



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

September 20, 2018 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of August 2, 2018 through September 5, 2018, the Enforcement Division received 95 complaints, opened 9 for investigation, and rejected 36. The Enforcement Division received 32 non-filer referrals during this time.

During this time, the Enforcement Division closed a total of 112 cases including:

- 32 warning letters,
- 1 advisory letter,
- 23 no action closure letters,
- 36 as a result of the adoption of stipulations at the August Commission meeting, and
- 8 committees were administratively terminated.

The Division had 1058 cases in various stages of resolution at the time of the August Monthly Report and currently has approximately 1038 cases in various stages of resolution, including the 33 cases before the Commission as listed in the September 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, 7 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 14 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

On the next page, you will find a chart that details the annual statistics for enforcement complaints, referrals and cases. The information in the chart has been gathered from public reports, information from the defunct and inactive database, and data that has been converted into current form, so the numbers are close estimates in some instances.

	Year	2014	2015	2016	2017
1	Complaints Received	1,228	609	1,180	564
2	Referrals Received	614	596	350	1,616
3	Total Complaint and Referrals Received	1,842	1,205	1,530	2,180
4	Cases opened	1,405	2,273 ¹	1,315	1,480
5	Cases closed	1,869	1,253	1,803	1,477
6	Cases with resolutions approved by the Commission ²	332	333	311	340
	a Streamline cases approved by Commission	234	258	234	262
	b Mainline cases approved by Commission	86	69	70	66
	c Default cases approved by Commission	12	6	7	12
7	Total fines imposed by the Commission	\$744,868	\$703,821	\$894,257	\$1,126,933
8	Warning letters issued	673	442	489	505
9	Administrative terminations	69	116	668	297
10	Cases closed with violations found ³	1,074	891	1,468	1,142
11	Advisory letters issued	10	19	14	17
12	No action closure letters	453	343	321	318

¹ In 2015, the Enforcement Division received information regarding 2,460 \$50 Annual Fee non-payers in May and another 1,786 in October of that year. None of these came through the typical “referral” process and had to be evaluated for: whether the committee had been terminated locally or with SOS, whether the committee never qualified, whether the fees were paid prior to the referral, and whether records existed to evaluate the committee, before the information could be opened into a case. Therefore, these do not appear in the Referral line since they did not follow that process.

² Total for lines 6a, 6b, and 6c.

³ Total for lines 6, 8, and 9.

II. LEGAL DIVISION

STAFF:**BRIAN LAU, ACTING 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 Act⁴ (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. Unless an extension of time is granted, the opening brief must be filed on or before September 21, 2018.

⁴ 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.

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.

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.

On June 14, 2018, the appellate court issued a tentative opinion affirming the trial court's award of attorney's fees. On August 30, 2018, after oral argument by the parties, the appellate court entered its tentative ruling as the final opinion and affirmed the trial court's decision regarding attorney's fees.

B. Outreach and Training

None to report.

C. Advice

In July 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 1,176 e-mail and telephone requests for advice.
- **Advice Letters:** Legal Division received 21 new advice letter requests under the Political Reform Act and completed 21 letters.
- **Section 1090 Letters:** Legal Division received five new advice letter requests concerning Section 1090 and completed 11 letters. This year to date, we have received 48 advice requests regarding Section 1090.

D. Miscellaneous Decisions

None to report.

E. Potential Upcoming Regulations

October 18, 2018.

- Top contributor disclosure requirements under Assembly Bill 249 (the Disclose Act) (Prenotice) – The Commission may consider the potential adoption of regulations identifying top contributor disclosure requirements when contributions may not legally be used for the advertisement at issue or have been earmarked for other purposes.
- Regulation 18756. Electronic Filing System Certification (Prenotice) – The Commission may consider additional certification requirements for Form 700 Electronic Filing System Certification under Section 87500.2 to ensure systems can exchange data with the Commission’s electronic filing system.

November 15, 2018

- Cost of Living Adjustment (Adoption) – The Commission will consider a cost of living adjustment to Contribution Limits, Voluntary Expenditure Ceilings, and the Gift Limit sections 83124, 85316(b)(4), and 89503(f).
- Regulation 18702.2. (Prenotice) - Discussion of materiality thresholds under the Act’s conflict of interest provisions for real property interests including clarification of the 500-foot property rule.

Scheduling to be Determined.

- Discussion of the definition of nondonor funds for purposes of Section 84222.
- Discussion of campaigning by governmental agencies under Commission Regulations 18420.1 and 18901.1.

F. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes

- Business, Consumer Services and Housing Agency
- California Department of Human Resources
- Conservation Corps, California
- Forestry & Fire Protection, Department of
- Veterans Affairs, Department of

Multi-County Agency Conflict of Interest Codes

- Antelope Valley Joint Union High School District
- Aspire Public Schools
- California State Association of Co-Excess Insurance Authority
- Central Valley Financing Authority
- Hanford Joint Union High School District
- Kirkwood Meadows Public Utility District
- Monterey Bay Area Self Insurance Authority
- Northern California Gas Authority Number 1
- Owens Valley Groundwater Authority
- Pooled Liability Assurance Network JPA
- Sacramento Cogeneration Authority
- Sacramento Municipal Utility District Finance Authority
- Sacramento Power Authority
- West Valley Mission Community College District

Exemptions

None to report.

