



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*September 15, 2016 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of August 4, 2016 through August 29, 2016, the Enforcement Division received, opened and rejected the following referrals and complaints:

Type	SWORN	PROACTIVE/INFORMAL	NON-FILER
<b>Number Received</b>	21	23	322
<b>Case Opened</b>	3	1	319
<b>Rejected</b>	3	1	1
<b>Under Review</b>	15	21	2

Also during this time, the Division closed a total of 180 cases including:

- 42 warning letters,
- 3 advisory letters,
- 11 no action letters,
- 11 as a result of the adoption of stipulations and defaults at the July Commission meeting, and
- 113 committees were administratively terminated.

The Division had 682 cases in various stages of resolution at the time of the August Monthly Report and currently has approximately 825 cases in various stages of resolution, including the 14 cases before the Commission as listed in the September 2016 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 183 have been resolved with fines and 230 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 50 have been resolved with fines and 323 are currently being worked. As for the remaining referrals, they were rejected, the committees were terminated locally without notice to Secretary of State, the committees were administratively terminated or are slated for administrative termination, or the committee received no violation or warning letters.

## II. LEGAL DIVISION

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STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JACK WOODSIDE, SENIOR COMMISSION COUNSEL

### A. Pending Litigation

*Frank J. Burgess v. Fair Political Practices Commission.*

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission's decision and order in *In re Frank J. Burgess*, Case No. 12/516. Following an administrative hearing in front of an Administrative Law Judge (ALJ), Mr. Burgess challenged that decision to the Commission. After oral argument before the Commission on March 19, 2015 and a thorough review of the record, the Commission rejected the ALJ's decision and decided the case based on the record, oral argument, and the parties' supplemental briefing on the "governmental decision" element of the case. The Commission found that Mr. Burgess violated Government Code Section 87100 of the Political Reform Act (the "Act")<sup>1</sup> and imposed a \$5,000 fine on July 7, 2015. Mr. Burgess challenged that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On August 23, 2016, the Court issued a tentative ruling granting the Petition on due process grounds. On August 24, 2016, after a hearing on the matter in Riverside County, the Court upheld its tentative ruling. Legal Division attorneys are awaiting the final judgment in the case and will advise the Commission of its options after review of the final judgment.

### B. Outreach and Training

General Counsel Hyla Wagner and Assistant Chief Trish Mayer met with the California Association of Political Treasurers group at their quarterly meeting in San Francisco on August 19th. They provided an update on the Political Reform Act Revision project, encouraging treasurers to comment on the draft, and on recent legislative and regulatory changes to the Act, including reporting of other payments to influence legislative action. The treasurers expressed appreciation for the elimination of two duplicative reports, the supplemental independent expenditure and preelection reports, and support further streamlining of reporting, particularly eliminating paper copies of forms filed electronically.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

### C. Advice

In August 2016, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and Attorneys collectively responded to more than 1,294 email and telephone requests for advice in August.
- **Advice Letters:** The Legal Division received 20 advice letter requests and issued 16 advice letters.
- **Section 1090 Letters:** Legal Division received eight advice letter requests concerning Section 1090 and issued two. This year to date we have received 36 requests regarding Section 1090.

### D. Advice Letter Summaries

#### Campaign

**Joseph W. Brady, CCIM, SIOR**                      **A-16-130**

The Act's campaign disclosure provisions apply to an advertisement to be placed for his business as the advertisement expressly advocates for his re-election. Therefore, the payments by his wholly-owned company to fund the advertisements will be considered contributions to him from his company.

#### Conflict of Interest

**Ted Wolter**    **A-16-108**

An official does not have a conflict of interest in a decision involving a housing development because it would not have a reasonably foreseeable material financial effect on a grocery chain that is a source of income to his wife.

**Joseph M. Montes**                                      **A-16-112**

Two city councilmembers were advised that they may not participate in any decision limiting retail uses in an urban center zone or any decision requiring parking or payment of in-lieu of parking fees in connection with the zone because there is a reasonably foreseeable material financial effect on their interests.

**Jane T. Coleson**    **A-16-124**

A council member does not have a conflict of interest in a decision to rezone properties in the town's central commercial area to allow residential use on the second story without a conditional use permit. Even though he has a residential real property interest within 500 feet of one of the parcels subject to the rezoning, the rezoning would merely change the nature of the use allowed on the second floor of an existing structure on a street that already includes a mix of residential and commercial uses.

**David M. Snow****A-16-137**

A mayor who has an interest in real property does not have a conflict of interest in the following:

1. A decision involving a housing ordinance that limits the zones in which group homes serving more than six residents can operate because the housing ordinance applies to a “significant segment” of residential property in the jurisdiction and the mayor will not be uniquely affected.
2. A decision on a conditional use permit for an existing group home to add two additional residents despite the group home being located approximately 890 feet from her property, because the change in use of the group home property would be minimal.

