



**FAIR POLITICAL PRACTICES COMMISSION**

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**To:** Chair Remke and Commissioners Casher, Eskovitz, Wasserman and Wynne

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

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

**Date:** November 10, 2014

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**A. OUTREACH AND TRAINING**

None to report.

**B. PROBABLE CAUSE DECISIONS**

***Please note, a 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.***

**In the Matter of Kendra Okonkwo, FPPC No. 12/334.** On October 8, 2014, after hearing, probable cause was found to believe that the named Respondent, Kendra Okonkwo as the Executive Director of Wisdom Academy of Young Scientists (WAYS) Charter School, committed nine violations of the Act, as follows:

**COUNT 1:** Respondent, on or about July 1, 2009, used or attempted to use her official position to influence a governmental decision in which she had a financial interest by negotiating and signing a lease agreement extension between Respondent and WAYS Charter School for real property located at 8778 South Central Avenue for the lease term of July 1, 2009 through June 30, 2010, in violation of Government Code section 87100.

- COUNT 2: Respondent, on or about July 1, 2010, used her official position to influence a governmental decision in which she had a financial interest by negotiating and signing a lease agreement between Respondent and WAYS Charter School for real property located at 702 – 706 East Manchester Avenue for the lease term of July 1, 2010 through June 30, 2011, in violation of Government Code section 87100.
- COUNT 3: Respondent, on or about July 1, 2010, used her official position to influence a governmental decision in which she had a financial interest by negotiating and signing a lease agreement extension between Respondent and WAYS Charter School for real property located at 8778 South Central Avenue for the lease term of July 1, 2010 through June 30, 2011, in violation of Government Code section 87100.
- COUNT 4: Respondent, on or about September 10, 2010, made a governmental decision in which she had a financial interest by signing a contract on behalf of WAYS Charter School between WAYS Charter School and Joe Thompson Drafting & Planning for \$2,550 to create preliminary drawings for site improvements to 8778 South Central Avenue, real property in which Respondent held an economic interest of \$2,000 or more, in violation of Government Code section 87100.
- COUNT 5: Respondent, on or about September 14, 2010, made a governmental decision in which she had a financial interest by signing a contract between WAYS Charter School and Azrocs Construction for \$4,999 in improvements to 706 East Manchester Avenue, real property in which Respondent held an economic interest of \$2,000 or more, in violation of Government Code section 87100.
- COUNT 6: Respondent, on or about October 1, 2010, made a governmental decision in which she had a financial interest by signing a contract on behalf of WAYS Charter School between WAYS Charter School and Joe Thompson Drafting & Planning for \$2,920 to create preliminary drawings for site improvements to 706 East Manchester Avenue, real property in which Respondent held an economic interest of \$2,000 or more, in violation of Government Code section 87100.
- COUNT 7: Respondent, on or about March 31, 2011, made a governmental decision in which she had a financial interest by signing a contract on behalf of WAYS Charter School between WAYS Charter School and Specialized Expert Services, Inc., for an amount not to exceed \$4,080 to perform consultant/coordination services for site improvements to 706 East Manchester Avenue, real property in which Respondent held an economic

interest of \$2,000 or more, in violation of Government Code section 87100.

COUNT 8: Respondent, on or about April 14, 2011, made a governmental decision in which she had a financial interest by signing a contract on behalf of WAYS Charter School between WAYS Charter School and RPM Construction Management, Inc., for \$57,900 to perform construction services for ADA site improvements to 706 East Manchester Avenue, real property in which Respondent held an economic interest of \$2,000 or more, in violation of Government Code section 87100.

COUNT 9: Respondent, failed to file a leaving office statement of economic interests within 30 days of leaving the office of Executive Director of WAYS by the due date of June 2, 2011, in violation of Government Code sections 87300 and 87302, subdivision (b).

