



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

January 19, 2017 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of December 2, 2016 through January 5, 2017, the Enforcement Division received 58 complaints, opened 19 for investigation, and rejected 17. The Enforcement Division received 46 non-filer referrals during this time and rejected 6.

Also during this time, the Enforcement Division closed a total of 90 cases including:

- 19 warning letters,
- 1 advisory letter,
- 21 no action letters,
- 34 as a result of the adoption of stipulations and defaults at December Commission meeting, and
- 15 committees were administratively terminated.

The Division had 1,018 cases in various stages of resolution at the time of the December Monthly Report and currently has approximately 1,087 cases in various stages of resolution, including the 27 cases before the Commission as listed in the January 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, 191 have been resolved with fines and 169 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 56 have been resolved with fines and 239 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

STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JACK WOODSIDE, SENIOR COMMISSION COUNSEL

A. Pending Litigation

Howard Jarvis Taxpayers Association 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 for the purpose of financing campaigns. 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 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. It expects to respond by filing a demurrer to the lawsuit on or before January 30, 2017.

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”)¹ 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 Court issued its

¹ 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.

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 Judgment stand and to vacate and set aside its Decision and Order in the underlying matter. The Commission has therefore dismissed the administrative proceedings against Petitioner Burgess and timely filed a Return to the Writ. On November 14, 2016, Burgess filed a Motion for Attorney's Fees. The FPPC is working with the Attorney General's office on the opposition to this motion. A hearing on the fee motion is scheduled for February 28 in Riverside County.

B. Outreach and Training

- In early December Assistant Chief Trish Mayer and Political Reform Consultant Alexandra Castillo made a presentation to almost 350 city clerks at their annual New Law and Elections seminar in Monterey. Topics included a recap of campaign and Form 700 rules, an overview of recent legislative and regulatory changes and an update on the Commission's new Form 700 electronic filing system.

C. Advice

In December 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 686 email and telephone requests for advice.
- ***Advice Letters:*** The Legal Division received 16 advice letter requests and issued 13 advice letters.
- ***Section 1090 Letters:*** Legal Division received six new advice letter requests concerning Section 1090 and issued seven. This year to date we have received 69 requests regarding Section 1090.

D. Advice Letter Summaries

Conflict of Interest

Robert Poythress

A-16-215

As a Madera County Supervisor, the official would have a conflict under Section 87100 in County decisions that will have a foreseeable and material financial effect on his employer, Citizens Business Bank. This would include Board of Supervisor decisions regarding deposits the County Treasurer/Tax Collector makes into the bank. However, in other decisions, where the bank is not named or otherwise the subject of a proceeding (such as the general funding of the Treasurer/Tax Collector's Office), it is only a conflict of interest if it is foreseeable that the decision could foreseeably and materially affect the bank.

Mark Branfitt**A-16-222**

For a decision that affects taxes, fees, or assessments that apply to a parcel of real property, the financial effect on an interest in the parcel is foreseeable and material. Thus, a Local Agency Formation Commission Commissioner may not take part in decisions regarding the detachment of parcels from a health care district because the decisions involve the reduction and eventual repeal of an assessment that applies to the Commissioner's property.

John L. Fellows III**A-16-226**

For the purpose of applying Regulation 18702.2, an official may measure from the boundary of his real property to the boundary of a specific project site as opposed to the boundary of an entire legal parcel. The official may participate in decisions regarding a parcel within 500 feet of his residence because the decision will not have a reasonably foreseeable material financial effect on his real property.

Donald A. Larkin**A-16-227**

A city councilmember may not take part in decisions to make recommendations to the High Speed Rail Authority regarding the proposed High Speed Rail that will run through the city. Depending on the route that is selected, it is likely that his residence will be affected by increased noise and traffic and it is possible that his residence will be taken by eminent domain. The decisions will have a reasonably foreseeable material financial effect on his real property.

