



(Approved August 15, 2019)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, July 18, 2019
10:00 a.m.

Present: Chair Miadich, Commissioner Cardenas, Commissioner Hatch, and
Commissioner Hayward

Staff Present: Thomas Jones, Executive Director
Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel
Galena West, Enforcement Chief
Loressa Hon, Chief of Administration
Sukhi Brar, Supervising Attorney
Karen Harrison, Commission Counsel
Toren Lewis, Commission Counsel
Matthew Christy, Commission Counsel
Kevin Cornwall, Commission Counsel
Sasha Linker, Commission Assistant

A. Call to Order

Chair Miadich called the meeting to order at 10:00 a.m.

B. Public Comment for Items not on the Agenda

Fernando Banuelos spoke to “In the Matter of Beltran for Mayor 2018, Alma Beltran, and Esteissi Huerta; FPPC No. 19/382” (Item 21 on the agenda). Andrew Sandoval spoke and asked the Commission to consider protections or procedures for “whistleblower” complainants. Mr. Sandoval also thanked specific Staff of the FPPC for their assistance over the previous month.

C. Approval of Minutes of Prior Meeting

MOTION: Approve the June 20, 2019 meeting minutes. Moved by Commissioner Hayward, seconded by Commissioner Hatch. Motion approved 4-0.

D. Approval of Enforcement Consent Calendar

At the request of Commissioner Cardenas, item 3 (In the Matter of Juanita Perea, #17/1310) was removed from the consent calendar and taken separately for discussion.

MOTION: Motion to approve Enforcement Consent Calendar, excluding item 3. Moved by Commissioner Hayward, seconded by Commissioner Hatch. Motion approved 4-0.

Andrew Sandoval gave public comment reiterating his mailed public comment letter regarding item 3 (In the Matter of Juanita Perea). In response to a question by Commissioner Cardenas, Enforcement Chief West explained why the fine imposed on Ms. Perea was calculated on a “per year” basis rather than on a “per transaction” basis. The Commission expressed a belief that it may be appropriate for staff to refer the matter to the local District Attorney.

MOTION: Motion to approve item 3 (In the Matter of Juanita Perea, #17/1310) and refer the Matter to the local District Attorney. Moved by Chair Miadich, seconded by Commissioner Hayward. Motion approved 4-0.

Commissioner Cardenas thanked Mr. Sandoval for appropriately bringing this matter to the Commissions attention. In response to a question from Commissioner Hatch, Enforcement Chief West discussed the confidentiality protections under the Act. In response to an inquiry from Chair Miadich, Enforcement Chief West explained that the Act does not provide whistleblower protection for complainants.

E. Local Jurisdiction Contract Update.

Executive Director Jones presented the draft contract to be offered to San Bernardino pursuant to Government Code Section 83123.5. He then stated that, upon its approval, staff would use the draft to create a proposed contract to offer all localities pursuant to Section 83123.6.

MOTION: Motion to approve draft San Bernardino County contract. Moved by Commission Hatch, seconded by Commissioner Hayward. Motion approved 4-0.

MOTION: Motion to bring back draft template for other jurisdictions. Moved by Chair Miadich, seconded by Commissioner Hatch. Motion approved 4-0.

F. Approval of Commissioner Compensation Request.

MOTION: Motion to approve the compensation request submitted by a Commissioner. Moved by Commissioner Hayward, seconded by Commissioner Cardenas. Motion approved 4-0.

G. Prenotice Discussion of Proposed Amendments to Multipurpose Organization Recordkeeping Regulations.

In response to an inquiry by Commissioner Hatch, Counsel Lewis explained how gross profits are covered in this regulation. In response to a question by Commissioner Cardenas, Counsel Lewis explained the definition of “original source,” as used in the regulation. Following presentation of the proposed regulation. Pam Parra, Franchise Tax Board (“FTB”), gave public comment to note that the FTB supports the proposed regulation. Lacey Keys, attorney from Olson Hagel Fishburn, provided public comment on specific changes she believes would help clarify the regulation for the regulated community.

H. Repeal of Regulation 18702.1 and Adoption of Regulation 18702.1.

MOTION: Motion to have high and low thresholds in the regulations. Moved by Commissioner Hatch, seconded by Commissioner Hayward. Motion approved 4-0.

