

(Unapproved and Subject to Change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

November 12, 2010

Call to Order. Chairman Dan Schnur called the meeting to order at 10:00 a.m., at 428 J Street, Eighth Floor, Sacramento, California. Chairman Dan Schnur, Commissioners Elizabeth Garrett, Tim Hodson, and Lynn Montgomery were present. Chairman Schnur announced that Commissioner Rotunda would be participating by teleconference from the University of Arkansas School of Law. (Gov. Code Section 11123).

Chairman Schnur also announced as a point of clarification that the gift regulations would not be voted on until the December Commission meeting. Further announcements from the Chairman were that the next Task Force meeting would be on November 17 and that an Interested Persons meeting would be held on November 18 to discuss the expanded Form 700.

PUBLIC COMMENT

- 1. Public Comment.** This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed; request clarification; or refer the item to staff.

Chairman Schnur asked if anyone in the audience had comments on any items not on the agenda. There were none.

PROPOSED CONSENT CALENDAR – ITEMS 2 THROUGH 18

Chairman Schnur asked the Commissioners if they had any comments or questions on any of the items, and if there were any items they wanted removed from the consent calendar.

Chairman Schnur asked that Items 3, 5, 8 and 9 be removed from the consent calendar for further discussion in detail.

Gary Winuk Chief of Enforcement gave his statement on the background of Item 3, relative to Michelle Berman Default Decision.

Mr. Wonderwheel, Counsel for the respondent, apologized to the Commission for his neglect in not filing Notices of Defense for the respondents and that it was entirely his fault that this case went to default. Mr. Wonderwheel then requested the Commission to use their authority to remove the item from default. He also stated that he was here representing the respondents for Items 3, 7, 8 and 9.

A lengthy discussion ensued relative to the health and mental capacity of the respondents, Mr. Foley (Item 8), and Ms. Birdfeather (Item 9).

Chairman Schnur made a suggestion that the Commission give Mr. Foley and Ms. Birdfeather the opportunity to return in December and to continue with discussion relative to Ms. Lauby and Ms. Berman.

Adrienne Lauby, Item 7; Robin Birdfeather, Item 9; Michelle Berman, Item 3; and Tim Foley, Item 8 all made statements on their behalf.

After discussion ended, several motions were made:

Chairman Schnur moved to return Item 3, Michelle Berman, to the consent calendar, seconded by Commissioner Rotunda. The motion passed 5-0.

Chairman Schnur moved to return Item 5, John Guardino, to the consent calendar, seconded by Commissioner Garrett. The motion passed 5-0.

Chairman Schnur moved to return Item 7, Adrienne Lauby, to the consent calendar, seconded by Commissioner Hodson. The motion passed 5-0.

Chairman Schnur asked the Commission to discuss a reduced penalty for Ms. Birdfeather (Item 9), and instructed the Enforcement division to work towards a settlement with Mr. Foley (Item 8).

Commissioner Rotunda moved to continue Item 8, Tim Foley, until the December meeting so that the respondent could submit medical evidence of his illness, seconded by Commissioner Garrett. The motion passed 5-0.

Commissioner Rotunda stated that he would like to see medical evidence of the respondents at the time of the illegal instance and instructed the Enforcement division to try to obtain that information. Commissioner Garrett agreed with Commissioner Rotunda regarding this issue.

Chairman Schnur moved to reduce the penalty from \$4500 to \$500 on Item 9, Ms. Birdfeather, seconded by Commissioner Montgomery.

AYES: Commissioners Hodson, Montgomery and Chairman Schnur

NOES: Commissioners Garrett and Rotunda

The motion passed 3-2

Chairman Schnur moved to approve the Consent calendar, Items 2 thru 7 and 10 thru 18, seconded by Commissioner Garrett.

