



(Unapproved and Subject to Change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, May 16, 2024
10:00 a.m.

Present: Chair Silver, Commissioner Baker, Commissioner Ortiz, Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
James M. Lindsay, Chief of Enforcement
Dave Bainbridge, General Counsel
Sukhi Brar, Assistant General Counsel
Shrdha Shah, Chief of Audits and Assistance
Jue Wang, PhD, Acting Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Jay Wierenga, Communications Director
Sasha Linker, Commission Assistant

Call to Order.

Chair Silver called the meeting to order at 10:02 a.m.

1. Public Comments for items not on the agenda.

Micheal Ceremello, Dixon Informer, inquired how to appeal a decision made on a case. Galena West, Executive Director, provided Mr. Ceremello with her contact information to discuss the process.

Steve Petzold gave public comment thanking staff for the information on conflict of interest codes.

James Rawlin gave public comment to continue to urge the Commission to investigate Jed York and his involvement in Santa Clara politics.

2. Approval of Commission Meeting Minutes.

MOTION: To approve the April 2024 meeting minutes. Moved by Commissioner Baker, seconded by Commissioner Ortiz. The motion passed 5-0.

3. Consent Calendar.

MOTION: To approve the consent calendar; adoption of Regulation 18227.5. Moved by Commissioner Ortiz; seconded by Commissioner Wilson. The motion passed 5-0.

4. In the Matter of Ramos for City Council 2018, Committee to Elect Daniel Ramos Adelanto City Council 2020, Daniel Ramos, Ricardo Ramos, Arley Arsineda; FPPC No. 19/464.

Chair Silver asked James Lindsay, Chief of Enforcement, to discuss what a prenotice default is. Mr. Lindsay stated publishing the prenotice default on an agenda is an effort to get the respondent to participate in the settlement process. Mr. Lindsay stated the respondent has communicated with the office since publication of the default.

5. Conflict of Interest Codes.

Dave Bainbridge, General Counsel, and Sukhi Brar, Assistant General Counsel, presented information on conflict of interest codes and the FPPC's role in conflict of interest codes.

Commissioner Baker pointed to the "designated employee" language being statutory language and not regulatory language.

Commissioner Wilson asked if there was an example of a code with overbroad disclosure. Ms. Brar stated the FPPC sometimes looks at a code and positions and will help the agency narrow their scope.

Commissioner Ortiz asked if agencies have the flexibility to add positions and interests to their codes and if that's checked by the FPPC. Mr. Bainbridge stated agencies are required to add new positions to their code and the review is done by their code reviewing body.

Chair Silver asked if there was any oversight on local code reviewing bodies. Ms. Brar is unaware of an audit, but employees have an appeal process and code reviewing bodies can ask the FPPC for advice.

Commissioner Wilson asked if there are situations where employees file an appeal. Ms. Brar stated she has seen two in the last month.

Commissioner Baker discussed bond oversight committees and the distinction between making recommendations to the public and making recommendations to the governing body. Mr. Bainbridge stated the purpose of bond oversight committees is to advise and that is interpreted as advising the public with solely an advisory role. Commissioner Baker stated it's difficult to see making a recommendation to the public is different than making a recommendation to the governing body. She further asked if there

are case specific or fact specific analyses of these members or if it's only what's on paper. Mr. Bainbridge stated if the committee is acting outside their role, they may be required to file an SEI.

Commissioner Wilson asked about attorneys who advise for multiple agencies. Mr. Bainbridge stated that may be a case where the attorney could have to file an SEI for each agency they advise.

6. Adoption of Proposed Amendments to Regulations 18237 and 18421.2, Cryptocurrency Reporting Requirements.

Mr. Bainbridge presented the regulation package for approval.

MOTION: To approve the regulation package. Moved by Commissioner Ortiz, seconded by Commissioner Wilson. The motion passed 5-0.

7. Update on Section 84308 (Levine Act) Advice and Educational Efforts.

Mr. Bainbridge gave an overview of the Section 84308 advice and educational efforts by the FPPC.

Chair Silver disclosed ex parte communications with the Civil Prosecutors Coalition regarding Section 84308 and current legislation in the same area.

Commissioner Baker asked if there were updates on the strong mayor questions that were previously discussed. Mr. Bainbridge stated there was an advice letter last year on the issue of strong mayor and there haven't been any questions since.

8. Legislative Update.

Lindsey Nakano, Senior FPPC Legislative Counsel, gave an overview of PRA related legislation.

Chair Silver asked if the Commission had previously supported legislation that reversed a prohibition on the use of campaign funds for personal use similar to SB 1170. Ms. Nakano stated the Commission is currently supporting a bill that would permit the use of campaign funds for certain security expenses, but is unsure whether the Commission previously supported reversing a prohibition in this context.

Ann Ravel gave public comment to ask the Commission's support for SB 1170.

Marissa Roy, President of California Women's List, discussed an Attorney General's Opinion letter in relation to SB 1170 and personal benefits.

