



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

December 21, 2017 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of November 3, 2017 through December 7, 2017, the Enforcement Division received 46 complaints, opened 12 for investigation, and rejected 18. The Enforcement Division received 128 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 154 cases including:

- 56 warning letters,
- 39 no action letters,
- 10 advisory letters,
- 32 as a result of the adoption of stipulations and defaults at the November Commission meeting, and
- 17 committees were administratively terminated.

The Division had 1,162 cases in various stages of resolution at the time of the November Monthly Report and currently has approximately 1,134 cases in various stages of resolution, including the 32 cases before the Commission as listed in the December 2017 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, 38 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 60 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

II. LEGAL DIVISION

STAFF:**JACK WOODSIDE, GENERAL COUNSEL****BRIAN LAU, ASSISTANT GENERAL COUNSEL****TRISH MAYER, ASSISTANT CHIEF****JOHN FESER, SENIOR COMMISSION COUNSEL IV**

A. Pending Litigation

Howard Jarvis Taxpayers Association, et al. v. Edmund Brown, et al.

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act¹ (the “Act”) because it does not “further the purposes of the Act,” an express requirement in the Act for legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, “entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The appeal will be filed with the Third District Court of Appeal. The deadline to file notice of appeal is Friday, January 12, 2018.

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.

¹ The 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 this source, unless otherwise indicated.

Mr. Burgess's case was first heard by an Administrative Law Judge (ALJ), and then Mr. Burgess challenged the ALJ's decision to the Commission. On March 19, 2015, the Commission rejected the ALJ's decision and decided the case based on the record and the parties' supplemental briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Act 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 September 15, 2016, the Superior Court issued its judgment granting the petition on due process grounds. The Court further ordered the Commission to file a Return to the Writ on or before November 7, 2016.

After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the Superior Court's judgment stand and to vacate and set aside its Decision and Order in the underlying matter, thereby dismissing the administrative proceedings against Mr. Burgess. The Commission timely filed a Return to the Writ.

On November 14, 2016, Burgess filed a Motion for Attorney's Fees under Code of Civil Procedure section 1021.5 ("private attorney general"). The FPPC in conjunction with the Attorney General's office prepared an opposition to this motion which was filed on January 25, 2017. The fee motion was heard on April 3, 2017, and the Superior Court took the matter under submission after argument by the parties. On April 10, 2017, the Superior Court granted Burgess's motion for attorney's fees. The Commission voted in closed session to appeal the Superior Court's order granting Burgess attorney's fees at the June meeting.

Appellant's opening brief was due by November 6, 2017, and was timely filed. Respondent's opposition brief was due by December 5, 2017, and Appellant's Reply brief is due by December 26, 2017. (As of the drafting of this report, we have not yet received notification as to whether Respondent's opposition brief has been filed.)

B. Outreach and Training

On November 17, 2017, Assistant Chief Trish Mayer along with Legislative and External Affairs Director Phil Ung, External Affairs and Education Manager Courtney Miller, and Enforcement Division Intake Manager Tara Stock spoke to nearly 50 treasurers from the California Political Treasurers Association at the FPPC offices in Sacramento. During this presentation, information regarding new laws was provided in addition to a question and answer session.

C. Advice

In November 2017, 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 591 e-mail and telephone requests for advice.

- **Advice Letters:** Legal Division received 16 new advice letter requests under the Political Reform Act and completed six letters.
- **Section 1090 Letters:** Legal Division received five new advice letter requests concerning Section 1090 and completed 10. This year to date we have received 78 advice requests regarding Section 1090.

D. Advice Letter Summaries

Full copies of FPPC Advice Letters, including those listed below, are available at:
<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Conflict of Interest

Elizabeth Gibbons

[A-17-240](#)

City official was found to have a disqualifying conflict of interest in participating in City Council decisions regarding a project impacting the expansion of a middle school. The official resided within 500 feet of the school and did not present sufficient facts that her residence would not experience a reasonably foreseeable material impact from the decisions.

Heather McLaughlin

[A-17-257](#)

Councilmember with an interest in real property subject to a rezoning to allow cannabis businesses under a proposed ordinance was disqualified from the decisions because the decisions are deemed to have a foreseeable and material financial effect on the councilmember's real property interest under Regulation 18702.2(a)(2). However, councilmembers were not disqualified based upon personal residences within 500 feet of property potentially subject to the ordinance. Neither was a councilmember with a dental business and commercial property within the downtown area because there was no indication that the ordinance would contribute to a change in value of the business or the commercial property's rental value or market demand because the property would not be available for use by a cannabis business under the proposed ordinance.

