



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

February 15, 2018 Commission Hearing

Contents

<u>ENFORCEMENT DIVISION</u>	2
<u>LEGAL DIVISION</u>	3
<u>EXTERNAL AFFAIRS AND EDUCATION DIVISION</u>	13
<u>LEGISLATIVE UPDATE</u>	14

I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of January 4, 2018 through February 1, 2018, the Enforcement Division received 47 complaints, opened 2 for investigation, and rejected 33. The Enforcement Division received 42 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 96 cases including:

- 28 warning letters,
- 16 no action letters,
- 2 advisory letters,
- 18 as a result of the adoption of stipulations at the January Commission meeting, and
- 32 committees were administratively terminated.

The Division had 1,065 cases in various stages of resolution at the time of the January Monthly Report and currently has approximately 1,015 cases in various stages of resolution, including the 13 cases before the Commission as listed in the February 2018 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, 23 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 33 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 Notice of Appeal was filed with the Third District Court of Appeal on January 9, 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.

The parties' respective appellate briefs have been timely filed: Appellant's opening brief on November 6, 2017; Respondent's opposition brief on December 5, 2017, and Appellant's reply brief on December 26, 2017. A hearing date for oral argument has not yet been set.

B. Outreach and Training

On January 22nd, Senior Commission Counsel Sukhi K. Brar and Assistant Chief Trish Mayer participated in a webinar training on the Act's Statement of Economic Interest (Form 700) reporting rules for the California Judges Association. During the program, Sukhi provided a comprehensive overview tailored to judges of all the types of interests that need to be reported on the Form 700, including sources of income, real property, investments and gifts. Attorney Edith Matthai of the Robie & Matthai law firm in Los Angeles also provided a comprehensive overview of other rules pertaining to judicial ethics outside of the Political Reform Act.

C. Advice

In January 2018, 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 1,268 e-mail and telephone requests for advice.

- **Advice Letters:** Legal Division received 14 new advice letter requests under the Political Reform Act and completed 14 letters.
- **Section 1090 Letters:** Legal Division received five new advice letter requests concerning Section 1090 and completed seven. This year to date, we have received five 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

Darlene K. Gee[A-17-249](#)

City councilmembers, who are members of a private country club located within 500 feet of downtown area, have property interests in their club memberships and interests in the club as an investment in a business entity. However, the councilmembers may take part in decisions regarding the downtown parking program because the decisions will not have a reasonably foreseeable material effect on their interests.

Bill Sartor[A-17-252](#)

Commissioner, with property interest just 600 feet away from 600-unit housing project and located on a street that currently ends at an undeveloped lot adjacent to the project, is prohibited from taking part in decisions regarding the project. The project may foreseeably result in a substantial change in traffic levels and the intensity of use, which would also likely influence the market value of the property.

Prasanna W. Rasiah[A-17-256](#)

A city councilmember, who has an interest in a business that owns real property in historic downtown district, does not have a conflict of interest in decisions to amend architectural standards and to close segments of two streets to traffic in neighboring districts because neither decision would have a material financial effect on the value of councilmember's interest in the business.

Theresa E. Fuentes[A-17-276](#)

The Act does not prohibit a city councilmember from taking part in governmental decisions relating to the city's potential regulation of short-term rentals because there is no indication from the facts presented that those decisions would have a reasonably foreseeable financial effect on the councilmember's law firm or his personal finances. While the councilmember's law firm formerly represented Airbnb, a privately held business that provides an online marketplace facilitating short-term rentals, the councilmember does not own a 10-percent interest or more in the firm and does not have interests in sources of income to the law firm, including Airbnb.

Ann Schneider[A-17-280](#)

City councilwoman, who resides in a home held in a family trust, does not have an economic interest in the property because her parents, the trustees of the trust, may revoke the trust at their discretion and she is not receiving income from the trust. The councilwoman does not have a disqualifying conflict of interest arising from the trust in decisions involving a park within 500 feet of the home.

Christopher Drop[A-17-281](#)

The Act does not prohibit the general manager of a community service district from taking part in governmental decisions relating to a project to build a playground structure at a charter school, including decisions relating to a potential grant to help fund the project, because those decisions would not have a reasonably foreseeable material financial effect on the general manager's real property interest in his residence distinguishable from the effect on the public generally. Although the general manager's residence is in close proximity to the charter school and the proposed project site, the community is only 0.704 square miles with a population of 784. Accordingly, the general manager's property will not be uniquely affected in comparison to other residences in the community.