**Krishan Chopra****A-16-139**

The Act does not prohibit a City of Mountain View Environmental Planning Commissioner from taking part in governmental decisions relating to the potential amendment of the City’s General Plan and its adoption of the East Whisman Precise Plan due to the Commissioner owning her primary residence 1,005 feet from the nearest boundary of the Plan area. The decisions would authorize within that area the addition of residential uses and an increase in the permitted intensity of commercial uses. However, (1) the Commissioner’s residence is in a built-out residential neighborhood buffered from potential externalities that could result from ensuing development within that area, (2) the Precise Plan includes traffic mitigation measures, and (3) future development within the affected area will require subsequent governmental decisions. Because the decisions at issue would not have a reasonably foreseeable material financial effect on the Commissioner’s real property interest in her residence, the Act does not prohibit the Commissioner from taking part in those decisions.

**Deborah L. Schwartz****A-16-142**

A planning commissioner that worked as a subcontractor for an architectural firm and received income from the firm will have a conflict of interest for 12 months after the payment in any decision that will have a foreseeable and material financial effect on the firm, including projects on which the firm is working.

**Kevin G. Ennis, Esq.****A-16-143 and A-16-152**

1. In determining distance between a subject property and the official’s property, the official may measure from the project boundaries (rather than the boundaries of the parcel on which the project is situated) to the official’s property.
2. Neither official has a disqualifying conflict of interest in the City Council’s consideration of an amendment to a General Plan near their respective homes. The homes are near, but beyond 500 feet, of the project boundaries and the area around their homes is substantially developed. Based on these facts, the project would not appear to materially change the market value of the property or the character of their neighborhoods.

**Catherine Kendall****I-16-147**

If selected to serve as Department of Conservation’s Enterprise Technology Services Division’s Chief Information Officer, the official would continue to have a conflict of interest in decisions that affect her spouse’s firm and in decisions that affect any source of income to her spouse’s firm.

**Mary Neilan****A-16-153**

A Joint Powers Agency (“JPA”) board member does not have a conflict of interest in applying for the position of General Manager of the JPA because she did so in her private capacity and did not make, participate in making, or influence any governmental decisions concerning the recruitment or hiring of the General Manager position.

**Teresa L. Sticker****A-16-181**

The Act prohibits a city Mayor from taking part in governmental decisions relating to “just cause” eviction controls on specified residential real properties, given that the Mayor’s spouse owns a single family residence with an attached in-law unit within the City, and that the Mayor rents out each of those residences to separate tenants. The “public generally” exception does not apply because the “just cause” eviction controls would not affect a significant segment of residential real properties throughout the City. Therefore, the Act prohibits the Mayor from taking part in those decisions because they would have a reasonably foreseeable material financial effect on the Mayor’s financial interest in his residential real property rental business distinguishable from the decision’s effect on the public generally.

**Candice Lee****A-16-160**

Councilmembers that live in a planned unit development (“HOA”) may attempt to influence a lease contract between a JPA and the HOA because according to the facts, the proposed lease will result in no revenue or costs to the HOA and therefore would not have a foreseeable financial effect on homeowners in the HOA.

**Miscellaneous****Julie Chapman****I-16-132**

Review of and feedback for a proposed ethics training required under AB 1234.

**Section 1090****Jane James****A-16-138**

If a planning manager’s spouse accepts employment with a city contractor, the manager will have a financial interest in the contractor and pursuant to Section 87100 could not make, participate in making, or influence any decision that will financially affect the contractor (including administration of the contract with the contractor). Moreover, Section 1090 would require the manager to abstain from participating in the modification, extension or renegotiation of the existing contract, and any new contract with the contractor.

**Mona M. Nemat, Esq.****A-16-145**

Section 1090 does not prohibit the District Board from approving a settlement agreement in ongoing litigation with a property owner’s association based on the rule of necessity so long as the Board Member, who has a financial interest in the settlement agreement, does not participate in approving the settlement agreement.

### **E. Miscellaneous Decisions**

**None to report.**

### **F. Upcoming Regulations**

**October 20, 2016**

**Regulation 18940 Guide to Gift Regulations; Minor Amendments to Implement SB 21.** SB 21 (Hill), Chapter 757, Statutes of 2015 requires a nonprofit organization that makes travel payments of \$5,000 or more for one elected state or local officeholder or \$10,000 or more a year for elected state or local elected officeholders, and whose expenses for such travel payments total 1/3 or more of the organization's total expenses in a year as reflected on the organization's Internal Revenue Service Form 990, to disclose to the Commission the names of donors who donated \$1,000 or more and also went on the trips. The bill also requires a person who receives a gift of a travel payment from any source to report the travel destination on his or her Form 700. Current Regulation 18940 is a guide to the regulations underlying the provisions of the Act that relate to gifts. Staff will propose amendments to Regulation 18940(d) to provide notice of the new disclosure requirement added by the enactment of SB 21.

**November 17, 2016**

**2017-2018 Consumer Price Index (CPI) Adjustment to Gift Limit and Contribution and Expenditure Limits.** Section 89503(f) requires CPI adjustments to the gift limits, affecting Regulations 18700, 18730 and 18940.2. Section 83124 and Regulation 18544 require CPI adjustments to the contribution limits and voluntary expenditure ceiling amounts, affecting Regulation 18545.