### C. LEGAL ADVICE TOTALS

- ***Email Requests for Advice:*** In October, Legal Division attorneys responded to more than 120 email requests for legal advice.
- ***Advice Letters:*** From September 26, 2014 to October 31, 2014, the Legal Division received 18 advice letter requests and issued 11 advice letters.
  - ***Section 1090 Letters:*** From September 26, 2014 to October 31, 2014, the Legal Division received 6 advice letter requests concerning Section 1090 and issued 8 advice letters. This year to date we have received 41 requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

### D. ADVICE LETTER SUMMARIES

#### Conflict of Interest

**Quinn M. Barrow**

**A-14-084(b)**

A city council member does not have a disqualifying conflict of interest in preliminary decisions that will not have a reasonably foreseeable material financial effect on his leasehold interests.

**Anne M. Russell**

**A-14-116(a)**

Two planning commissioners and a deputy community development director (“Director”) may participate in government decisions regarding the creation of an Airport Overlay Zone (AOZ) as part of an amendment to the City’s Land Use and Circulation

Element of the General Plan. The decisions will not have a reasonably foreseeable material financial effect on the interests of a planning commissioner and the Director despite owning property in the AOZ because (a) the decisions will not change the underlying zoning or development potential of the officials' property, (b) new disclosure requirements on sellers of property and prohibitions on activities hazardous to flight operations are similar to existing requirements and (c) any effects of proposed land use changes for nearby properties will be buffered by existing development and a major thoroughfare. The second planning commissioner does not have a conflict of interest because the decisions will not materially affect the purchaser of his property located in the AOZ.

**Raymond P. Ramirez**                      **A-14-133**

The Lion's Gate Community Services District is a public agency and is required to promulgate a conflict of interest code.

**Joseph M. Montes**                      **I-14-162**

A decision to impose, repeal, or modify assessments within an assessment district, the boundaries of which are "within 500 feet of the property line of the officials' real property," will not have a measurable financial effect on the value of the councilmembers' property outside the district.

**Robert H. Pittman**                      **A-14-167**

A councilmember does not have a conflict of interest in decisions on a home-development project and related development agreement under the Act where the facts show that these decisions will not have a reasonably foreseeable measurable impact on the councilmember's property under Regulation 18705.2(a)(11).

**Harriet A. Steiner**                      **A-14-175**

Discusses new Regulation 18705.2 which provides that the effect of a decision is material as to a leasehold interest in real property if the decision will: (1) change the termination date of the lease; (2) increase or decrease the potential rental value of the property; (3) increase or decrease the rental value of the property, and the official has a right to sublease the property; (4) change the official's actual or legally allowable use of the real property; or (5) impact the official's use and enjoyment of the real property. This test applies irrespective of the distance between the leased property and the subject property. With respect to the test for increases or decreases in the potential rental value of the property, while slightly reworded from the original language, this factor still focuses on the public official's rent due on his current lease. Assuming that there is no impact or change in the lease price during the term of the lease and the property cannot be subleased, this factor would not be met.

**Rebecca J. Olson**                      **A-14-179**

A Senior Project Manager for the consulting firm CSG, a City of Belmont contractor, will be assigned exclusively to the project with the city. The term of the contract is 18 months and the Project Manager will not be making decisions for the City. While the contract will be performed over an 18 month period, the total amount of time worked is the equivalent of 18 weeks (only 40 hours a month), far less than a year, and far less than full-time work. The limited performance hours support the conclusion that the Project Manager will not be serving in a staff capacity under the proposal. Therefore, he would not qualify as a “consultant” and is not a public official under the Act.

**Jannie L. Quinn**                      **A-14-182**

A Councilmember may participate in and vote on whether to authorize the City Manager to execute an agreement with Google to provide community shuttle service despite owning two properties within 500 feet of proposed routes and shuttle stops. Based on the location of the properties and the buffer of houses between them and the proposed stations, it does not appear that the decisions in question will measurably affect the Councilmember’s interests.

**Gifts****William D. McMinn**                      **A-14-171**

A San Diego Unified Port District Commissioner has been invited by the American Israel Education Foundation (“AIEF”) to participate in the Educational Seminar for Southern Pacific Latino Leaders in Israel. The AIEF, a 501(c)(3) tax exempt organization, will pay for all travel, lodging and subsistence relating to the trip. Pursuant to Section 89506(a)(2), payments provided by AIEF for his travel, lodging and subsistence are reportable gifts that are not subject to gift limits. However, any payments made by third parties for items other than travel and related lodging and subsistence may be considered a reportable gift subject to the \$440 gift limit and the conflict of interest provisions of the Act, because those items would not be related to a legislative or governmental purpose or issues of international public policy.

