



(Approved January 26, 2023)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, November 17, 2022
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Gómez, Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Angela Brereton, Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Loressa Hon, Chief of Administration
Brian Lau, Assistant General Counsel
Kevin Cornwall, Commission Counsel
Lindsey Nakano, Senior FPPC Legislative Counsel
Jay Wierenga, Communications Director
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:01 AM.

1. Public Comment for Items not on Agenda.

Steve Petzold gave public comment to discuss pending cases he is waiting for a resolution on. He also inquired about a case that was Commission initiated and asked these cases to be resolve as quickly as possible.

2. Closed Session. Personnel Matter (Gov. Code § 11126(a).)

The Commission adjourned for closed session at 10:03 a.m. and reconvened at 11:01 a.m.

3. Approval of Commission Minutes.

MOTION: To approve the October 2022 Commission Meeting Minutes with edits. Moved by Chair Miadich, seconded by Commissioner Baker. The motion passed 5-0.

4-7. Consent Calendar.

MOTION: To approve the consent calendar. Moved by Chair Miadich; seconded by Commissioner Wilson. The motion passed 5-0.

8. Assignment of Hearing to Administrative Law Judge (ALJ): In the Matter of Hanford Now and Dan Chin; FPPC Case No. 16-711.

Angela Brereton, Chief of Enforcement, recommended that this matter be assigned to an ALJ.

Chair Miadich asked the timeline for scheduling these hearings with the Office of Administrative Hearings. Ms. Brereton stated that scheduling these hearings would take two to three months, and it depends on the length and time of the hearing.

Commissioner Baker asked if scheduling the hearings for the Commission to hear would require all the Commissioners presence. Ms. Brereton responded that the Commissioners would need to be in attendance.

9. Adoption of Proposed Amendments to Regulation 18624, Lobbyist Arranging Gifts; 18625, Loans to Lobbyist or Lobbying Firm; and Proposed Regulation 18626, Contingency Fees Prohibition.

Brian Lau, Assistant General Counsel, presented the regulation package to the Commission.

Commissioner Baker asked if the language that is currently being used is not just limited to the filing of a lawsuit and going to arbitration allows for other private mediation services. Mr. Lau stated that civil action and the arbitration are provided as two examples of legal action. He added that we are looking for a degree of formalities to make sure that there is clear intention of collecting the debt, but there is some room for interpretation as far as what would qualify as the legal action.

Commissioner Baker asked for clarification on whether a consultant decides not to pursue legal action based on cost or some other reason. Mr. Lau stated that this goes back to whether they are following their typical procedure and whether they are using their best efforts.

Commissioner Baker asked what the transparency would be when a financial responsibility is not being pursued. Mr. Lau stated that this would be reported on campaign reports.

MOTION: To adopt the regulations as presented. Moved by Chair Miadich, seconded by Commissioner Wilson. The motion passed 5-0.

10. In re Kendrick Opinion.

Kevin Cornwall presented the staff memo and discussed the history and background of the item.

Chair Miadich disclosed an ex parte conversation with Senator Glazer prior to today's meeting. Chair Miadich discussed staff's view that it would not be retroactive application of the law to apply contributions made this year toward the recusal requirement that goes into effect in January 2023, but staff's position is that the Commission, as a matter of policy, can decide whether contributions made this year would apply to the recusal requirement that starts January 2023. Mr. Cornwall stated that there are reasonable arguments for both with respect to the legislative intent. Chair Miadich agreed with staff however, is concerned that the Commission, when faced with the same question when this law was originally enacted, chose to delay counting contributions until the law was fully in effect. While the staff's perspective is appreciated Chair Miadich stated he had not heard a compelling reason to take a different approach. He added that the legislature presumably would be aware of how this Commission implemented the law the first time and no indication has been given that we would do something different here. Chair Miadich stated his position is that the Commission issue an opinion advising that the contributions made in 2022 do not count for purposes of the recusal requirement going into effect in 2023. Commissioner Baker stated she has the same reasoning but one additional point that the Commission has had one other instance where the question of retroactivity was brought up, with local campaign contribution limits, where the same analysis was presented but the Commission went a different way. She added that in both instances the legislation did not say either way and asked how the Commission concluded the previous matter and if that is distinguishable here. Mr. Cornwall stated in opinion O-21-001, *In re Sanders*, some of the concerns referenced the first amendment and retroactivity, but the decision was based on the language of the text in AB 571. There was a subdivision of that statute that had a delayed effective date; the bill was passed in 2019 with an effective date going into January 2021 in which case the Commission inferred from that the legislature included that there for a reason, whereas here, the legislature could have included delayed effective date in this instance, but ultimately declined to do that.

