



FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda

From: Roman G. Porter, Executive Director

Subject: Monthly Report on Commission Activities

Date: March 30, 2011

A. Personnel

Hires

Milad Dalju	FPPC Counsel, Enforcement
Sunnie Zhen	Student Intern, Technical Assistance Division
Debbie Blatt	Student Intern, Technical Assistance Division

Separations

Sharon Brumley	Executive Assistant (RA), Executive Division
Elaine Anderson	Staff Services Analyst, Technical Assistance Division

B. Divisional Updates

Technical Assistance Division

During the first quarter of each year calls to the Commission's toll-free advice line increase due to the March 1 and April 1 filing deadlines for the Form 700. Division staff responded to 4,446 calls in January, 3,593 calls in February and more than 4,000 calls through March 18. Email advice questions also increased with an average of 60 emails per week answered by staff.

The Division conducted seven seminars to educate state and local filing officers on their administrative duties related to the Statement of Economic Interests (SEI or Form 700), published informational fact sheets relating to the gift rules, and created more than 20 campaign filing schedules for special and local elections scheduled in 2011.

Enforcement Division

Between the period of January 26 and March 25, 2011, the Enforcement Division opened 138 proactive cases and received 14 sworn complaints. Five of these sworn complaints are currently in the intake process, 4 were assigned to active investigation, 2 were closed with warning letters and 3 were closed without action. During this time, the Division closed a total of 140 cases with 44 cases receiving warning letters, 6 receiving advisory letters, 11 prosecuted by the Commission, 4 cases finding no violation of the Act letters and 75 cases closing without action.

Currently, the Enforcement Division has 435 cases in various stages of resolution, which include the 31 cases before the Commission as listed in the April 2011 agenda.

Beginning this month, in each report to the Commission I will provide a breakdown, by topic, of the warning and advisory letters sent by the Enforcement Division. During the period of January 26 through March 25, 2011, 44 warning letters and 6 advisory letters were issued.

<u>Warning Letters</u>		<u>Advisory Letters</u>	
SEI Reporting	4	Conflict of Interest	1
SEI Failure to File	8	Campaign	2
Campaign	14	Gift	2
Lobbyist	9	SEI Non Reporting	1
Major Donor	2		
Gift	5		
Late Contribution Report	1		
Mass Mailing	1		

Legal Division

During February 1 through March 18, 2011, the Legal Division received 30 requests for written advice and completed 22 requests (8 formal, 14 informal, and 0 withdrawn). During the same period the Division received 14 Public Records Act (CPRA) requests, and completed 14 requests during this period.

C. Conflict-of-Interest Code: Adoption, Amendments and Exemptions

Pursuant to Section 87300 of the Government Code and Commission Regulations 18750, 18750.1 and 18751, state and multi-county agencies seeking to request an exemption or to adopt or amend a conflict-of-interest code must submit the request to the Commission for review and approval. The Technical Assistance Division has reviewed and, since the last agenda, I have approved the following conflict-of-interest codes adoptions and amendments:

Adoptions

M-S-R Public Energy Authority
 State and Federal Contractors Water Agency
 Yuba-Sutter Economic Development Corp

Amendments

Central CA Alliance for Health
 Chiropractic Examiner's Board
 Delta Stewardship Council
 Department of Conservation
 Kings River Watershed Coalition Authority
 Los Gatos-Saratoga School District
 Marin Schools Insurance Authority
 Ocean Protection Council
 Orange Cove Irrigation District
 State Treasurer
 Upper Kings Basin Integrated Regional Water Management Authority
 West Side Community Healthcare District

D. Advice Letter Summaries from February 1 through March 18, 2011

Campaign**Rei Terada****A-10-100**

This letter provides that the Irvine Faculty Association, based on the facts provided, has no campaign or lobbying filing requirements.

Nancy Mendizabal**A-10-208**

Former candidate for city council sought advice whether she may use campaign funds to reimburse her for legal fees in connection with a dispute with the city, which was challenging her right to run for office. Requestor was advised that based on the facts described, she may use campaign funds to reimburse the legal and other fees she incurred defending the city's legal action against her candidacy because the expenditures are directly related to a political, legislative, or governmental purpose and arises directly out of her status as a candidate for public office.

Alpio Barbara**A-11-016**

A defeated candidate for a local healthcare district received a partial refund of fees paid to the county in association with his candidacy. Prior to terminating his committee, and due to a mistake of law, he forgave a loan he personally made to the committee. The refund was received after he had terminated his committee. Due to the facts in this particular circumstance, he is allowed to deposit the refund into his personal bank account in order to repay debt owed to him by the campaign.

Ina K. Bendis**A-11-032**

A school board member may use campaign funds to pay for her membership dues of \$71 to join the International Society for Philosophical Enquiry, a Minnesota-based nonprofit organization whose membership consists of individuals of high intelligence, where the membership is reasonably related to the individual's service on the school board.

