

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

FPPC No. 12/588

12
13 **ROBERT KING FONG**

STIPULATION, DECISION, AND ORDER

14 Respondent.

15
16
17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 respondent Robert King Fong (Respondent) hereby agree that this Stipulation will be submitted for
20 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondents.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by not
4 timely reporting two payments made at his behest by the Plumbers and Pipefitters Local 447 to Faith
5 and Homeless Families in violation of Government Code section 82015, subdivision (b)(2)(B)(iii) and as
6 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set
7 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing an administrative penalty in the total amount of
10 Three Thousand Dollars (\$3,000). Respondent submitted with this Stipulation a cashier's check from
11 Respondent in said amount, made payable to the "General Fund of the State of California," as full
12 payment of the administrative penalty that shall be held by the State of California until the Commission
13 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
14 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
15 after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent
16 in connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates
17 and agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before
18 the Commission becomes necessary, neither any member of the Commission, nor the Executive
19 Director, shall be disqualified because of prior consideration of this Stipulation.

20
21 Dated: _____ Gary S. Winuk, on behalf of the Enforcement Division
22 Fair Political Practices Commission

23
24 Dated: _____ Robert King Fong, City Councilman, Sacramento
25
26
27
28

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Robert King Fong” FPPC No. 12/588,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____
9 Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Robert King Fong (“Respondent”) is a Sacramento City Councilman. Under the Political Reform Act (the “Act”)¹, a payment of \$5,000 or more made at the behest of an elected officer for charitable purposes must be reported by the officer within 30 days of the date the payment was made. As set forth below, Respondent violated the Act by failing to report two payments made at his behest within 30 days of the payments being made.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

COUNT 1: Respondent failed to timely report a \$5,000 payment made at his behest by the Plumbers and Pipefitters Local 447 to Faith and Homeless Families in violation of Section 82015, subdivision (b)(2)(B)(iii).

COUNT 2: Respondent failed to timely report a \$10,000 payment made at his behest by the Plumbers and Pipefitters Local 447 to Faith and Homeless Families in violation of Section 82015, subdivision (b)(2)(B)(iii).

SUMMARY OF THE LAW

A payment made at the behest of an elected officer for a charitable purpose shall be reported within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year. (Section 82015, subd. (b)(2)(B)(iii).)

Regulation §18215.3, subdivision (a) states that a payment is made at the behest of a candidate if its “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the official.”

SUMMARY OF THE FACTS

On February 20, 2009, the Plumbers and Pipefitters Local 447, a union that represents employees of the City of Sacramento, made a payment of \$5,000 to Faith and Homeless Families, a non-profit organization founded by Respondent. On August 1, 2010, the Plumbers and Pipefitters Local 447 made a second payment to Faith and Homeless Families. This payment was for \$10,000.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

On December 21, 2010 Respondent filed a Behested Payment Report (Form 803) with the Sacramento City Clerk reporting the \$10,000 payment made by Plumbers and Pipefitters Local 447 to Faith and Homeless Families. Respondent reported that the payment was made on August 1, 2010 so the deadline to timely report the payment would have been August 31, 2010. On December 22, 2010, Respondent filed a Behested Payment Report (Form 803) with the Sacramento City Clerk reporting the \$5,000 payment made by Plumbers and Pipefitters Local 447 to Faith and Homeless Families. The deadline to timely report this payment was March 23, 2009.

COUNT 1

Failure to Timely File Behested Payment Report

Respondent failed to timely report a \$5,000 payment made at his behest by the Plumbers and Pipefitters Local 447 to Faith and Homeless Families on February 20, 2009 in violation of Section 82015, subdivision (b)(2)(B)(iii).

COUNT 2

Failure to Timely File Behested Payment Report

Respondent failed to timely report a \$10,000 payment made at his behest by the Plumbers and Pipefitters Local 447 to Faith and Homeless Families on August 1, 2010 in violation of Section 82015, subdivision (b)(2)(B)(iii).

CONCLUSION

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000) each.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

There are no comparable cases involving violations of Section 82015, subdivision (b)(2)(B)(iii). But the following cases are similar in that they involve a failure by a candidate or committee to report contributions received by the candidate or committee in violation of Section 84211, subdivision (f).

- *In the Matter of Human Rights Campaign California Marriage PAC - No On Prop 8 Committee and James Rinefierd*, FPPC No. 12/214: Respondents failed to timely report 328 contributions of \$100 or more, which totaled \$122,536, over three reporting periods. Respondents' failure to report the contributions appeared

to be inadvertent and they filed amended statements reflecting reporting the contributions after the election. On September 12, 2012, the Commission approved a stipulated agreement wherein respondents admitted to three violations for failure to report contributions and agreed to pay a fine of \$2,000 per violation.

- *Fernando Vasquez, Vasquez for Downey Council 2010, and Jane Leiderman, Treasurer*, FPPC No. 11/057: Respondents failed to timely report 17 contributions of \$100 or more, totaling \$7,696 over two reporting periods in October 2010. In December of 2010 and January of 2011, respondents filed amended statements reporting the various contributions that they had failed to previously report. On March 15, 2012, the Commission approved a stipulated agreement wherein respondents admitted to two violations and agreed to pay a fine of \$2,000 per violation.
- *In the Matter of Sacramento County Democratic Central Committee and William Guy Crouch*, FPPC No. 09/740: Respondents failed to timely report 13 contributions totaling approximately \$10,000. Respondents should have reported the contributions on a pre-election statement but did not report them until after the election. On August 12, 2010, the Commission approved a stipulated agreement wherein respondents agreed to pay a fine of \$2,500 for the violation.

Failure to timely file Behested Payment Reports denies the public important information regarding who is making payments at the behest of an elected officer. In this case, Respondent failed to report payments made at his behest until well after the reporting deadline. In one instance the report was filed one year and nine months late, and in the other, the report was filed approximately three and a half months late.

To his credit, Respondent does not have a history of violating the Act and cooperated with the Commission in resolving this case. Respondent was not up for reelection during the time between when the payments were made and when Respondent reported the payments. It appears the violations were unintentional and that there was no intent to deceive the public.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, as well as fines in prior similar cases, the imposition of a penalty of \$1,500 per count for a total penalty of \$3,000 is recommended.