Kelso G. Barnett[A-17-287](#)

The Act prohibits a planning commissioner from taking part in governmental decisions relating to the proposed renovation and redevelopment of the large retail and restaurant business in a historic building downtown, because those decisions would have a reasonably foreseeable material financial effect on the commissioner's residence located within 450 feet of the project. The renovation would more than double the total commercial area, enable the establishment of a specialty food marketplace with multiple owner-operated vendors within the building, and convert an existing narrow walkway on the portion of the property closest to the commissioner's residence into a pedestrian promenade with an exterior courtyard. It is foreseeable that these changes would have a measurable impact on the commissioner's residence.

Anthony P. Condotti[A-17-288](#)

Councilmembers who own rental properties subject to both the "just cause" eviction and "rent freeze" provisions included in a proposed city ordinance are disqualified from decisions regarding the ordinance and may not take part in the decisions under the public generally exception because properties subject to the "rent freeze" are uniquely affected as compared to the applicable significant segment. However, a councilmember with rental property not subject to the "rent freeze" and councilmembers who are the lessees of rental property may take part in the decisions.

Mark Branfitt, P.E.[A-17-289](#)

Two commissioners on local agency formation commission are prohibited from taking part in decisions regarding an application seeking dissolution of a health care district within the county, when dissolution of the district would eliminate a property tax they currently pay as property owners within the district. The public generally exception does not apply because the agency's jurisdiction is the county, and the affected properties in the district did not make up a significant segment of the county.

Peter Ostroff[A-17-290](#)

Planning commissioner has a disqualifying conflict of interest and may not take part in decisions to modify the city's code to change development standards within the official's residential neighborhood. These decisions would have a foreseeable and material effect on the value of the official's home. However, the official could take part in decisions regarding the city's jurisdiction-wide definition of "basement" if the decisions are properly segmented from the code decisions.

Krishan Chopra[A-17-291](#)

The Act does not prohibit a city councilmember from taking part in governmental decisions relating to a school district's transfer of unused development rights, where five of eight proposed projects are located near the corporate headquarters of the official's former employer. The city's potential approval of the transfer would not have a material financial effect on the official's former employer, a large international technology corporation, because the decisions would not contribute to a change in the price of the company's publicly traded stock.

Lobbying**Angelina Cacioppo Hernandez**[A-17-285](#)

The Act's lobbying provisions do not require a county library to register as a lobbyist or adhere to lobbyist disclosure requirements merely because the library provides postcards for public comments and mails the postcards, at the request of the commenter, to public officials including elected state officials.

Section 1090**Jack Grossman**[A-17-167\(a\)](#)

A company that performed assessment and inventory services on eleven city pump stations and prepared a written report under an initial contract with the city is not prohibited from subsequently contracting with the city for the design and rehabilitation of one of the eleven pump stations. While the company's report was used in the city's request for proposals for the subsequent contract, Section 1090 does not prohibit the city from entering into the subsequent contract with the company. The company did not participate in the making of the subsequent contract through its performance of the initial contract, did not impose considerable influence over the city regarding the subsequent contract, and derived no unfair advantage in procuring the subsequent contract by the work it performed under the initial contract.

Barbara Balen[A-17-235](#)

Under the Act, a utility district board member has a conflict of interest in decisions relating to the lining of an irrigation ditch because a portion of the ditch runs through her property and the decisions may have a foreseeable and material effect on the property. Although an analysis was requested, Section 1090 does not apply to the question presented.

Michael C. Ghizzoni[A-17-250](#)

A member of a local government agency board is prohibited under the Act from taking part in decisions, including litigation-related decisions, to add a high occupancy vehicle lane to a highway with an on-ramp within 153 feet of his residence, due to the reasonably foreseeable material financial effect upon his interest in his real property. However, Section 1090 does not prohibit the remaining members of the board from entering a settlement agreement for litigation involving the project.

Russell E. Perdock[A-17-265](#)

Section 1090 does not prohibit a councilmember from applying for a position as chief of police because the councilmember did not participate in any discussions concerning recruitment, or the terms and conditions of employment, and the councilmember intends to resign prior to applying for the position.

Ken Ibarra[A-17-279](#)

Section 1090 prohibits a councilmember from applying for a position as city clerk because the councilmember was preliminarily involved in making the contract for the city clerk position in approving the job description and hiring a recruitment firm.

