



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond and Commissioners Cardenas, Hatch and Hayward

From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel

Subject: Advice Letter Report and Commission Review

Date: January 7, 2019

The following advice letters have been issued since the December Advice Letter Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. 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

Thomas E. Montgomery [A-18-184\(a\)](#)

Even though County Supervisor has a conflict of interest under the Act prohibiting him from taking part in decisions concerning a specific development project requiring a general plan amendment, he may take part in the final yes or no decision on the general plan amendment pursuant to Regulation 18706(c) so long as there are no further discussions of the project.

Robin Paige Donohue [A-18-232](#)

The Act prohibits two city councilmembers from taking part in governmental decisions relating to a residential development project because a potential traffic circulation change necessary to accommodate the project is located within 500 feet of each of those councilmember's residences and because it is reasonably foreseeable those decisions would have a measurable impact on their respective real property interests in their residences.

Laurence S. Wiener [A-18-234](#)

Given that the outcome of the City Council's decision involves whether a Councilmember's property is subject to a permitting requirement, the Councilmember may not take part in decisions related to the permit requirement's interpretation. Nonetheless, the Councilmember may take part in the City Council's consideration of an existing permit application if the decision regarding the interpretation of the permitting requirement is determined first and without that Councilmember's participation.

Claudia Quintana [A-18-245](#)

A City Councilmember is prohibited from making, participating in making, or using his position to influence any decisions regarding the development of a golf course located within 500 feet of his home because it is reasonably foreseeable those decisions would have a measurable impact on the Councilmember's real property interest in his residence.

Keith F. Collins[A-18-248](#)

The exception to the personal financial effect rule under Section 18702.5(b)(3) does not allow a sitting councilmember, who loses an election, to nonetheless participate in a vote to appoint himself to a vacant seat on the same city council prior to the end of his tenure. Participation in such a decision would have a reasonably foreseeable material financial effect on the official's financial interest in his personal finances.

Sue A. Gallagher[A-1-8-252](#)

While councilmembers, who rent a room within their residences, each have a potentially disqualifying conflict of interest in decisions involving rental housing including price gouging and anti-discrimination ordinances, the councilmembers may take part in the decisions under the public generally exception because the decisions will affect all rental units, which constitute more than 25% of the residential properties in the jurisdiction, and will not uniquely affect the councilmembers.

Krishan Chopra[A-18-254](#)

The Act does not prohibit City Councilmember from taking part in decisions relating to a development project proposed by a large business entity with multiple offices within the city because the Councilmember does not have a financial interest in the large business entity due to the Councilmember's ice cream store making regular recurring retail sales of ice cream to one of those offices under Section 87103.5.

Joemil Reguindin[I-18-257](#)

The Act does not prohibit a business taxes specialist from simultaneously operating an independent, fee-based, tax consulting and representation business. However, should the public official do so, the Act prohibits him from making, participating in making, or using his position to influence a governmental decision that will have a reasonably foreseeable and material financial effect on his financial interests including his consulting business or his clients. Additionally, the official's agency may impose its own restrictions on incompatible activities outside of the Act.

Gary Schons[A-18-260](#)

The Act does not prohibit City Councilmember from taking part in decisions relating to City ordinances relating to the cannabis industry, despite his previous work as an independent contractor for a governmental affairs firm which has no past, current, or prospective clients that do business in or intend to enter the City's cannabis industry, because it is not reasonably foreseeable that those decisions would have a material financial effect on his source of income interest in that firm.

Marco Barcena[I-18-263](#)

The Act's conflict of interest provisions do not prohibit a newly-elected City Councilmember from continuing to work as an employee for a city department. However, other statutory restrictions or the City's restrictions on incompatible activities may apply.

Gifts

Angie Palmerin, Esq.

[A-18-251](#)

Payments by her spouse's employer for the spouse's education, housing, and travel expenses associated with his continued education under the employer's program are not gifts to the public official subject to the Act's gift restrictions, even if the official shares the housing or makes use of the four roundtrip tickets provided to the spouse as part of the program.

Revolving Door

James W. Symington III, MPA

[A-18-243](#)

The one-year ban would apply to a parole administrator contemplating retirement and would prohibit him from contracting or appearing as a paid consultant for the purpose of influencing any administrative or legislative actions or certain actions involving a permit, license, grant, or contract, or the sale or purchase of goods or property before his former agency. In addition, the permanent ban may apply to any proceedings involving specific parties the official previously participated in as a state employee.

Section 1090

Dina Walker and Cuauhtemoc Avila

[A-18-218](#)

Section 1090 prohibits a school district board member, who is the President and CEO of a nonprofit, from participating in the district board's approval of a data sharing agreement between the district and the nonprofit because the board member has a financial interest in the contract. However, because her interest in the contract is remote pursuant to Section 1091(b)(1), the district board may nonetheless enter the contract with the nonprofit so long as the board member follows Section 1090's abstention requirements.

Shawn M. Mason

[A-18-236](#)

In regard to decisions involving a project labor agreement, an official's 401(k) account and pension plan are not disqualifying financial interests for purposes of the Act's or Section 1090's conflict-of-interest provisions. Under the Act, the term "investment" does not include an interest in a diversified mutual fund and the definition of "income" specifically excludes any payments received under a defined benefit pension plan. In addition, there is no indication that the planned labor agreement would involve the 401(k) for purposes of Section 1090 and the payments made under a defined benefit pension plan are not financial interests because payments made under the plan are defined, fixed benefits, that will not and cannot be, by operation of law, affected by the contract.

Michael C. Ghizzoni

[A-18-264](#)

Neither the Act nor Section 1090 would limit a County Auditor-Controller-Elect from taking part in governmental decisions involving a private company, due to her previous marriage to the president of that company or previous income from the company, because the public official no longer has a financial interest in the company as a source of income and has no financial interest in her former spouse.