



*Help achieve an open and accountable government*

October 18, 2017

The Hon. Jodi Remke, Chair  
Hon. Commissioners  
California Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
[CommAsst@fppc.ca.gov](mailto:CommAsst@fppc.ca.gov)

**Re: Agenda Item 31, The FPPC's Statement of Governance Principles**

Dear Chair Remke and Commissioners:

The California Clean Money Campaign is pleased to see that possible revisions to the FPPC's Statement of Governance Principles is on the agenda for the October meeting. Below we outline questions the Commission may wish to address when considering how the Commission weighs in on legislation.

**1) The propriety of FPPC staff lobbying regulated entities or organizations to change their position on bills.**

FPPC staff has recently vigorously lobbied entities over which the Commission has regulatory power or may have regulatory power in the future, asking organizations to change their positions on pending legislation. This raises serious questions as detailed in a *Los Angeles Times* investigative report titled *'It's Just Inherently Intimidating': Watchdog Agency Under Fire For Pressuring Groups It Regulates To Oppose Transparency Bill.* One officer of a non-profit group reported that while lobbying them to change their position on a bill, FPPC staff said that the chair was taking note of which groups supported it and which opposed it, with the non-profit officer saying "it seems pretty out of line to me". Another non-profit officer who was lobbied by FPPC staff said an agency lobbying an organization it has the power to regulate "raises some questions." A third said "They are engaging in very strong tactics that many organizations are finding to be uncomfortable".

<http://www.latimes.com/politics/la-pol-sac-fppc-open-government-lobby-20160921-snap-story.html>

**2) The propriety of FPPC staff broadly releasing "statements of concern" to legislators and their staff on legislation when the Commission itself has not taken a position.**

When FPPC staff sends letters of concern or sends its analyses to legislators and their staffs prior to Commission approval of those concerns, it is largely indistinguishable from the Commission itself expressing those concerns on a measure and can easily be misinterpreted as an official Commission position. An example of this was the letter addressed to the sponsor of AB 14 on February 23, 2017 describing FPPC staff concerns on the bill. This letter was not only cc:ed to AB 14's authors, which was appropriate and welcome, but also to the consultants of both the legislative Elections Committees and to the Republican party legislative consultants, even though the bill had not yet been scheduled for a hearing:

[http://www.caclean.org/content/pdf/ab14\\_fppc\\_lange\\_letter\\_2\\_23\\_17.pdf](http://www.caclean.org/content/pdf/ab14_fppc_lange_letter_2_23_17.pdf)

Copies of this staff letter unsurprisingly ended up in the hands not only of multiple legislators who asked about "the FPPC's concerns", but also in the hands of the bill's opponents, who cited it in their official letters of opposition – all despite the bill not having even been on the Commission's agenda for the Commissioners to

evaluate whether they agreed with staff's concerns. Said differently, by releasing their legislative analyses beyond the legislation's authors and sponsors, FPPC staff is shaping policy in the legislature without the Commission itself approving the positions and arguments taken by FPPC staff.

### **3) The propriety of releasing a FPPC staff recommendation to oppose legislation without prior notice to the author's office and sponsor.**

Misunderstandings of what are staff recommendations vs. what are official Commission positions would be reduced, and working relationships with the legislature enhanced, if FPPC staff provided prior notice of their public recommendations to bill authors. A particularly dramatic example of a failure to do this occurred when FPPC staff gave notice of their recommendation to the Commission to oppose AB 249 just as AB 249's Senate floor manager was preparing to bring the bill up for a floor vote. Notice of the staff's recommendation was sent in an email at 1:58pm on September 11, 2017, but not sent to the bill's author or sponsor. The Senate Republican Minority Leader immediately used the supposed "FPPC opposition" as a reason on the floor for members to vote against it, without the author or floor manager having even gotten it with enough time to read the contents of the staff recommendation. Many people speculated that that was the intent of the FPPC staff.

The bill had been in print for 13 days, with the amendments that staff expressed concerns about having been in print for 19 days, a period in which no indication was given to the author or the sponsor that staff was planning an oppose recommendation for the September Commission hearing.

### **4) The propriety of FPPC staff or individual Commissioners lobbying or taking positions on legislation that the Commission has not taken a position on.**

After an in-depth 2 hour and 15 minute hearing on the FPPC staff's recommendation to oppose AB 249, the Commission declined to take a position at its hearing on September 21. But afterwards, the Chair continued talking to members of the press about the staff's recommendation, as reported in the *Los Angeles Times* on September 24. While certainly Commissioners and staff retain their First Amendment rights to speak out on issues, including ones related to the FPPC, the Commission may wish to consider how individual Commissioners and staff should identify themselves and make the Commission's position clear when their personal views or the FPPC staff's views are inconsistent with the position taken or not taken by the Commission.

<http://www.latimes.com/politics/la-pol-ca-road-map-donor-disclosure-earmarks-20170924-story.html>

### **5) Whether staff recommendations to the Commission should be required to provide a balanced analysis of the pros and cons of bills they are making recommendations on.**

The Commission's ability to make informed decisions is in part based upon obtaining objective staff analyses of legislation identifying and then weighing the pros and cons of each bill. Although the staff letter to the sponsor of AB 14 (AB 249's predecessor) in February 23 this year said that "we appreciate that the bill's authors and sponsors have made changes to the language in last year's AB 700 that addresses some of the Commission's concerns" and that "we find that many of the rules concerning disclaimer display will bring an improvement in noticeability and clarity of the disclaimers on political advertisements", the staff's analysis of AB 249 urging the Commission to take an oppose position on AB 249 did not identify or analyze these "improvements."

More broadly, staff's recommendation instead read like an opposition letter from an entity that had already taken a position on the bill, even going so far as to avoid mention of language in the bill that directly contradicted points their recommendation was trying to make. For example, the staff's analysis claimed that AB 249 "potentially narrows circumstances of illegal earmarking" by pointing out that Section 85704(b)(1) requires the true source to "expressly consent" to earmarking, without pointing out that the very next

paragraph, (b)(2), an alternative test for earmarking, explicitly does not include the requirement that true sources “expressly consent”, as was repeatedly pointed out to staff by the sponsor.

The Commission may wish to consider whether to instruct staff to provide more balanced discussions of the pros and cons of the bills it is asking the Commission to take a position on so that Commissioners have the information they need to faithfully consider whether they agree with staff’s recommendations.

**Summary**

Thank you again for considering whether the FPPC’s Statement of Governance Principles should be reviewed for possible revision or whether the above issues should be addressed in some other way.

Sincerely,

A handwritten signature in blue ink that reads "Trent Lange". The signature is fluid and cursive, with the first name "Trent" and last name "Lange" clearly distinguishable.

Trent Lange, PhD.  
President and Executive Director  
California Clean Money Campaign