



MEMORANDUM

To: Chair Remke, Vice Chair Eskovitz and Commissioners Casher, Wasserman and Wynne

From: Gary S. Winuk, Chief of Enforcement
Angela J. Brereton, Senior Commission Counsel

Date: May 22, 2014

RE: Assignment of Hearing to Administrative Law Judge (“ALJ”)

Case Name: In the Matter of James Gattis (FPPC Case No. 12/398)

I. INTRODUCTION

Respondent James Gattis has been a member of the Board of Directors for Salinas Valley Memorial Healthcare System (SVMHS) since 2005, and currently serves as treasurer. At all relevant times, Respondent Gattis was a public official as defined in Section 82048, of the Political Reform Act (the “Act”),¹ and therefore he was prohibited from making, participating in making, or attempting to use his official position to influence a governmental decision in which he knew, or had reason to know, that he had a financial interest. (Section 87100.) In his private capacity, Respondent Gattis works in the field of real estate investments involving the renovation and leasing of commercial real estate in downtown Salinas.

In this matter, Respondent Gattis violated the conflict of interest provisions of the Act when he voted as a member of the Board of Directors for SVMHS to agree to terminate the lease between SVMHS and Central Coast Audiology, Inc., which was a source of income to Respondent Gattis under the Act.

Respondent in the above-referenced case has requested an administrative hearing on the Accusation attached hereto as Exhibit A. The Accusation alleges multiple violations of the Act.

The Executive Director has determined that the hearing should be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

This memorandum is submitted to each member of the Commission pursuant to Regulation 18361.5, subdivision (b), which provides: “If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly

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.

scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.”

II. PROCEDURAL HISTORY

A probable cause hearing was held on March 6, 2014. On March 20, 2014, the Hearing Officer issued an Order Re: Probable Cause (“Order”). The Order included a finding that there is probable cause to believe that the Respondent violated the Act, as set forth in the attached Accusation.

On April 9, 2014, the Accusation was personally served on Respondent. On or about April 23, 2014 Respondent served a Notice of Defense, requesting a hearing.

III. PROCEDURAL ISSUES

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ. (See Section 11512, subd. (a).)

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ’s proposed decision in the proceeding. (See Section 11512, subd. (b).)

IV. SUMMARY OF THE ACCUSATION

Respondent James Gattis has been a member of the Board of Directors for Salinas Valley Memorial Healthcare System (SVMHS) since 2005, and currently serves as treasurer. At all relevant times, Respondent Gattis was a public official as defined in Section 82048, of the Act, and therefore he was prohibited from making, participating in making, or attempting to use his official position to influence a governmental decision in which he knew, or had reason to know, that he had a financial interest. (Section 87100.)

In his private capacity, Respondent Gattis works in the field of real estate investments involving the renovation and leasing of commercial real estate in downtown Salinas. At all relevant times, Respondent Gattis with his wife owned a building located at 307 Main Street, in Salinas, CA.

In this matter, Respondent Gattis violated the conflict of interest provisions of the Act when he voted as a member of the Board of Directors for SVMHS to agree to terminate the lease between SVMHS and Central Coast Audiology, Inc., which was a source of income to Respondent Gattis under the Act. On or about May 3, 2010, Respondent Gattis had entered into a lease agreement with CCA to lease Suite 240 of the building located at 307 Main Street for five (5) years. The agreement required CCA to pay \$2,464,00 to Respondent Gattis and his wife for the security

deposit at the time of the lease was executed, and to pay the same amount as monthly rent for the first year of the lease, and 3% added to the monthly rent for each year following.

Respondent Gattis admitted that he should have recused himself from the vote in this instance, but he contends that since the item was on the consent calendar, he did not notice the conflict of interest.

The Accusation consists of 1 count.

COUNT 1

Violation: Making a Governmental Decision in Which the Public Official Had a Financial Interest

Respondent Gattis violated the conflict of interest provisions of the Act when he voted as a member of the Board of Directors for SVMHS to agree to terminate the lease between SVMHS and Central Coast Audiology, Inc., which was a source of income to Respondent Gattis under the Act. As a member of the Board of Directors for SVMHS, Respondent Gattis was a public official. On or about May 27, 2010, Respondent Gattis voted to approve the termination of the lease agreement between the SVMHS and CCA. CCA was a source of income to Respondent Gattis because within 12 months prior to the vote, Respondent Gattis received and was promised income of \$500 or more from CCA due to the lease agreement for between Respondent Gattis and CCA for Suite 240 of the building at 307 Main Street. CCA was directly involved in the governmental decision because CCA initiated, was a named party and was the subject of the proceeding regarding the termination of CCA's lease with SVMHS. Because CCA's lease with SVMHS was to be terminated, CCA would no longer be obligated to pay rent and other monetary obligations (security deposit, etc.) pursuant to the lease agreement with SVMHS. Thus, the financial effect of the governmental decision upon CCA was material. Additionally, it was reasonably foreseeable that the decision would have a material financial effect on CCA because the termination of the lease agreement would allow CCA to afford to move to a new location, which had already been secured in the lease between Respondent Gattis and CCA. Thus, by making a governmental decision in which he had a financial interest, Respondent Gattis violated Government Code Section 87100.

The Accusation requests a monetary penalty pursuant to Section 83116, subdivision (c), of up to \$5,000.00 per count, for a total monetary penalty in an amount not to exceed \$5,000.

V. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available. (Regulation 18361.5, subd. (b).) Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).