



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, February 16, 2023
10:00 a.m.

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

Staff Present: Galena West, Executive Director
Christopher Burton, Assistant Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Loressa Hon, Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:03 AM.

2. Approval of Commission Minutes.

MOTION: To approve the January 2023 meeting minutes. Moved by Commissioner Baker; seconded by Chair Miadich. The motion passed 4-0.

3. Consent Calendar.

Commissioner Wood stated she has questions on item 3. Chair Miadich stated item 4 will be taken first.

Commissioner Baker wanted to highlight that item 4 is subject to a different settlement with another jurisdiction so the stipulation presented today is for one maximum count and asks that this fact be considered for comparables in the future.

MOTION: To approve item 4. Moved by Chair Miadich; seconded by Commissioner Wood. The motion passed 4-0.

Commissioner Wood discussed language on page five of the stipulation that discusses the spouse having a credit card and asked that this language be clarified because there are some circumstances that a spouse could have a credit card. Christopher Burton, Acting Chief of Enforcement, stated there are circumstances

that a spouse would have a credit card, but this is specifically a one bank account violation based on the charges made on the credit card.

Commissioner Wood also pointed out that the public harm is not specified on page eight of the stipulation and discussed the practice of including the harm to help the public understand the importance. Chair Miadich agreed with this statement and asked the Enforcement Division to start being diligent to include that information.

MOTION: To approve item 3. Moved by Chair Miadich; seconded by Commissioner Baker. The motion passed 4-0.

5. Prenotice Discussion of Levine Act regulations.

Brian Lau, Assistant General Counsel, gave an overview of the regulation package, going through each regulation one by one for changes.

In discussing 18438.1, Chair Miadich discussed the exemption of the Governor's office and asked why it was included in the regulations 30 plus years ago. Mr. Lau stated he has not found a written justification.

Commissioner Wilson suggested discussing this with Legislative Counsel to find a possible answer.

Commissioner Baker discussed the language about a candidate for elected office and wanted to clarify the type of candidate that covers. Mr. Lau stated this is directed at someone who is not in an exempt position.

Chair Miadich asked why the FPPC definitions do not mention the State Board of Equalization exemption that is mentioned in the referenced Attorney General Opinion. Mr. Lau stated that is because the exemption is in the statute itself.

Chair Miadich asked if prior to SB 1439, did government code section 84308 use the terms "pending" and "pending before an agency" in the original version. Mr. Lau said yes. Chair Miadich further asked if "pending" is intended to be narrower than "pending before an agency." Mr. Lau agreed with this statement.

Chair Miadich discussed 18438.2(b)(2), specifically, whether a city council member must be aware of what is pending before a planning commission. Mr. Lau stated the current draft does not require knowledge of everything is happening within a county or city.

Commissioner Wilson discussed the expectation of knowledge and whether a staff member who is preparing an official is obligated to inform the official. Mr. Lau stated the statute is clear about it being the officer's responsibility.

Commissioner Baker asked whether media coverage falls into 'should have known' and whether a member of the public walking up to an official to discuss a matter is also knowledge. Mr. Lau stated his belief is that an official does not need to seek out the information but if it is mentioned during a public meeting, then that is an expectation of knowledge.

Chair Miadich asked if Mr. Lau saw a problem with the legislature using the know or reason to know standard in a different context than the regulations. Mr. Lau discussed the regulatory interpretation as necessary and permissible to use in different contexts. Commissioner Baker stated she gets nervous when the statutory language is specific, and the regulations change the terminology. Commissioner Wilson asked if there's any indication in the legislative record why the legislature changed the language. Dave Bainbridge, General Counsel, stated the language in the statute has not changed and that from a practical application standpoint, it makes sense to define the terms slightly differently. Chair Miadich asked why the terms were not defined over the last 30 years. Mr. Lau stated the terms are already defined in 18438.7. Chair Miadich went back to Commissioner Wilson's point about a staff member who keeps tabs on other meetings like the planning commission and asked if Staff had discussed a safe harbor. Mr. Lau stated a safe harbor has been discussed but could be added.

Commissioner Baker asked if 18438.3(b) applies to a paralegal or other employee at a firm. Mr. Lau stated an agent is thought to be the person who shows up to speak. Commissioner Wood inquired whether the regulations are setting up a system to allow paralegals to be vehicles but not agents. Mr. Lau believes the regulation is written in a way that this scenario can't happen.

Commissioner Wood asked if remote attendance fits into 18438.4. Chair Miadich stated that is a good point and should be taken into consideration for all regulations. Mr. Lau stated anything that is caught in all three points would qualify so he believes remote attendance is captured.

Commissioner Baker asked Mr. Lau to come back in the future with a description of the statutory authority for the FPPC to make the change that allows an official to participate if they return the contribution in a certain timeframe.

Commissioner Wood discussed contributions from a data standpoint saying it doesn't seem difficult to find out who is contributing to you. Commissioner Baker added it is not too difficult, but it could take a couple days if multiple contributions are received at once.

Commissioner Wilson asked if Staff has thought about committee meetings prior to when full council meetings occur and how disclosure might work in that instance. Mr. Lau stated it has been discussed but no language has been decided on.

Commissioner Wood asked if there is a definition for a candidate for elected office somewhere that should be referenced in 18438.1.

Kyra Kazantizis, CEO of Silicon Valley Council of Nonprofits, gave public comment discussing her concerns about the negative affects SB 1439 might have on the ability of community-based nonprofits to partners with cities. Specifically, the definition of agent and stated staff of nonprofits generally have no financial interests.

Sean McMorris, California Common Cause, gave public comment to discuss the letter submitted by California Common Cause.

Hank Heckel, Office of Mayor London Breed, gave public comment discussing questions of implementation and compliance of SB 1439 and discussed the forms that will be required.

Chair Miadich asked how nonprofit employees are differentiated for purposes for finding financial interests under the draft regulations. Mr. Lau stated it is something Staff will look into more.

Commissioner Wilson asks how forms are created for local bodies. Mr. Lau said it is not routine but sometimes a model form is provided for jurisdictions to use.

Commissioner Baker asked if Staff outreach has included school boards and water agencies and stated she hopes Staff does that before the regulations come back for approval.

Chair Miadich stated these regulations will come back for an Interested Person meeting and then approval is tentative for May 2023.

6. Legislative Update.

Lindsey Nakano, Senior Legislative Counsel, gave an update on introduced bills that would affect the agency.

Commissioner Wilson asked if there would be any exceptions for mandatory electronic SEI filing for those who may be disabled or unable to file online. Ms. Nakano stated there is currently not language that would create an exception for those instances.

Chair Miadich asked if AB 37 has the requirement to reimburse the cost of home security systems. Ms. Nakano said no, that requirement is not in the bill language.

7. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

8. Commissioner Comments and Proposed Future Agenda Items.

MOTION: To Adjourn the meeting. Moved by Commissioner Baker; seconded by Commissioner Wood. The motion passed 4-0.

The meeting adjourned at 12:20 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved March 6, 2023

Richard C. Miadich, Chair
Fair Political Practices Commission