Michael C. Ghizzoni[A-18-008](#)

A county supervisor, who owns a farm and property adjacent to large canyon with 1,600 existing oil wells, does not have a conflict of interest under the Act in decisions regarding a project and franchise agreement for additional oil production in the canyon. The proposed project and franchise agreement will not have a foreseeable and material effect on the supervisor's interests considering the scope of the project, current uses of the property, and the geography of the canyon. Additionally, Section 1090 does not prohibit the supervisor from taking part in the decisions regarding the project or franchise agreement. The supervisor does not have a financial interest in contracts resulting from the project or franchise agreement for purposes of Section 1090.

E. Miscellaneous Decisions

None to report.

F. Potential Upcoming Regulations**March 2018:**

- Regulation 18450.1 (Adoption) – Proposed regulatory amendments to Regulation 18450.1 to maintain or eliminate minimum thresholds for advertisements requiring disclosure statements under AB 249, and to specify yard sign dimension limitations if minimum thresholds are maintained.
- Regulation 18401 (Adoption) – Proposed regulatory amendment to Regulation 18401 to clarify recordkeeping requirements for earmarked funds, including accounting method for

determining top contributors when earmarked funds have been contributed, and mass electronic mailings as necessitated by AB 249.

Scheduling to be Determined:

- Prenotice discussion of possible amendments to conflict of interest rules including: (1) rules for small shareholders and related business entities and (2) bright line materiality standards and clarification of the 500-foot property rule.

G. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes

- Coastal Conservancy
- Collaborative for Education Excellence

Multi-County Agency Conflict of Interest Codes

- Antelope Valley Joint Union High School District
- Cuyama Joint Unified School District
- Livermore Valley Joint Unified School District
- Santa Clarita Valley Water Agency (previously Castaic Lake Water Agency)
- Yolo Subbasin Groundwater Agency

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.

1. ***In the Matter of Barbadillo for Milpitas City Council 2014, and Gary Barbadillo, Case No. 15/248.***

On January 12, 2018, after hearing, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: Respondents Barbadillo for Milpitas City Council 2014 and Barbadillo failed to pay a total of \$7,373.65 in expenditures from the designated campaign bank account, in violation of Section 85201.
- Count 2: Respondents Barbadillo for Milpitas City Council 2014 and Barbadillo accepted two contributions over \$100 in the form of cash and a money order in violation of Section 84300, subdivisions (a) and (c).

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

2. *In the Matter of Committee to Elect Al Murray Berkeley City Council 2016, AL G. Murray, and Pauline Stewart, FPPC Case No. 16/19757.*

On January 10, 2018, probable cause was found to believe Respondents committed the following violation of the Act:

- Count 1: The Committee, Murray, and Stewart failed to timely file the pre-election campaign statement due on September 24, 2016, in violation of Sections 84200.5, subdivision (a), and 84200.8, subdivision (a).

3. *In the Matter of Ramona Landeros for School Board 2016, Ramona Landeros, and Cesar Garcia, Case No. 16/19700.*

On January 10, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The Committee, Landeros, and Garcia failed to timely file the pre-election campaign statement due on May 26, 2016, in violation of Sections 84200.5, subdivision (a), and 84200.8, subdivision (a).

- Count 2: The Committee, Landeros, and Garcia failed to timely file the semi-annual campaign statement due on August 1, 2016, in violation of Sections 84200.

- Count 3: The Committee, Landeros, and Garcia failed to timely file the semi-annual campaign statement due on January 31, 2017, in violation of Section 84200.

4. *In the Matter of Cruz for School Board – WUSD 2012, Alicia Cruz 4 School Board 2016, and Alicia Cruz, Case No. 17/620.*

On January 26, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The 2012 Committee and Cruz failed to file a pre-election campaign statement due October 25, 2012, in violation of Sections 84200.5 and 84200.7.

- Count 2: The 2016 Committee and Cruz failed to file a pre-election campaign statement due October 27, 2016, in violation of Sections 84200.5 and 84200.8.
- Count 3: The 2016 Committee and Cruz failed to timely file a semi-annual campaign statement due January 31, 2017, in violation of Section 84200.
- Count 4: The 2016 Committee and Cruz failed to file a late contribution report within 24 hours of receiving a late contribution from Clark Pacific in violation of Section 84203.
- Count 5: The 2016 Committee and Cruz failed to designate a dedicated campaign bank account in violation of Section 85201.