Commissioner Baker asked about the difference between legal liability and legal consequences. Mr. Cornwall stated there was not an intentional differentiation between the two terms and that there is no specific case that deals with retroactivity in the context of contributions or the Act.

Commissioner Wilson commented that SB1439 was passed with little or no opposition at both houses. The bill required a two-thirds vote because it amended the Political Reform Act, so the author and the legislature had the option of putting an urgency clause into the bill that would not have changed the vote threshold, so that the bill would take effect immediately. Commissioner Wilson believes the fact they did not do that means it was not intended to be applied retroactively.

Commissioner Wood stated she agrees with everyone else; that it is best if we avoid this situation by trying to count contribution starting at the beginning of the year. She added the Commission should talk to the legislators about pay-to-play when an officer or a committee receives a contribution, but there is a lot of it that happens through independent expenditures as well. She asked if the Commission does not plan to interpret this to include outside money and stated she would want to discuss whether to ask the legislature to be thorough in this state of play prohibition. Mr. Cornwall stated that it does include independent expenditures.

Corrie Manning, General Counsel, League of California Cities, gave public comment agreeing with the things that have been said today about why the opinion should be issued to not apply to the contributions made prior to January 1st, 2023. Ms. Manning stated they are concerned about some of the practical implications of the law that were not taken into consideration when the legislation was passed and reiterated that they want to be a partner with the Commission and Commission staff to address of those through implementing regulations.

Jay Carson, Nielsen Merksamer, agreed with the Commission's decision today and questioned the timing of the opinion adoption since the Commission does not have a scheduled December meeting. Mr.

Bainbridge stated that an opinion will be brought back assuming there are enough votes in January for adoption by the Commission and to concerns about what law applies, after the vote, it will be clear the way the Commission will be interpreting this provision. Considering this is an opinion, it is only specific

to the requester, which is Mr. Kendrick, but anticipates after the opinion has been adopted the regulations will also reflect the position of the Commission on this. Mr. Carson asked if the Commission could issue a statement of policy today to clarify the position so there are not any issues for 19 days in 2023. Mr. Bainbridge stated the opinion is just that, an opinion of the Commission, and a statement of policy would start to get into an area where it is rulemaking, where the Commission are obligated to follow the rules. Mr. Bainbridge further stated the Commission could not do anything, other than state how they would like the opinion to read. Chair Miadich asked if it is possible theoretically that the Commission could call a meeting in December and appear telephonically to vote on the draft opinion. Mr. Bainbridge stated that it is possible to have that meeting with having a 10 days' notice of the Commission meeting. Chair Miadich stated a meeting is to be scheduled for the 22nd of December by telephone and asked if that would give Mr. Cornwall more time. Mr. Bainbridge stated that adding more time would be helpful.

MOTION: For staff to bring back an opinion that reflects 2022 contributions do not count when the law takes effect. Moved by Chair Miadich, seconded by Commissioner Wood. The motion passed 5-0.

11. Legislative Update.

Lindsey Nakano, Senior Legislative Counsel, presented legislative ideas for the 2023 year.

Regarding idea seven, Commissioner Baker asked if Ms. Nakano has explored if there is a minimum threshold or if this will be for every contribution? Ms. Nakano stated in Los Angeles it applies to all contributions but for our purposes we could explore limitations.

Regarding idea nine, Chair Miadich asked if District Attorneys who have the prosecutorial authority over 1090 have the ability to go to court and set aside the contract. Ms. Nakano stated that according to the most recent court decision, only the parties of the contract have that standing. Chair Miadich further asked how often this is a problem, where a 1090 violation is found, and nobody moves to void the contract. Ms. Nakano stated for Commission's purposes, there has only been one case, and in terms of the district attorneys she is not certain about the figures, however, further research could be done.

Chair Miadich asked Staff to explore whether the Commission has regulatory options regarding mass mailings first before we move to a legislative proposal.

Commissioner Wilson asked about rationale for number three which is lobbying of local redistricting Commissions. Ms. Nakano stated that the policy argument is that there is a public interest in shedding light on who is trying to influence these proceedings and added it is just a matter of transparency.

