

1 GALENA WEST
Enforcement Chief
2 TOREN A. LEWIS
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:

12 ERIC REED,

13
14
15 Respondents.

FPPC No. 15/1174

STIPULATION, DECISION, AND ORDER

16
17
18 **STIPULATION**

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

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

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to
28 personally appear at any administrative hearing held in this matter, to be represented by an attorney at

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondent violated the Political Reform Act by failing to
5 timely disclose economic interests on his 2014 Annual Statement of Economic Interests in violation of
6 Government Code Section 87203, and by voting on a matter in which he knew or should have known
7 that he had a disqualifying conflict of interest in violation of Government Code Section 81700, as
8 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set
9 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing an administrative penalty in the amount of Four
12 Thousand Five Hundred dollars (\$4,500). Respondents submitted with this Stipulation a cashier's check
13 in said amount, made payable to the "General Fund of the State of California," as full payment of the
14 administrative penalty that shall be held by the State of California until the Commission issues its Decision
15 and Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
16 Stipulation, the checks shall become null and void, and within fifteen (15) business days after the
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
18 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
19 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
20 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
21 shall be disqualified because of prior consideration of this Stipulation.

22
23 Dated: _____
24 Galena West, Chief, on behalf of the Enforcement
25 Division of the Fair Political Practices Commission

26 Dated: _____
27 Eric Reed, Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Eric Reed,” FPPC No. 15/1174, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Eric Reed is a member of the Belmont City Council. The Political Reform Act (the “Act”) prohibits public officials from making, participating in making, or attempting to influence a governmental decision in which the official knows or has reason to know that he has a financial interest. Eric Reed violated the Act by failing to timely disclose his economic interest in over \$2,000 in AT&T stock and then voting on a matter concerning AT&T at the February 10, 2015 Belmont City Council meeting.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2015.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of the State of California found and declared the previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.¹ To that end, the Act must be liberally construed to achieve its purpose.²

Duty to Timely Disclose Economic Interests

One of the purposes of the Act is to ensure that public officials report assets and income that could materially affect their official actions, in order to avoid conflicts of interest.³ In furtherance of this purpose, the Act requires every public official to annually file a statement of economic interests, on which the official must disclose his or her reportable investments, interests in real property, and income.⁴

Conflict of Interest

The primary purpose of the conflict of interest provisions of the Act is to ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests.⁵ The Act’s conflict of interest prohibitions apply to public officials who are members of state and local government agencies, including city councilmembers.⁶

In furtherance of this purpose, the Act prohibits public officials from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which the official knows or has reason to know, he or she has a

¹ § 81001, subd. (h).

² § 81003.

³ § 81002, subd. (c).

⁴ § 87203

⁵ § 81001, subd. (b).

⁶ § 82048, subd. (a).

financial interest.⁷ Any direct or indirect investment worth \$2,000 or more in a business entity can give rise to a financial interest, including stock interests.⁸

A public official has a financial interest in a decision if it is reasonable foreseeable the decision will have a material financial effect on the official's financial interest.⁹ A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is the subject of the governmental decision.¹⁰ For a financial interest that is a business entity, the financial effect is material if the entity initiates the proceeding in which the governmental decision will be made by filing an application.¹¹

SUMMARY OF THE FACTS

This case arose from an anonymous telephone complaint that Belmont Mayor Eric Reed failed to disclose a stock investment in AT&T on his 2014 annual Statement of Economic Interest ("SEI"). The Enforcement Division made initial contact with Reed in July of 2015, after which Reed admitted his failure to report his AT&T stock on his SEI and filed an amended statement disclosing his ownership of the stock.

Enforcement then determined that Reed violated the Act's conflict of interest provisions by participating in a governmental decision related to AT&T at the February 10, 2015 Belmont City Council meeting. At this meeting, the city council voted 4-1 to grant AT&T's appeal and overturn the City of Belmont Planning Commission's decision prohibiting AT&T from making certain improvements to a wireless facility on a public utility pole.

While Reed participated in the decision, he was the only councilmember to vote "no" on AT&T's appeal.

VIOLATIONS

Count 1: Failure to Timely Disclose Economic Interests

Reed failed to disclose his stock investments of more than \$2,000 in AT&T on his 2014 Annual Statement of Economic Interest, in violation of Government Code Section 87203.