## G. Conflict of Interest Codes

### Adoptions and Amendments:

- Santa Rosa Regional Resources Authority
- Southern CA Public Power Authority
- CA Rural Risk Management Authority
- Southern CA Association of Governments
- CA Association of Mutual Water Companies  
Joint Powers Risk and Insurance Management Authority
- Calleguas-Las Virgines Public Financing Authority
- Metro Gold Line Foothill Extension Construction Authority
- CA State Association of Co-Excess Insurance Authority
- Caliber Schools
- Westlands Water District

### Exemptions and Extensions

#### *Exemption*

- California Environmental Protection Agency, Regional Solid Waste Working Group

#### *Extension*

- Department of Toxic Substances Control, Green Ribbon Science Panel

## H. 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 proven in a subsequent proceeding.*

*The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.*

### **In the Matter of Roberto Reyes, FPPC No. 16/160.**

On August 15, 2016, probable cause was found to believe that the named Respondent committed two violations of the Act, as follows:

COUNT 1: Respondent Roberto Reyes, a Richmond city planning commissioner, failed to timely file a 2014 Annual Statement of Economic Interest (“SEI”), due by April 1, 2015, in violation of Sections 87200 and 87203.

COUNT 2: Respondent Roberto Reyes, a Richmond city planning commissioner, failed to timely file a Leaving Office SEI within thirty days of leaving the planning commission in April 2015, in violation of Sections 87200 and 87204.

### **In the Matter of Tim Hodge for City Council ‘92 And Tim Hodge, Case No. 15/1346.**

On August 16, 2016, probable cause was found to believe Respondent committed the following violations of the Act:



COUNT 1: The Committee and Hodge failed to pay the 2013 Annual Fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 2: The Committee and Hodge failed to pay the 2014 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 3: The Committee and Hodge failed to pay the 2015 Annual Fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

**In the Matter of Frank C. Guzman and 2011 Committee to Elect Frank Guzman to PUSD Governing Board Member aka Committee to Elect Frank Guzman to Pomona USD School Board 2011, FPPC No. 15/625.**

On August 24, 2016, probable cause was found to believe that the named Respondents committed seven violations of the Act, as follows:

COUNT 1: The Committee and Guzman failed to timely file a semi-annual campaign statement due by July 31, 2014 for the reporting period ending June 30, 2014, in violation of Section 84200.

COUNT 2: The Committee and Guzman failed to timely file a semi-annual campaign statement due by February 2, 2015 for the reporting period ending December 31, 2014, in violation of Section 84200.

COUNT 3: The Committee and Guzman failed to timely file a semi-annual campaign statement due by February 1, 2016 for the reporting period ending December 31, 2015, in violation of Section 84200.

COUNT 4: The Committee and Guzman failed to timely pay a \$50 annual committee fee to the Secretary of State. due by January 15, 2013, in violation of Section 84101.5(c)(1).

COUNT 5: The Committee and Guzman failed to timely pay a \$50 annual committee fee to the Secretary of State. due by January 15, 2014, in violation of Section 84101.5(c)(1).

COUNT 6: The Committee and Guzman failed to timely pay a \$50 annual committee fee to the Secretary of State, due by January 15, 2015, in violation of Section 84101.5(c)(1).

COUNT 7: The Committee and Guzman failed to timely pay a \$50 annual committee fee to the Secretary of State, due by January 15, 2016, in violation of Section 84101.5(c)(1).

**In the Matter of Michael Horner, Case No. 15/1275.**

On August 25, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

- COUNT 1: Horner failed to timely file a semi-annual statement with the Lake County Auditor-Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of a candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period, violating Section 84200(b).
- COUNT 2: In 2014, Horner failed to timely file a late independent expenditure report with the Lake County Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within 90 days before the date of the election, for a mass mailing expressly advocating the defeat of a candidate, within 24 hours of making the late independent expenditure, violating Section 84204.
- COUNT 3: In 2014, Horner failed to timely file an independent expenditure verification form with the Commission by email within 10 days after the date Horner made his first independent expenditure, violating Section 84213.
- COUNT 4: In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392, violating Section 84300(b).
- COUNT 5: In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly advocating the defeat of a candidate which failed to display required sender identification, violating Section 84305(a).

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: TARA STOCK, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to 1,054 requests for advice via phone in August.

### **Workshops and Webinars**

Political Reform Consultants presented the following webinars and workshops:

- John Kim and Alex Castillo, webinar for candidates and treasurers
- Glen Bailey and Alex Castillo, webinar for campaign filing officers
- John Kim and I, workshop in the City of Berkeley for candidates and treasurers
- Deborah Hanephin, workshop in the City of Santa Monica for candidates and treasurers
- Deborah Hanephin and Glen Bailey, workshop in the City of Anaheim for candidates and treasurers
- Deborah Hanephin and Glen Bailey, workshop in the County of San Diego for candidates and treasurers

The Division is now preparing to present five workshops and webinars for candidates and treasurers, campaign filing officers, and local general purpose committees in September.