MOTION: To approve the proposed legislative ideas with the exception of mass mailing. Moved by Chair Miadich, seconded by Commissioner Baker. The motion passed 5-0.

12. Regulation Projects for 2023.

Mr. Bainbridge presented the proposed regulatory ideas for 2023 for discussion and stated the calendar would be brought to the Commission in January. Chair Miadich asked about Levine act implementation regulations, and whether there is going to be an interested persons meeting. Mr. Bainbridge stated there could be an interested persons meeting, and that pre-notice is an opportunity for the public to come weigh in as well.

13. Fiscal Year 2021/2022 Year End Expenditure Report.

Loressa Hon, Chief of Administration, discussed the fiscal period of July 1st, 2021 through June 30th of 2022 and addressed how the information is being presented.

Chair Miadich asked how much of the \$612,000 is attributable to the services contract with Department of General Service. Ms. Hon stated that \$175,000 dollars were spent through that contract, and the second contract was with our vendor for Form 700 filing of \$350,000.

Chair Miadich asked regarding the consulting professional services row, questioning if the allocation for 2021 and 2022 did not include anticipated expenditures related to the contract that was going to be expiring. Ms. Hon stated since the contract ended in March, the only expenditure we thought we would do for that one year would be April, May, and June but because the contract was encumbered for a 12-month base, the department saved the allocation for July, August, and September for the next fiscal year in this budget allocation.

Commissioner Wilson asked if all the FPPC employees have access to Adobe Pro. Ms. Hon stated that there are different levels of adobe license, only some have Adobe Pro, and some have basic Adobe depending on their job needs. Commissioner Wilson asked Ms. Hon why Adobe Pro would be beneficial.

Ms. Hon stated that Adobe Pro is beneficial to some stuff because they do a lot of editing of PDF

documents, and the basic Adobe would not allow the individual to have access to editing PDF's.

Commissioner Baker asked if the staff does zero-based budgeting, where you start from scratch, or does the staff carry over numbers from the prior year to begin to build out the future. Ms. Hon stated that balances cannot be carried forward due to the state rule, where if you have leftover money from the current year, you are not allowed to spend them on the following year. When budgeting is done, we budget based on how much we are allocated from Department of Finance. Ms. Hon clarified that the allocation of each line item is decided based on the spending the prior year.

Commissioner Baker asked if the trainings are for FPPC team or for the public? Ms. Hon stated that it is only a portion of the training that we spend on our internal staff training. She added that there are some trainings that staff can take, and those go into the line of Consulting Professional Service because they are interagency agreement with CALHR. The actual training line is when we go outside training of CALHR.

Chair Miadich asked if a subcategory could be created so the Commission could see a truer sense of what is spent on training.

14. Fiscal Year 2022/2023 First Quarter Expenditure Report.

Ms. Hon stated addressed Commissioner Baker's previous question to show the allocation for rent and facilities is lower at \$687,000. The full budget allocation was a little bit less than 15 million compared to the prior year and this may be adjusted once May revisions are available.

Chair Miadich asked about the category for reimbursement. Ms. Hon stated that the reimbursement includes a couple of things, the first thing is the contract we do with local authorities for us to provide the audits or the enforcement portion of the contract. As of today, they only receive \$55,000 of the two contracts that we have. If their contract is not due until December, we will see the money at the third quarter. Therefore, that number will be adjusted when reimbursement is received. Chair Miadich asked if we have an estimate of the total amount of reimbursement will be received for the fiscal year. Ms. Hon stated that currently there are two contracts and those have a base value of \$55,000 each.

Commissioner Wilson commented that a staff memo or an outline would be helpful in the future when presenting these items.

15. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

16. Commissioner Comments and Proposed Future Agenda Items.

Commissioner Wood discussed ideas to address pay-to-play activities by independent expenditure committees. Chair Miadich asked if Commissioner Wood has data or documentation that she can share with Mr. Bainbridge to help staff identify the timing and the right forum for this discussion.

Chair Miadich and Commissioner Baker have several proposed policies to assist the Enforcement Division in prioritizing their work. Both the Chair and the Executive Director are meeting with the Enforcement Division staff to generate their ideas and thoughts on the matter.

MOTION: To Adjourn the meeting. Moved by Commissioner Wilson; seconded by Commissioner Baker The motion passed 5-0.

The meeting adjourned at 1:12 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved January 9, 2022

Richard C. Miadich, Chair
Fair Political Practices Commission