MOTION: Motion to continue with Staff recommendations on threshold numbers. Moved by Commissioner Hatch, seconded by Commissioner Hayward. Motion approved 4-0.

I. Repeal of Regulation 18702.3 and Adoption of Regulation 18702.3.

MOTION: Motion to have high and low thresholds in the regulations and to continue with Staff recommended threshold numbers and additional additions to the regulation. Moved by Commissioner Hatch, seconded by Commissioner Hayward. Motion approved 4-0.

J. The public meeting adjourned for break at 11:50 a.m.

The public meeting reconvened at 12:31 p.m.

K. Discussion of Public Generally.

General Counsel Bainbridge and Assistant General Counsel Lau presented a legal memorandum regarding the “Public Generally” exception to the law that prohibits an official from participating in a decision in which he or she has a conflict of interest. Commissioner Hayward and Chair Miadich expressed doubt as to whether the Public Generally exception was, in fact, an actual exception, or whether it was part of the general rule. Commissioner Hatch expressed support for a regulatory change to clarify the rule. Mike Columbo, attorney from Nielsen Merksamer, gave public comment to reiterate the mailed letter from Sean Welch, of Nielsen Merksamer, which stated a belief that the current rule has become unpredictable. Following public comment, the Commission discussed whether to solicit further input from outside sources prior to possible future regulations on the issue.

MOTION: Motion to hold an Interested Person’s meeting before the regulation is added to the 2020 regulation calendar. Moved by Chair Miadich, seconded by Commissioner Hatch. Motion approved 4-0.

L. Discussion of Commissioner Remote Participation.

Counsel Cornwall presented a memorandum discussing the limitations on Commissioners participating in Commission meetings from remote locations. The Commission expressed concern about the possibility of the Commission being without a quorum at a meeting if even one of the Commissioners encountered a travel emergency that prevented the Commissioner from appearing live at the meeting. In response to a question from Commissioner Hayward, Counsel Cornwall stated that there was no provision in the Bagley-Keene Act that allowed for emergency participation by phone without prior notice consistent with that Act.

M. Committee Updates.

Commissioner Hayward updated the Commission on the Budget & Personnel Committee Meeting. Commissioner Hatch updated the Commission on the Law & Policy Committee Meeting and stated he planned to recommend that the Commission adopt a “support” position on AB 571 (relating to contribution limits in localities).

N. Legislative Update.

MOTION: Motion to have a “support” position on AB 571. Moved by Commissioner Hatch, seconded by Chair Miadich. Motion approved 3-1 with Commissioner Hayward voting no.

The Commission discussed AB 201 (regarding campaign disclosures in electronic communications) and AB 1217 (relating to broad amendments to the DISCLOSE Act), and whether the current status of each of the bills warranted a change of the Commission’s adopted position on the bills.

MOTION: Motion to change the Commission’s position to “support” on AB 201. Moved by Commissioner Hatch, seconded by Chair Miadich. Motion approved 4-0.

MOTION: Motion to change the Commission’s position to “oppose unless amended” on AB 1217. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 3-1 with Commissioner Hatch voting no.

In response to an inquiry by Commissioner Hatch, Executive Director Jones informed the Commission that, following the June meeting, Jones had informed the author of SB 71 of the Commission’s change of position regarding the bill, but that staff had not been contacted recently by the author to resolve the Commission’s concerns.

O. Advice Letter Report and Commission Review.

The advice letter report was accepted as submitted, without further action by the Commission.

P. Executive Staff Reports.

The Executive Staff reports were accepted as submitted, without further action by the Commission.

Q. Pending Litigation

The public session of the meeting adjourned, and the Commission entered into closed session at 1:45 p.m. to discuss pending litigation pursuant to Gov. Code Section 11126 (e) (1).

The public session of the meeting reconvened at 2:14 p.m.

R. Commissioner Comments and Proposed Future Agenda Items.

In response to a request by Commissioner Hayward, staff from the Legal Division stated that a legal memorandum regarding “behested payments” would be presented to the Commission for consideration at its August meeting.

S. Adjourn

MOTION: Motion to adjourn the meeting. Moved by Commissioner Hatch, seconded by Commissioner Hayward. Motion approved 4-0.

The meeting adjourned at 2:15 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved August 5, 2019

Richard C. Miadich, Chair
Fair Political Practices Commission