Daniel Sodergren

[A-17-259](#)

A member of the Economic Vitality Committee has a conflict of interest in decisions on a Downtown Specific Plan update, because she owns and lives in residential property located within the plan area. However, she is disqualified only from decisions before the Economic Vitality Committee. The Act permits her to attend and participate in the meetings held by the Downtown Specific Plan Task Force, Parks and Recreation Commission, Planning Commission, and City Council so long as she doesn't purport to act in her official capacity.

Dianne Jacob

[A-17-261](#)

A county supervisor did not have a disqualifying conflict of interest in decisions regarding the construction of an additional turning lane because the decisions would not have a reasonably foreseeable material effect on the supervisor's properties, which are located several miles away from the project.

Section 1090

James D. Ciampa

[A-17-115](#)

Where a city attorney also holds a position as chair of the board of a company that has provided residential water services to customers in areas that the city is seeking to annex, the city attorney has a conflict of interest under the Act and may not participate in the annexation negotiations because there is a nexus between the purpose for which the official receives income as chair of the board and the governmental decision.

Jim Wagoner

[A-17-176](#)

Section 1090 prohibits the staff at an air quality management district from participating in the district's voucher program to replace older wood stoves with cleaner-burning wood or gas stoves, where staff has advance knowledge of the funding cycle ahead of the public and the vouchers are offered on a first-come, first serve basis. Because the voucher program turns away applicant's each funding cycle upon exhaustion of the funds, Section 1091.5(a)(3), which allows an officer or employee to participate in a receiving an agency's public service "on the same terms and conditions" as if he or she were not a member of the agency, does not apply.

Gary W. Schons

[A-17-195](#)

Section 1090 does not prohibit an agency from entering a contract with a consulting company where the company was a subcontractor on a prior contract for a feasibility study on a similar proposal. A contractor is not subject to Section 1090 if it did not previously "transact on behalf of" the agency.

Robert Chavez

[A-17-239](#)

Section 1090 does not prohibit a city from entering a contract with a nonprofit conservation corps to complete a streetscape improvement project notwithstanding that the organization previously consulted the city regarding the project, was extensively involved in the design of the project, and developed an initial design concept for the project.

Bill Sator

[A-17-253](#)

City that has contracted with a specialized aeronautical services operator for previous ten years is permitted under Section 1090 and the Rule of Necessity to enter a subsequent agreement with the operator notwithstanding councilmembers longstanding employment with the contractor. However, the councilmember may not make or participate in any decisions involving the agreement.

Lori Herbel

[A-17-273](#)

Section 1090 does not impact a member of an advisory commission, who is also a contract instructor for the town, because there is no indication that actions by the advisory commission involve a contract the member may enter into as an instructor.

Revolving Door

Arno Harris

[I-17-237](#)

A former member of a statutorily-created state oversight board was found to be subject to the Political Reform Act's post-governmental employment restrictions as he was a designated employee in the oversight board's conflict-of-interest code.

SEI

Steven Block

[A-17-263](#)

A member of a local board of retirement, who is the settlor, trustee and primary beneficiary of a revocable family trust, is not required to report the trust on his statement of economic interests if it contains no reportable assets. However, if the trust does contain reportable assets, he is required to report only the value and identity of the reportable assets. Additionally, the official is not required to report interests in a hedge fund where that fund meets the criteria listed in Regulation 18237(a)(1) through (5).

E. Miscellaneous Decisions

None to report.

F. Potential Upcoming Regulations

January 2018:

- AB 249 Regulation Packet Phase 2 (Adopt) – Approximately 7 additional non-substantive regulation amendments resulting from implementation of AB 249.
- Revolving Door Regulation Packet (Prenotice) – Discussion of possible regulatory amendments to the revolving door provisions for local (Regulation 18746.3) and state officials (Regulations 18746.1 and 18746.4) implementing AB 551 and AB 1620.
- Regulations 18901 and 18901.1 (Prenotice) – Discussion of possible regulatory amendments to the implement S.B. 45, which banned certain publicly funded mass mailings permitted under Regulation 18901 in the 90 days preceding an election.
- Prenotice discussion of possible amendments to conflict of interest rules as applied to small shareholders and related business entities.

G. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes

- Prison Industry Authority
- Santa Monica Bay Restoration Commission
- State and Community Corrections Board
- State Hospitals Department
- Technology Department
- Travel and Tourism Commission

Multi-County Agency Conflict of Interest Codes

- Chino Basin Desalter Authority
- Cuyama Basin Water District
- Magnolia Educational and Research Foundation
- San Geronio Pass Water Agency
- San Joaquin Valley Water Infrastructure Authority
- Turlock Unified School District
- Yosemite Area Regional Transportation System
- Yucaipa Valley Water District

Exemptions

None to report.