Colin Doyle**A-16-252**

The requestor is a Planning Commissioner and a local architect. In his private capacity as an architect, the Commissioner submitted a rezoning application on behalf of his client. While he may not appear before the Planning Commission, he may appear before the City Council on behalf of his client regarding the zoning change application so long as the Planning Commission has no further input on the application and he does not appear in his official capacity. He may also appear before the Design Review Board on behalf of his client. It is under the authority of the City Council and not the Planning Commission. Similarly, he must not appear in his official capacity.

Kristen Barneich**A-16-251****Barbara Harmon****A-16-259****Caren Ray****A-16-260**

Three city council members who have interests in real property do not have a conflict of interest in a decision involving a specific plan amendment, located approximately 1,000 feet or more from their respective residences. In addition, one of the council members also asked her live-in significant other who has worked on the project in the past and the receipt of a campaign contribution from a project proponent. Neither of these facts create a conflict of interest.

Matthew Piner**A-16-256**

A Preservation Commission member may appear before the Planning Commission to provide public comment on a proposed project, so long as he does not act or purport to act as a representative of, or on behalf of the Preservation Commission, to any member, officer, employee or consultant of the planning department, because the Planning Commission is not an agency appointed by or subject to the budgetary control of the Preservation Commission.

Carolyn Hardy**A-16-257**

The councilmember with residential property 50 feet away from the Forest Theater, may participate in fee decisions for the use of the Forest Theater. The user fees appear to have no financial impact on the councilmember's real property.

C/I Code**Lillian Harris-Neal****I-16-192****James L. Markman****I-16-192(a)**

Members of the City of Brea Investment Advisory Committee make governmental decisions concerning the management of public investments, and therefore must file statements of economic interests ("SEIs") under Section 87200. Investment managers employed by outside firms that invest public funds under contract with the City of Brea, who are making decisions regarding the investment of public funds, must file SEIs under Section 87200.

Kryss Rankin**A-16-242**

For purposes of determining the code reviewing body for the Sacramento-Yolo Port District, the District is considered to be a multi-county agency, with the Commission as the code reviewing body. Although the port is principally located in Yolo County, it also owns real property and exercises official authority in portions of Solano County.

Gifts**Alan Seem****I-16-236**

The requestor organized the 2016 Autumn China Trip, for Silicon Valley mayors, councilmembers, and local business members to travel to China to meet with local Chinese government officials, potential investors, and CEOs from local high tech companies. Due to the fact that a local Chinese government authority paid for the Silicon Valley officials travel, lodging, and meals, and the travel was for the governmental purpose of economic trade and business development with the region, the tour payments would be reportable gifts, not subject to the gift limits. We noted the recent enactment of Section 89506(f), regarding nonprofits that regularly organize and host travel for officials for their future attention.

Revolving Door**Steven M. Danowitz****A-16-244**

Based on the limited facts presented by the requestor, the advice concluded that Section 87400 et seq. would apply and would prohibit him from participating in an audit proceeding in which his legal advice was sought and provided while he was employed at the Franchise Tax Board. However, we advised that Section 87404 does provide for a process to allow the agency to hold a hearing to further develop facts and to determine if a former employee should be excluded from a proceeding pursuant to Section 87400 et seq. Section 87404 does not direct or authorize the Commission to participate in the hearing or determination.

Wayne D. Cook**A-16-248**

A former employee of the California Arts Council (“CAC”) may consult on a part-time basis with CAC contractors consistent to the revolving door rules of the Act because a year will have passed between his retirement from the state and his consulting, and because he will not work on any project under a state contract in which he participated as a state employee.

Section 1090**Teresa L. Highsmith****A-16-150**

A member of a local work force development policy board was advised that he is not prohibited from contracting with the local workforce development board (for which his policy board has some oversight authority) for services related to his private business. However, the official was advised that he is prohibited under the Act from making, participating in making, or using his official position to influence the decision. Accordingly, while his company may enter into the contract, any appearances or communications with the workforce development board must be made by a representative of the company and not the policy board member.