Extensions

- Governor's Military Council

G. 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 Friends of Gary Hardie, Jr. for Lynwood Schools 2015 and Gary Hardie, Jr., Case No. 17/263.*** On August 14, 2018, after hearing, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee and Hardie failed to file the semi-annual campaign statement for the reporting period of July 1, 2016 through December 31, 2016, due January 31, 2017, in violation of Government Code Section 84200.

Count 2: The Committee and Hardie failed to file the semi-annual campaign statement for the reporting period of January 1, 2017 through June 30, 2017, due July 31, 2017, in violation of Government Code Section 84200.

Count 3: The Committee and Hardie failed to file the semi-annual campaign statement for the reporting period of July 1, 2017 through December 31, 2017, due January 31, 2018, in violation of Government Code Section 84200.

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

1. ***In the Matter of City of Fountain Valley, FPCC No. 16/20109.*** On August 7, 2018, probable cause was found to believe that Respondent committed the following violations of the Act:

Count 1: The City sent campaign related mass mailings at public expense, in violation of Section 89001 and Regulation 18901.

Count 2: The City failed to include a proper disclosure statement on a magazine advertisement in the October 2016 issue of Fountain Valley Living Magazine that it purchased to support Measure HH, in violation of Sections 84506, subdivision (a)(1), and 84507.

Count 3: The City failed to file a semi-annual campaign statement due on January 31, 2017, in violation of Section 84200, subdivision (b).

Count 4: The City failed to file a verification for its independent expenditures, in violation of Section 84213, subdivision (b).

Count 5: The City failed to file a 24-Hour Expenditure Report for four expenditures amounting to \$1,775 by September 29, 2016, in violation of Section 84204.

2. ***In the Matter of Albert Robles for Carson City Council 2013 and Albert Robles, FPCC No. 17/1164.*** On August 27, 2018, probable cause was found to believe Respondents committed the following violation of the Act:

Count 1: The Committee and Roles failed to timely file a semiannual campaign statement for the reporting period of January 1, 2017 through June 30, 2017, in violation of Section 84200, subdivision (a).

3. ***In the Matter of Yarbrough for Val Verde School Board 2014 and D. Shelly Yarbrough, Case No. 16/117.*** On September 4, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: The Committee and Yarbrough failed to timely file a semi-annual campaign statement covering the report period of January 1, 2014 through December 31, 2014, due February 2, 2015, in violation of Government Code Section 84200.
- Count 2: The Committee and Yarbrough failed to timely file a semi-annual campaign statement covering the reporting period of January 1, 2015 through June 30, 2015, due July 31, 2015, in violation of Government Code Section 84200.
- Count 3: The Committee and Yarbrough failed to timely file a semi-annual campaign statement covering the report period of July 1, 2015 through December 31, 2015, due February 1, 2016, in violation of Government Code Section 84200.
- Count 4: The Committee and Yarbrough failed to timely file a semi-annual campaign statement covering the report period of January 1, 2016 through June 30, 2016, due August 1, 2016, in violation of Government Code Section 84200.
- Count 5: The Committee and Yarbrough failed to timely file a semi-annual campaign statement covering the report period of July 1, 2016 through December 31, 2016, due January 31, 2017, in violation of Government Code Section 84200.
- Count 6: The Committee and Yarbrough failed to timely file a semi-annual campaign statement covering the report period of January 1, 2017 through June 30, 2017, due July 31, 2017, in violation of Government Code Section 84200.
- Count 7: The Committee and Yarbrough failed to timely file a semi-annual campaign statement covering the report period of July 1, 2017 through December 31, 2017, due January 31, 2018, in violation of Government Code Section 84200.
- Count 8: The Committee and Yarbrough failed to timely pay the 2014 annual fee within 15 days after filing the Committee's statement of organization providing its date of qualification, and failed to pay the resulting \$150 late penalty, in violation of Government Code Section 84101.5, subdivisions (b) and (d).
- Count 9: The Committee and Yarbrough failed to timely pay the 2016 annual fee by the January 15, 2016 due date, and failed to pay the resulting \$150 late penalty, in violation of Government Code Section 84101.5, subdivisions (c) and (d).
- Count 10: The Committee and Yarbrough failed to timely pay the 2017 annual fee by the January 15, 2017 due date, and failed to pay the resulting \$150 late penalty, in violation of Government Code Section 84101.5, subdivisions (c) and (d).

Count 11: The Committee and Yarbrough failed to timely pay the 2018 annual fee by the January 15, 2018 due date, and failed to pay the resulting \$150 late penalty, in violation of Government Code Section 84101.5, subdivisions (c) and (d).

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: DEBORAH HANEPHIN, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 1208 requests for technical assistance via phone in August.

Training & Outreach

Political Reform Consultants conducted the workshops and outreach activities:

Glen Baily delivered an outreach session to two clerks from the Sacramento Regional County Sanitation District.

John Kim conducted two Candidate/Treasurer workshops, one in Anaheim and one in Santa Monica. The Anaheim presentation was attended by approximately 53 candidates and Santa Monica hosted 18 candidates.

Alex Castillo delivered a Candidate/Treasurer workshop in San Diego. 63 people were in attendance.

Additional Training

Our video tutorials were accessed a total of 390 times in August. The Form 700 videos received 215 views while the Candidate/Treasurer video received 142 views. Filing officer videos were viewed 33 times.