiking trail, is not compensation for a direct communication with qualifying officials and will not trigger the Act's lobbyist provisions.

Prof. Robert Fellmeth

A 12-158

A lobbyist employer's reporting requirements include compensation paid to attorneys and witnesses to testify in PUC rate-making or quasi-legislative proceedings, except for any time spent preparing written testimony for such proceedings.

Mass Mailing

Camille A. Goulet

I-12-152

Mass emails do not trigger Section 89001 or Regulation 18901. However, a local agency is prohibited from using public moneys for campaign related communications. Regulation 18901 expressly prohibits the use of an elected official's photograph, and the prohibition is not overcome by including photographs of all of the elected officials in the publication.

Revolving Door

Stephen J. Crooke

I-12-146

Both the one-year and permanent ban apply to the requestor. The one-year ban does not prohibit the requestor from serving as a representative to the Ground Fish Advisory Panel so long as he does not make an appearance or communication in a proceeding before the DFG or FGC. His final day is his last day of work even though he was authorized to work to a later time.

Jawahar Shah**I-12-156**

The Act's one-year ban prohibits a public official from appearing before or communicating with his former state employer on behalf of his new employer for the purpose of influencing any administrative or legislative action and any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. However, to the extent that the former official did not participate as a state employee in proceedings involving specified contracts, the permanent ban would not apply.

Catherine T. Redmond**I-12-162**

The one-year ban applies to the advisee but the prohibitions under Section 87406.3 will only apply to any appearances before or communications to the San Joaquin County Board of Supervisors. With respect to any appearances before or communications to the Governing Board for the San Joaquin Valley Unified Air Pollution Control District, only the provisions under Section 87406.1 will apply to prohibit him from influencing any regulatory action. Section 87406.1 does not prohibit the former official from making an appearance before or communicating with District staff on behalf of clients on permitting or enforcement matters. For example, submitting permit applications to District staff, meeting and/or negotiating with District staff on permitting issues, participating in variance hearings and permit appeals before the District hearing board and negotiating with District staff on enforcement matters would not be prohibited.

Lorna Flores**A-12-166**

The one-year ban is not applicable because the requestor will not be appearing before or communicating with her former agency. Her current job description does not involve any judicial, quasi-judicial or other proceeding she was involved in with her previous agency so the permanent ban does not apply.