AYES: Commissioners Garrett, Montgomery, Rotunda and Chairman Schnur

Abstention: Commissioner Hodson

Campaign Reporting Violations

3. In the Matter of Michelle Berman, FPPC No. 10/115 (Default Decision). (3 counts). Total Proposed Penalty: \$15,000.
4. In the Matter of John Dragone, Committee to Elect John Dragone and Kathy Dragone, FPPC No. 08/702. (Default Decision (5 counts). Total Proposed Penalty: \$10,000.
5. In the Matter of Friends of John Guardino, John Guardino, and Linell Hardy, FPPC No. 09/739. (1 count). Total Proposed Penalty: \$9,000.
6. In the Matter of Rachel Neville, Neville for Water Board, and Mark Neville, Treasurer, FPPC No. 08/120 (Default Decision (2 counts). Total Proposed Penalty: \$8,500.
7. In the Matter of Adrienne Lauby, FPPC No. 10/116 (Default Decision). (1 count). Total Proposed Penalty: \$4,500.

Campaign Reporting Violations - Streamline Program

10. In the Matter of Hermosa Beach Police Officer's Association Political Action Committee and J.R. Smith, FPPC No. 09/721. (5 counts) Total Proposed Penalty: \$1,000.

Major Donor Violation – Streamline

11. In the Matter of Laurie Burt, FPPC No. 10/791. (1 count). Total Proposed Penalty: \$400.
12. In the Matter of Baldwin & Sons, LLC and its Owner, Alfred Baldwin, FPPC No. 10/837. (1 count). Total proposed penalty: \$400.
13. In the Matter of Kelly Swette, FPPC No. 10/901. (1 count). Total proposed penalty: \$400.
14. In the Matter of Brian Swette, FPPC No. 10/901. (1 count). Total proposed penalty: \$400.

Statement of Economic Interests - Non-Filers – Streamline

15. In the Matter of Anthony Vollerling, FPPC No. 10/541. (3 counts). Total Proposed Penalty: \$600.
16. In the Matter of Aliitama Sotoa, FPPC No. 10/54 (1 count). Total Proposed Penalty: \$400.

17. **In the Matter of Dierdre Gilliam, FPPC No. 10/477. 1 count). Total Proposed Penalty: \$200.**
18. **In the Matter of Roger Vintze, FPPC No. 10/532. (1 count). Total Proposed Penalty: \$200.**

GENERAL - ITEMS 19 THROUGH 25

19. **Adoption of Amendments to Regulations 18450.1, 18450.4 and 18450.5 – Electronic Advertising Disclosure.** Staff: Commission Counsel Emelyn Rodriguez and General Counsel Scott Hallabrin. This regulatory action is proposed to implement part of the recommendations by the Commission's Subcommittee on Internet Political Activity. Staff proposes amendments to the Act's advertising disclosure regulations that would apply disclosure rules to Internet and other electronic media advertisements.

Staff presented their report on Item 19, relative to Electronic Advertising Disclosure. Chairman Schnur asked for comments from the Commissioners.

Commissioners Garrett and Montgomery offered their comments.

Chairman Schnur asked for comments from the public.

Andy Rockas made a comment regarding 18450.1 sub. A (3) and 18450.4.

Katie Fleming from Common Cause commended the FPPC staff for all their hard work and agreed with the regulations.

Betty Ann Downing asked if a logo or icon would be treated as an advertisement and would, therefore, need a disclaimer. After discussion a motion was presented.

Commissioner Garrett and Montgomery stated the words "logo" and "icon" should remain in the regulations.

Scott Hallabrin, Chief Counsel, commented on the language for the regulations:

Regulation 18450.4 – On page 3, line 14, after the word "advertisement" insert "*which also includes audio,*".

Regulation 18450.5 – On page 5, line 13, after the word "stations" add "*or other locations where the advertisement is placed*".

Commissioner Garrett moved to approve the regulations as amended in Item 19, seconded by Commissioner Rotunda. The motion passed 5-0.

