

## Sasha Linker

---

**From:** [REDACTED]  
**Sent:** Tuesday, May 08, 2018 10:20 AM  
**To:** CommAsst  
**Subject:** COM-03182018-00358; Jeffrey Oderman

May 8, 2018

Subject: COM-03182018-00358; Jeffrey Oderman

Dear Chair Remke and Members:

The FPPC has consistently held participants in the political process to a strict standard of compliance with the law. In a typical year, the FPPC makes findings of violations in more than a thousand cases, the vast majority of which involve officials, candidates, volunteers and contributors who do not possess any special expertise in the laws governing political accountability. In many of its rulings, the FPPC has explicitly acknowledged that the violations were inadvertently committed by unsophisticated individuals – but nonetheless issued formal warnings or fines.

On the other hand, the FPPC is only rarely called upon to pass judgement on the conduct of individuals who are recognized experts in the field of government law and ethics. We should expect that when such cases arise, they will be taken at least as seriously as those involving ordinary citizens. Therefore, it is all the more remarkable that the Enforcement Division has declined to even open an investigation into an alleged violation of Government Code Section 1090 by a highly-experienced specialist in municipal law in the course of his duties as a city attorney.

I am concerned that the Enforcement Division's decision threatens the FPPC's credibility; and as the Executive Director has declined to overrule the decision, it has regrettably become necessary for me to bring the matter directly to the commission's attention.

On March 17, 2018, I filed a formal complaint with the FPPC regarding what I believe to be an obvious and significant violation of Section 1090 by Jeffrey Oderman, a partner in the law firm of Rutan & Tucker. The alleged violation occurred in the course of a meeting of the Claremont City Council on March 13<sup>th</sup>, at which Mr. Oderman was present in his official capacity as the interim city attorney. As the entire meeting was videotaped, there are no facts in dispute. (The video can be viewed on the city's website.)

At one point in the meeting, the council formally considered the approval of a legal services contract with Mr. Oderman's firm. During the public comment period, I raised an objection to the contract based on my belief that Rutan & Tucker had a conflict of interest which would preclude the firm from advising the council on a significant legal matter involving the previous law firm which had served as Claremont's city attorney. I also reminded the council that Mr. Oderman was prohibited by Section 1090 from participating in any way in the council's consideration of a contract with his firm, and that the council would have to obtain independent legal advice to deal with my objection.

One of the council members asked Mr. Oderman about the conflict issue which I had raised. In response, Mr. Oderman told the council, "Let me express my thoughts this way. I'm not, as I speak now, representing you, and I am not providing legal advice. One comment that the gentleman made, with

which I fully agree, is that I have a conflict of interest providing legal advice to you with regard to my own contract. So that is something that I cannot do. If the council wants to obtain legal advice to address the point that the previous speaker made, you'll have to find another attorney to represent you to do that, and nothing I say should discourage you from doing that if you are so inclined."

**Mr. Oderman then proceeded to provide the council with the very advice that he had just admitted that he couldn't legally give to them:** "I will say, speaking as sort of an applicant before you – I'm not representing you – that I do not agree at all that there is any conflict of interest because of a potential claim that the city may wish to make against its prior law firm. I find no merit in that whatsoever. But that's my personal opinion. That is not my legal advice to the council."

Mr. Oderman (who at all times during the meeting actually was the Claremont City Attorney) sought to justify his participation by claiming to have *momentarily stepped out of his role as the city attorney* in order to offer self-serving legal advice that he misleadingly characterized as a "personal opinion" – the intent and effect of which was to dismiss concerns about the legal consequences of the objection I had raised and persuade the council to immediately approve the contract with his firm.

There is no precedent for a "let's pretend for the next two minutes that I am not the city attorney" exception under Section 1090, nor can it be reconciled with the statute's broad reach and underlying purpose. I hope it is unnecessary to point out to you that if public officials are allowed to participate in the making of contracts which they have an interest in by resorting to the simple expedient of temporarily disclaiming their official status, Section 1090 will become a toothless nullity.

Having had access to the complete video record of this incident, the Enforcement Division reached the conclusion that there was "insufficient evidence of a violation of the Act or of Government Code Section 1090" to open an investigation. I appealed this decision to Executive Director Erin Peth, who also declined to open an investigation based on her determination that "there is insufficient evidence to support a finding that Mr. Oderman's limited statements would rise to the required level of participation under Section 1090." I believe that Ms. Peth's conclusion is problematic in several ways.

First, the FPPC has consistently taken the position that *any level* of participation by a self-interested official is sufficient to violate Section 1090. The commission has never acknowledged a "limited participation" exception, nor is it apparent how such a standard could be meaningfully defined or reconciled with the FPPC's own precedents and prevailing case law.

Second, Mr. Oderman himself did not even claim that his statements were too limited to violate Section 1090. To the contrary, he explicitly acknowledged that they would be prohibited if offered in his official capacity. It is odd that Ms. Peth would choose to disregard Mr. Oderman's own understanding of the significance of his comments to the council, as well as his claim of having temporarily morphed into a private citizen.

Third, even though the FPPC invariably uses a standard six-step framework to analyze potential violations of Section 1090, neither the Enforcement Division nor Ms. Peth made any effort to do so here. Such an analysis would seem to compel a finding that Mr. Oderman violated Section 1090.

I am not asking for the commission to prejudge the merits of my complaint, or to hold Mr. Oderman to a higher standard than anyone else, but I am sure that it is inappropriate to dismiss this matter without even opening an investigation. It is important for the commission to understand that the Enforcement Division's summary resolution of this case is likely to be highly consequential.

As the FPPC has now validated the conduct of an attorney with special expertise in government ethics, who held a position of public trust, and who willfully participated in the making of a high-dollar-value contract in which he had a personal interest after acknowledging that he was legally barred from doing so, it will be virtually impossible for the FPPC to justify enforcement of Section 1090 and the PRA against ordinary public officials who unintentionally participate in self-interested governmental decisions.

Even more significantly, the public cannot help but notice the disparity between the FPPC's vigorous enforcement efforts against average citizens and the apparent leniency extended to a partner at a large law firm. Under the circumstances, they can be expected to make unflattering deductions about the commission's integrity. That may or may not be fair, but it is ultimately the commission's responsibility to protect its own reputation. The commission has an obligation to formally justify the decision in this case in a coherent manner which is fully consistent with case law and the FPPC's own rules, regulations, and precedents; and if such a justification cannot be produced, the commission should direct the Executive Director to reconsider her decision.

Very truly yours,

James M. Belna

Claremont, CA