Chair Silver asked if the letter Ms. Roy discussed was the Attorney General's Opinion letter discussing the basis for the statutory prohibition in question. Ms. Roy stated yes, but that she was just repeating a

description of the letter provided during the Commission's most recent Law and Policy Committee meeting and does not have a copy.

Chair Silver asked what documentation the FTB could look at to review this expense. Ms. Nakano stated the documentation is the hours and cost.

Commissioner Ortiz discussed the need for mental health access but it's the choice of the candidate.

Commissioner Wilson discussed wanting to support this legislation.

Chair Silver stated he wanted to understand the technical aspects of the bill before supporting it.

Commissioner Wood agreed with Commissioner Wilson and would be willing to support the bill today.

Commissioner Baker stated she is not prepared to support the bill today but still sees the distinction between other expenses, security and childcare, and mental health expenses because the statute is specific that health care expenses are not permissible.

Chair Silver asked Ms. Nakano about the bill's amendments. Ms. Nakano stated the amendments are planned to be crossed in the second house and will address Commissioner Ortiz's concerns.

Commissioner Baker asked if a cost would be associated with the bill after the amendments are accepted.

Ms. Nakano stated the costs would be reevaluated once the amendments are in print.

Commissioner Ortiz asked what Chair Silver is looking for in this bill. Chair Silver responded to see how disclosure is going to happen and to see how much it will cost the FPPC.

Commissioner Ortiz asked when we will be to that point. Ms. Nakano stated it could be by the next meeting but doesn't have a sure timeline.

Chair Silver asked how it did in committee. Ms. Nakano stated 6-0 with Senator Nguyen not voting.

Commissioner Wilson stated positions on bills have been unanimous in the past so he won't be making a motion at this time.

Commissioner Baker left the meeting at 12:06 p.m.

When discussing the three Section 84308 bills, Chair Silver asked for an example of how the new narrower definition of pending would act in practice. Ms. Nakano stated if an officer has even actual knowledge that an item will come before them in the future but it isn't agendaized, they can receive a

contribution over the limit from the party and they wouldn't be required to disclose it and they would be held liable for receiving it.

Dylan Elliot, on behalf of San Francisco City Attorney's office, David Chiu, discussed how the bill impacts elected city attorneys in a way different from other elected officials and they believe the law should be modified to recognize this distinction. City attorneys may be required to provide advice and therefore participate in any covered proceedings before the city.

Chair Silver asked Mr. Elliot if the City Attorney's office has issued any positions on these bills. Mr. Elliot could not confirm but said very likely yes.

Commissioner Ortiz asked if SB 1404 includes funding. Ms. Nakano discussed the new lobbying filer fee and funding required from the general fund.

In discussing AB 2041, Commissioner Ortiz asked what happens to the expenses used for an attorney prior to the guilty conviction. Ms. Nakano stated it is a timing issue and that if there is a conviction, the funds would need to be reimbursed.

Chair Silver asked how FTB would determine an animal was in fact an emotional support animal for AB 3239. Ms. Nakano stated she is not aware of any documentation since there is not a doctor's note or medical certification required. Chair Silver stated he is concerned about the difficulty to verify whether the animal meets the requirements.

Commissioner Ortiz asked why the Commission has not taken a position on SB 948. Chair Silver said the last discussion was to table conversations on a regulation until September.

Chair Silver asked if Senator Glazer was considering any amendments for his Section 84308 bill. Ms. Nakano stated if there are amendments, they are likely to be crossed in the second house.

9. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

Mr. Lindsay pulled a streamline manner, case number 24/326, from the agenda and the matter will be closed with a warning letter.

Shrdha Shah, Chief of Audits and Assistance, discussed the discretionary lobbying audits completed by the division.

Chair Silver asked how long these audits took the division to complete. Ms. Shah stated each audit was an average of 190 hours that was spread over two years.

Chair Silver discussed the requirement by law is for the Franchise Tax Board to complete 25% of lobbying firms and lobbyist employers are audited each legislative session. He further asked when the last time FTB completed an audit. Ms. Shah stated four were completed from the 2021 draw and one is still in progress from the 2023 draw. Chair Silver stated less than 10 have been completed when there are hundreds that should have been done and in our discretionary audits, we can see four of five had findings.

Commissioner Ortiz asked whose responsibility it is to make sure a lobbyist is registered. Ms. Shah stated both the lobbyist and the firm or employer.

Commissioner Wilson asked if there is a statute of limitations on the lobbying audits. Ms. Shah stated it is two years from the date of the draw. Chair Silver added that if a violation is found, there is still the five year statute of limitations for Enforcement to prosecute.

Jay Wierenga, Communications Director, discussed the agency's 50th anniversary celebration that is scheduled for September 11, 2024.

10. Commissioner Comments and Proposed Future Agenda Items.

MOTION: To Adjourn the meeting. Moved by Chair Silver; seconded by Commissioner Ortiz. The motion passed 4-0.

The meeting adjourned at 12:49 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved June 3, 2024

Adam E. Silver, Chair
Fair Political Practices Commission