Extensions

None to report.

H. Probable Cause Hearings

Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.

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

1. ***In the Matter of Andrew Valencia for Sweetwater School Board 2016 and Andrew Valencia, Case No. 16/20043.***

On November 28, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The Committee and Valencia failed to timely file a pre-election campaign statement for the reporting period of September 25, 2016 to October 22, 2016 in violation of Sections 84200.5 and 84200.8.

Count 2: The Committee and Valencia failed to timely file a semiannual campaign statement for the period October 23, 2016 to December 31, 2016 in violation of Section 84200.

Count 3: The Committee and Valencia failed to timely file a 24-hour report for two contributions of \$1,000 received on or about September 1, 2016 in violation of Section 84203.

Count 4: The Committee and Valencia failed to timely file a 24-hour report for a contribution of \$1,000 received on or about October 1, 2016 or on or about October 15, 2016 in violation of Section 84203.

2. *In the Matter of Re-Elect Council Member Pam O'Connor 2010, Pam O'Connor, and Alfredo Caravelli, Case No. 15/914.*

On November 29, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee and O'Connor failed to timely file the pre-election campaign statement due on October 6, 2014, in violation of Section 84200.7, subdivision (b).

Count 2: The Committee and O'Connor failed to timely file the pre-election campaign statement due on October 23, 2014, in violation of Section 84200.7, subdivision (b).

Count 3: The Committee and O'Connor failed to timely file the semi-annual campaign statement due on February 2, 2015, in violation of Section 84200.

Count 4: The Committee and O'Connor failed to timely file the semi-annual campaign statement due on July 31, 2015, in violation of Section 84200.

Count 5: The Committee and O'Connor failed to timely file the semi-annual campaign statement due on February 1, 2016, in violation of Section 84200.

Count 6: The Committee and O'Connor failed to timely file the semi-annual campaign statement due on August 1, 2016, in violation of Section 84200.

Count 7: The Committee and O'Connor failed to timely file the semi-annual campaign statement due on January 31, 2017, in violation of Section 84200.

Count 8: The Committee and O'Connor failed to timely pay the 2013 annual fee by the February 15, 2013 due date, in violation of Section 84101.5, subdivisions (c) and (d).

Count 9: The Committee and O'Connor failed to timely pay the 2014 annual fee by the January 15, 2014 due date, in violation of Section 84101.5, subdivisions (c) and (d).

Count 10: The Committee and O'Connor failed to timely pay the 2015 annual fee by the January 15, 2015 due date, in violation of Section 84101.5, subdivisions (c) and (d).

Count 11: The Committee and O'Connor failed to timely pay the 2016 annual fee by the January 15, 2016 due date, in violation of Section 84101.5, subdivisions (c) and (d).

Count 12: The Committee and O'Connor failed to timely pay the 2017 annual fee by the January 15, 2017 due date, in violation of Section 84101.5, subdivisions (c) and (d).

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: COURTNEY MILLER, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 387 requests for technical assistance via phone in November.

Training & Outreach

Political Reform Consultants conducted the following workshops and outreach activities:

John Kim and I conducted an SEI Filing Officer Workshop for LA County Filing Officers. More than 125 filing officers attended the two-hour training which covered filing officer duties and gift rules.

Deborah Hanephin partnered with the Institute for Local Government to present a webinar on gift rules. Approximately 40 people attended the webinar.

Glen Bailey, John Kim and Alex Castillo staffed the FPPC Outreach Booth at the CSAC Annual Meeting in Sacramento. Consultants answered questions from approximately 30 attendees regarding behested payments, gift rules and the Form 700, and promoted the FPPC's training and outreach opportunities.

Additional Outreach Activities

On September 29, FPPC Communications Director Jay Wierenga took part in a civic engagement workshop in San Bernardino, sponsored by the Office of Assemblymember Eloise Gomez Reyes. Wierenga gave a presentation on the Commission's functions and role and answered questions from attendees. Also presenting was the San Bernardino County Registrar-Recorder and County Clerk's Office. Approximately 75 people attended the workshop.

On November 4th, FPPC Communications Director Jay Wierenga provided a similar presentation on the FPPC to the Redding Chapter of the League of Women Voters, along with the Shasta County Clerk's Office. Approximately 30 people attended the presentation.