**Lobbying****Emily B. Erlingsson**                      **I-14-130**

An attorney does not become a “placement agent” with registration requirements when he or she provides services that are of a traditional legal nature. The attorney could be considered a placement agent if he or she engages in marketing or other activities on behalf of an external manager. For purposes of the “1/3 exception” in the definition of placement agent, to qualify for the exception, a person must spend 1/3 or more of his or her time in activities that are directly related to managing the securities or assets owned or controlled by an external manager. The definition of placement agent

includes those employees who exert influence over a decision to enter a contract with an external manager. Employees who do not exert influence or who support the implementation of the contract are not placement agents solely based on this activity.

### **Section 1090**

#### **Tomomi Glover**

**A-14-138**

Under Section 1090, a District Board Member would have a financial interest in any contract between the District Board and his spouse's employer, Music for Minors, a nonprofit 501(c)(3) organization. However, this interest is a "remote interest" under Section 1091(b)(1). Therefore, so long as the District Board Member does not participate in the contract decision, the District Board may enter into a contract with the nonprofit.

#### **Zakhary Mallet**

**I-14-144**

Under the Act, a member of the BART District is prohibited from participating in decisions regarding contracts with the District if there is a realistic possibility that the prime contractor will retain the member's employer (or other source of income) and the financial impact on the employer/source of income meets the applicable materiality standard. Under Section 1090, both the official and the District are prohibited from entering into the contract if the member has a financial interest in the contract.

#### **Rod Hsiao**

**A-14-152**

Based on the facts presented, Section 1090 prohibits a member of a county board of education from contracting with school districts in the same county to sell to the districts a product through a non-profit organization formed by the board member and from which he receives salary and benefits.

#### **William D. McMinn**

**I-14-155**

The Act does not prohibit a designated employee of the San Diego Harbor Police Department from also being employed by an entity, such as a private business, firm, or nonprofit, that provides services to the District where his wife is the President and CEO of the entity. However, he may not make a governmental decision that would affect his economic interests, including his employer. Section 1090 does not prohibit him from working for the entity, provided he will not be making a contract between the District and the entity.

#### **William D. McMinn**

**A-14-161**

A port district operations officer whose daughter is employed by a company with which the district may contract in the future is not prohibited under either the Act or Section 1090 from participating in making future district contracts with the company. The officer's daughter is not a dependent of and has no financial relationship with the officer.

**Marilyn Craft**

**A-14-168**

The spouse of a candidate for the Pittsburg City Council is the Executive Director of a 501(c)(3) nonprofit organization that currently has a contract with the City of Pittsburg to provide youth and teen services throughout the community. Although the candidate would have a financial interest under Section 1090 in any subsequent renewal or modification of that contract if elected, such interest would only be “remote” pursuant to Section 1091(b)(1), thereby allowing the City Council, absent participation from the candidate, to renew or modify the existing contract with her spouse’s nonprofit organization.

**Diane Gibson-Gray**

**A-14-172**

The Executive Director of a non-profit who is a City Council candidate does not create a prohibition for the city to continue to contract with the non-profit under Section 1090. Based on the remote interest exception in Section 1091(b)(1), the city would be able to enter into the contracts, but the City Council member/Executive Director would have to recuse herself from any related decision.

**Karen Jernigan**

**A-14-173**

Section 1090 prohibits a city from making contracts with a glass products and repair company owned by a city councilmember for the purchase of goods or services except under the “rule of necessity.” Based on the facts provided, the “rule of necessity” would permit such a contract only when it is for repairs reasonably related to the replacement or repair of glass on city buildings or facilities that are immediately necessary to prevent vandalism or theft. The city councilmember would be prohibited from participating in these contracting decisions.

**SEI**

**Gina M. Ratto**

**I-14-122**

Agency was advised that they did not have any filing obligations under the Act for payments received by the agency, pursuant to the bargained terms of a contract, to cover employee travel expenses to attend meetings necessary to carry out the purposes of, and obligations incurred under, the contract.