20. Adoption of Regulation 18215.2 and Amendment of Regulations 18215 and 18225 – Exceptions from Campaign Reporting for Specified Internet Political Activity.

Staff: Senior Commission Counsel Hyla Wagner and General Counsel Scott Hallabrin. This regulatory action is proposed to implement part of the recommendations by the Commission's Subcommittee on Internet Political Activity. Proposed Regulation 18215.2 creates an exemption from campaign reporting for an individual's uncompensated Internet political activity. The proposed amendments to Regulations 18215 (definition of "contribution") and 18225 (definition of "expenditure") update the existing media exception to include online media.

Staff presented their report on exceptions from Campaign Reporting for Specified Internet Political Activity

Chairman Schnur asked if there were any comments from the public. There were none.

Commissioner Hodson thanked the staff for all their work on the regulations.

Commissioner Garrett moved approval of the regulations in Item 20, seconded by Commissioner Montgomery.
The motion was passed 5-0

21. Discussion of Amendments to the Gift Regulations. Staff: Senior Commission Counsel William J. Lenkeit and General Counsel Scott Hallabrin. The Commission will discuss Staff's proposal to revise and update the Commission's gift regulations for overall consistency and clarity. Substantive changes include clarifying the home hospitality exception, requiring elected officials to report their findings when using tickets received under Regulation 18944.1 to evaluate conditions at public venues, and modifying the valuation rule for tickets to non-profit and political fundraising events.

Staff presented a brief overview of the gift regulations and stated they were prepared to answer questions from the Commissioners and the general public.

Commissioner Montgomery had a question relative to the requirement to report their findings when checking out a public facility for a function.

Commissioner Garrett stated that she would like additional information on disclosure and that staff should prepare FAQ sheet for these regulations.

Chairman Schnur asked if there were any comments from the general public.

Shawn Mason, City Attorney for the City of San Mateo and also representing the League of California Cities City Attorneys that they want to be part of the conversation regarding the changes to the gift regulations. He was glad to hear that there would be no decisions made at this Commission meeting.

Michael Martello, an interested person, gave comments regarding the need to amend the Home Hospitality regulation to spell out the rules very clearly.

Kathy Donovan from the Assembly Ethics Committee expressed her appreciation for the Commission's willingness to continue working on the gift regulations.

- 22. Adoption of Amendments to Regulation 18723 – Statement of Economic Interests Filing Deadline for Elected State Teachers' Retirement Board Members.** Staff: Assistant General Counsel John W. Wallace and General Counsel Scott Hallabrin. The proposed amendments implement a change to the deadline for filing Statements of Economic Interests (SEIs) by elected members of the Board of Administration of the State Teachers' Retirement Board (CalSTRS), required by Senate Bill 1007 (Hancock). Senate Bill 1007, chaptered on September 30, 2010, amended the definition of "elective office" (Section 82023) and "elective state office" (Section 82024) to include elected members of the Board of Administration of CalSTRS, thus requiring these officials to file their annual SEIs on March 1, instead of April 1.

Staff presented their report on Item 22, Statement of Economic Interests Filing Deadline for Elected State Teachers' Retirement Board Members.

Chairman Schnur asked for comments from the Commissioners and the general public. There were none.

Commissioner Garrett moved to approve the amendments to regulation 18723, seconded by Commissioner Hodson. The motion passed 5-0.

- 23. Legislative Report.** Staff: Legislative Coordinator Tara Stock. As submitted
- 24. Litigation Report.** Staff: General Counsel Scott Hallabrin. As submitted.
- 25. Executive Director's Report.** Staff: Executive Director Roman Porter. As submitted

Commissioner Rotunda moved to adjourn the meeting seconded by Commissioner Garrett.

Chairman Schnur announced that the Commission was not holding an executive session and, with no further business adjourned the meeting at 12:30 p.m.

Dated:

Sharon Brumley
Commission Assistant

Approved:

Dan Schnur, Chairman
Fair Political Practices Commission