Gary W. Schons, Esq.**A-16-180**

One of the District Directors, as well as the entire District Board of Directors, has a prohibitory financial interest under Section 1090 related to the potential settlement agreement over a property dispute. However, the rule of necessity applies to allow the District to enter into an agreement with the Director to resolve all property-related issues concerning access to its land.

Michael Jenkins**A-16-213****Jaroslav (Yarek) Lehr****A-16-218**

Under Section 1090, an Alternate Board Director who did not participate in any discussions concerning recruitment, or the terms and conditions of employment for a new Executive Director is not subject to the conclusive presumption of participation in every decision. Thus, he is not prohibited from applying for the position.

Eric R. Klinkner**A-16-220**

An Alternate Board Director who did not participate in any discussions concerning recruitment, or the terms and conditions of employment, of a new Executive Director is not subject to the conclusive presumption of participation in every decision. However, because the Alternate Board Director had an opportunity for very limited participation in preliminary discussions, under which the contract would later be executed, we cannot conclude that he participated in the making of the employment agreement, and leave it the Alternate Board Director and the agency to determine whether such participation prohibits him from taking the Executive Director position.

Robert M. Burns**A-16-223**

Section 1090 does not prohibit Lassen County employees from purchasing books at a bookstore owned by a current member of the Lassen County Board of Supervisors. There is no contract between the County and the bookstore, and the series of small purchases occasionally made at the discretion of county staff, without input from the Board of Supervisors, are made on the same terms and conditions as those made by members of the general public. Although these limited

purchases involve a contract in the most technical sense, they are not the type of contractual situation Section 1090 seeks to prevent.

Jennifer M. Lyon**A-16-239**

Owning homes in and being members of a Home Owners Association (“HOA”) constitutes a financial interest in decisions regarding a contract between the District and the HOA allowing the HOA to obtain effluent from the District. However, since the District will need to dispose of the effluent in any case, whether the HOA agreement is renewed or not, the rule of necessity applies to the contract decision. However, the members with the Section 1090 conflict of interest must abstain from participation in the decision.

E. Miscellaneous Decisions

None to report.

F. Upcoming Regulations**February 16, 2017**

- **Controlled Committee.** A committee controlled by a candidate or state measure proponent is defined in Section 82016. Staff proposes to codify legal advice regarding what constitutes having significant influence over a committee to make the committee a controlled committee under that section.

March 16, 2017

- **Conflicts of Interest Regulations, Revisited:** Having advised on the new conflict of interest rules for over a year, staff will present a review and refinement of select provisions of the conflict of interest regulations enacted in 2014 and 2015.

G. Conflict of Interest Codes

Adoptions and Amendments

Exemptions and Extensions

Multi-County Agency Conflict of Interest Codes

Exemption

- Calaveras County Water District Public Financing Authority
- California Montessori Project
- Castaic Lake Water Agency
- Central Valley Financing Authority
- Delano-Earlimart Irrigation District
- Glenn-Colusa Irrigation District
- Independent Cities Finance Authority
- Kings Mosquito Abatement District
- Kings River Conservation District
- Marin Clean Energy
- Monterey Bay Air Resources District
- Northern California Gas Authority Number 1
- Sacramento Cogeneration Authority
- Sacramento Municipal Utility District (SMUD)
- SMUD Finance Authority
- Sacramento Power Authority
- Sacramento-Yolo Port District Commission
- South Valley Water Resources Authority
- Southern Humboldt Community Healthcare District
- Tahoe Forest Hospital District
- Turlock Irrigation District

- None

Extension

- None

State Agency Conflict of Interest Codes

- Department of Insurance
- Energy Commission
- Fair Employment and Housing Council
- Workforce Development Board

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 Montclair Taxpayers Association and Trisha Vincent, FPPC No. 15/1433.