Count 2: Conflict of Interest

On February 10, 2015, Reed voted on the AT&T matter described above, when he knew or should have known that he had a disqualifying conflict of interest by virtue of his ownership of AT&T stock. Since AT&T was the subject of the proceeding, the financial effect of any vote on AT&T's appeal of the Planning Commission decision was both material and reasonably foreseeable. Thus, Reed violated Section 87100 of the Government Code.

⁷ § 87100.

⁸ § 87103.

⁹ § 87103.

¹⁰ Reg. 18704.1, subd. (a)(2).

¹¹ Reg. 18705.1, subd. (a)(1).

CONCLUSION

This matter consists of two counts of violating the Act carrying a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Ten Thousand Dollars (\$10,000).

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“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 Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Recent cases with similar violations include:

Failure to Timely Disclose Economic Interests (Count 1)

- ❖ *In the Matter of Sonny Dhaliwal, Sonny Dhaliwal for City Council 2010, and Sarbjit Dhaliwal*, FPPC Case No. 12/806 (Commission approved a stipulated decision on June 19, 2014.) The Commission imposed a penalty of \$2,000 against Dhaliwal for his failure to disclose receipt of personal loans totaling \$17,500 on his Annual SEI.
- ❖ *In the Matter of John Wuo*, FPPC Case No. 15/1540 (Commission approved a stipulated decision on November 17, 2016.) The Commission imposed a penalty of \$1,000 against the respondent for his failure to report a source of income a business position on his 2014 Annual SEI and his Leaving Office SEI. Wuo eventually amended his SEI to disclose both interests.

In this case, like in *Wuo*, Reed failed to report his economic interests arising from a business interest on his annual SEI. Reed also cooperated with the Enforcement Division’s investigation and ultimately amended his return to disclose his interest in his AT&T stock. However, in this case, the public harm in this case is higher than in *Wuo*, because the interest that Reed failed to report ultimately gave rise to a prohibited conflict of interest when Reed voted on the AT&T matter at the February 10, 2015 Belmont City Council meeting.

In mitigation, as the only city councilmember to vote “no” on AT&T’s appeal, Reed voted against his financial interest. Therefore, a \$1,500 penalty is appropriate for Count 1.

Conflict of Interest (Count 2)

- ❖ *In the Matter of Gregory Cox*; FPPC No. 16/292. Cox, a member of the California Coastal Commission, voted on an application by SeaWorld for a permit while holding a disqualifying interest in SeaWorld stock through his wife. Cox contended that he did not know about his wife's interest in SeaWorld stock, that he did not vote with the intent to benefit his own financial interests, and that he made no attempt to conceal his actions or financial interests. Cox also self-reported the violation when he became aware of his conflict, and he fully cooperated with the Enforcement Division in resolving the case. Cox also had no history of prior violations of the Act. On April 21, 2016, the Commission approved a penalty of \$3,000 against Cox.

- ❖ *In the Matter of Jonathan Sharkey*; FPPC No. 16/066. Sharkey, a member of the Port Hueneme City Council, voted to approve the 2015-2016 city budget and Capital Improvement Program which included funding for park improvement projects at two parks located within 500 feet of Sharkey's residence. Sharkey claimed that his violation of the Act was inadvertent, and that he relied on inaccurate legal advice. He cooperated fully with Commission staff in investigating and resolving this matter. Sharkey also had no prior violations of the Act. The Commission approved a \$3,000 penalty against Sharkey at its July 21, 2016 meeting.

As in the cases above, Reed participated in a governmental decision in which he had a financial interest, as prohibited by the Act. At the time of the vote, Reed had not reported his interest in AT&T on his 2014 SEI so the public would not have had notice of his financial interest. However, like the respondents in *Cox* and *Sharkey*, Reed has no prior Enforcement history, and cooperated fully with the Enforcement Division's investigation. In further mitigation, Reed voted against his interest in AT&T, thus reducing the public harm of his participation in the Belmont City Council's decision. For these reasons, a \$3,000 fine is warranted in this case for Count 2.

PROPOSED PENALTY

The factors listed in Regulation 18361.5, prior similar cases, and other relevant facts justify a total penalty of \$4,500 for Counts 1 and 2.