5. *In the Matter of Carol Chorbajian, Case No. 16/408.*

On January 26, 2018, probable cause was found to believe Respondent committed the following violations of the Act:

- Count 1: Chorbajian failed to timely file an Assuming Office SEI by July 25, 2015 in violation of Sections 87302.6 and 87202.
- Count 2: Chorbajian failed to timely file a 2015 Annual SEI by April 1, 2016, in violation of Sections 87302.6 and 87203.
- Count 3: Chorbajian failed to disclose a business position and income on an Assuming Office SEI in violation of Sections 87302.6 and 87202.
- Count 4: Chorbajian failed to disclose a business position and income on the 2015 Annual SEI in violation of Sections 87302.6 and 87203.
- Count 5: Chorbajian failed to disclose a business position and income on the 2016 Annual SEI in violation of Section 87300.

6. *In the Matter of Violeta Alvarez, Re-Elect Violeta Alvarez for City Council 2015, and Mario Estrada, FPPC Case No. 15/1501*

On January 31, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: Alvarez, the Committee, and Estrada failed to timely report all contributions and expenditures, and failed to disclose all required contributor and payee information, on the Committee's originally filed and amended campaign statements for the reporting periods of January 1, 2014 through December 31, 2015, in violation of Section 84211, subdivisions (a), (b), (c), (d), (f), (i), (j), and (k).

Count 2: Alvarez, the Committee, and Estrada received cash contributions of \$100 or more, and made cash expenditures of \$100 or more, in violation of Section 84300, subdivisions (a) and (b).

Count 3: Alvarez, the Committee, and Estrada failed to maintain supporting records for contributions received and expenditures made, in violation of Section 84104.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: COURTNEY MILLER, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 791 requests for technical assistance via phone in January.

Training & Outreach

Political Reform Consultants conducted the following workshops and outreach activities:

- Alex Castillo conducted Campaign Filing Officer and Candidate/Treasurer workshops for staff and constituents in Fresno County. She also conducted a Candidate/Treasurer workshop in Kern County, where approximately 50 people attended.
- John Kim conducted a Campaign Filing Officer and SEI Filing Officer workshop for the City of Atherton. Approximately 33 staff attended the workshops.
- Alex Castillo and Glen Bailey conducted a SEI Filing Officer outreach for the State Center Community College District.
- I conducted a New Law/Filing Officer Responsibilities workshop with the Region 16 (Napa/Sonoma) City Clerks Association. Approximately 35 city clerks attended.

The division also has started recording and posting “shorts” – these are shorter training videos dedicated to a specific Form 700 schedule. These videos create a more user-friendly experience by allowing a filer to find answers about one schedule without having to watch a video about the entire Form 700. The following recorded instructional webinars were posted to the FPPC website:

- Form 700: Schedule C
- Form 700: Schedule D
- Form 700: Schedule E

The 2018 version of the Political Reform Act has been updated and is available on the website.

IV. LEGISLATIVE UPDATE

STAFF: PHILLIP UNG, DIRECTOR, LEGISLATIVE AND EXTERNAL AFFAIRS

The Legislature's bill introduction deadline is February 16. Proposed amendments to the Political Reform Act have been sparse, but there will be a clearer picture of 2018 legislation by the introduction deadline. There are currently two bills moving through the legislative process. Staff is not making any recommendations for the February Commission meeting.

Legislation currently being tracked by Commission staff and other related documents can be found on the [Commission's Pending Legislation](#) page.

Political Reform Act or Related Bills (#1-2)

1. AB 664 (Steinorth): Campaign fund expenditures; fair market value; family members

FPPC Position: *None currently*

Status: Senate Rules Committee

Fiscal Estimate: Minor and absorbable

Last Amended: January 11, 2018

Summary:

Existing law prohibits the spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation from campaign funds controlled by the elected officer or candidate.

Under the *Harden* (A-90-498) and *Tierney* (A-04-094) Advice Letters, the Commission staff has advised that the compensation from campaign funds must be fair market value or a gift may result, so long as the duties performed by a non-spouse relative are directly related to a political, legislative, or governmental purpose.

This bill would prohibit compensation above fair market value to a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate or elective office from a controlled committee of the elected officer or candidate for elective office. The bill would additionally prohibit compensation above fair market value to any business majority-owned or controlled by any spouse, domestic partners, or above named relatives.

2. SB 964 (Allen): Secretary of State: online filing and disclosure system

FPPC Position: *None currently*

Status: Introduced

Fiscal Estimate: None requested

Summary:

Existing law requires the Secretary of State to post on his or her website hyperlinks to local government websites that contain publicly disclosed campaign finance information no later than December 31 of each year.

This bill would require that the hyperlinks are updated before December 31 of each year.