On December 2, 2016, probable cause was found to believe that the named Respondents committed three violations of the Act, as follows:

- COUNT 1: Vincent and the Committee failed to pay the 2013 Annual Fee by the February 15, 2013 deadline 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: Vincent and the Committee failed to pay the 2014 Annual Fee by the January 15, 2014 deadline 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: Vincent and the Committee failed to pay the 2015 Annual Fee by the January 15, 2015 deadline 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 John Anagnos, FPPC No. 15/1497. On December 2, 2016, probable cause was found to believe that the named Respondent committed two violations of the Act, as follows:

- COUNT 1: John Anagnos, an Alternate Commissioner of the Lodi Winegrape Commission Board, failed to file a 2014 Annual SEI by April 1, 2015, in violation of Section 87300.
- COUNT 2: John Anagnos, an Alternate Commissioner of the Lodi Winegrape Commission Board, failed to file a 2015 Annual SEI by April 1, 2016, in violation of Section 87300.

In the Matter of Committee to Elect Marina Fraser, Marina Fraser, and Jackie M. Buckley, Case No. 16/140. On December 7, 2016, probable cause was found to believe Respondents committed the following violations of the Act:

- COUNT 1: Respondents failed to timely file the semi-annual statement due January 31, 2013, in violation of Section 84200.
- COUNT 2: Respondents failed to timely file the semi-annual statement due July 31, 2013, in violation of Section 84200.
- COUNT 3: Respondents failed to timely file the semi-annual statement due January 31, 2014, in violation of Section 84200.
- COUNT 4: Respondents failed to timely file the semi-annual statement due July 31, 2014, in violation of Section 84200.
- COUNT 5: Respondents failed to timely file the semi-annual statement due February 2, 2015, in violation of Section 84200.
- COUNT 6: Respondents failed to timely file the semi-annual statement due July 31, 2015, in violation of Section 84200.

- COUNT 7: Respondents failed to timely file the semi-annual statement due February 1, 2016, in violation of Section 84200.
- COUNT 8: Respondents failed to timely file the semi-annual statement due August 1, 2016, in violation of Section 84200.
- COUNT 9: Respondents 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 10: Respondents 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 11: Respondents 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).
- COUNT 12: Respondents failed to pay the 2016 annual fee by the January 15, 2016 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 Eric Rudnick, FPPC No. 16/060. On December 19, 2016, probable cause was found to believe that the named Respondent committed two violations of the Act, as follows:

- COUNT 1: Eric Rudnick, a Consultant for the County of Santa Clara Public Health Department and a Commissioner for the Emergency Medical Services Authority Commission, failed to file a 2014 Annual SEI by April 1, 2015, in violation of Section 87300.
- COUNT 2: Eric Rudnick, a Consultant for the County of Santa Clara Public Health Department and a Commissioner for the Emergency Medical Services Authority Commission, failed to file a 2015 Annual SEI by April 1, 2016, in violation of Section 87300.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: TARA STOCK, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 522 requests for advice via phone in December. In 2016, the Division has answered over 9,600 requests for phone advice.

Forms, Manuals, and Other Materials

Division staff updated and posted the 2016/2017 Form 700 and related documents and the 2017/2018 charts for the updated state contribution and voluntary expenditure ceiling limits.

Workshops

Political Reform Consultants Deborah Hanephin and John Kim presented a workshop on Form 700 filing officer duties to almost 50 state agency filing officers. The presentation was very well-received – evaluations received after the presentation included average scores of 28 out of 30.

Division staff is gearing up for more workshops to be held for state and local agency Form 700 filing officers, as well as local candidates and treasurers, and campaign filing officers.

Filing Schedules

The 2017 filing schedules for state committees have been finalized and are now posted on the website, along with the filing schedules for local elections being held on March 7, 2017, June 6, 2017, and November 7, 2017. In December, staff also created filing schedules for six local jurisdictions holding special elections on other dates in 2017.