Conflict of Interest**Theodore R. Meriam****I-10-203**

Public official requested advice on whether he has a disqualifying conflict of interest that would prohibit him from making or participating in decisions as a planning commissioner based on the proximity of his primary residence to a potential development project in downtown Clayton. The facts suggest that his property is within 500 feet of some properties affected by governmental decisions and more than 500 feet from others. Based on the impact of the decisions, it is likely that the decisions will have a reasonably foreseeable material financial effect on his economic interest. Staff advised, however, that he must make this determination on a decision-by-decision basis.

Mike Fitzpatrick**A-11-004**

A councilmember who has no economic interest in his adult son is not prohibited under the Act from making or participating in decisions involving the salaries and benefits of employees of the city police department when the councilmember's adult son is an employee of that department.

Ronald R. Ball**I-11-006**

A councilmember asked if she could participate in a governmental decision to determine the future use of City-owned property located between 500 and 600 feet of her business. So long as the governmental decision does not have a reasonably foreseeable material financial effect on Councilmember's property, she may take part in the decision.

Michael Fennel**I-11-010**

Public officials who own property, including a personal residence, within 500 feet of property that is the subject of a governmental decision are presumed to have a conflict of interest in the decision unless the decision will not have any, not even one penny's, financial effect on their property.

Mike Reynolds**A-11-014**

A local official employed by a water district is advised that he does not have a conflict of interest in submitting a proposal in his private capacity to another local water agency to provide low-flow water efficient toilets to be distributed at a one day "event" to residents within the Joshua Basin Water District so long as he does not use his office to influence the decision.

Mark a. Blum**A-11-023**

Council members who have conflicts of interest in a land use decision in the jurisdiction would be disqualified in voting to select the city council's course of action under Elections Code Sections 9214 in response to the petition deciding the land use issue.

Donna Mooney**A-11-026**

A city's vice mayor may vote to approve another city council member's claim for reimbursement of attorney fees the council member paid to a law firm that previously employed the vice mayor even though (a) the vice mayor still has an account in the law firm's 401(k) retirement plan and (b) two partners of the law firm made contributions to the vice mayor's campaign. He does not have an investment economic interest in the stocks in which the retirement account is invested because they consist of mutual funds registered with the SEC. He does not have a source of income economic interest in the plan because he does not currently receive payments from the plan and there is no promised benefit at retirement under a defined-contribution plan. He does not have a source of income economic interest in the campaign contributions because campaign contributions are not "income" under the Act.

Diane Eisenberg**I-11-027**

Because charter schools organized under Education Code section 47600 et seq. are local government agencies and members of their board of directors are "public officials," the school and their board members are subject to the conflict-of-interest provisions of the Act

Pamela Bensoussan**A-11-028**

A Public official was advised that he has a potential conflict of interest that prohibits him from participating in city council deliberations and decisions on future actions and amendments to the urban Core Specific Plan. Because his property is within 500 feet of the property that is the subject of the governmental decision, any reasonably foreseeable financial effect on his property, even one penny, is material. He did not provide enough information for staff to determine if the "public generally" exception applies.

Bruce Burrows**I-11-034**

Section 87100 does not apply to a former local board member who is not a current public official. Moreover, the local revolving prohibition only applies to former local elected officials, chief administrative officers of a county, city managers, or general managers or chief administrators of a special district. Neither provision applies in this case.

Daniel McHugh**A-11-036**

Because a commissioner owns property within the redevelopment project area, the financial effect on her property is deemed to be material.

Gifts**Stephen P. Deitsch****A-11-011**

Transportation provided by a public official to other officials, when the officials are attending a meeting or conference for purposes related to their official positions, in the same automobile owned by a corporation solely or majority controlled by the official offering the ride is an act of neighborliness that does not constitute a gift to the other officials so long the as the official offering the ride is not engaged in corporate activities and does not have or plan to have business before the other officials. However, we decline to provide general assistance concerning transportation under similar circumstances provided in a corporate owned airplane or watercraft.

Celia A. Brewer**I-11-021**

Payments made, on behalf of an official's severely injured son, to a nonprofit organization that uses the donations to reimburse the official for payments made for her son's injury-related expenses present questions related to the Act's gift rules that require a policy interpretation best left to the Commission. It is anticipated that Commission Staff will present a regulatory proposal addressing these question in the near future.

Stephen P. Deitsch**I-11-022**

A public official is not required to report tickets to a tennis tournament and other similar events subject to Regulation 18944.1 if those tickets were obtained from the city as a resident on a first-come, first-served basis. A ticket received through a discount made in the regular course of business to members of the public without regard to official status is neither a gift, nor income, under the Act. Therefore, the value is not reportable under the Act.

Lobbying**Juan Garza II****A-10-142(a)**

Lobbyist sought advice on behalf of lobbyist employer/firm regarding whether the lobbying firm and its lobbyists may host an event to congratulate three candidates after the Nov. 2, 2010 election. Requestor also wished to know if the wife of the company's owner (who is not a registered lobbyist) pay for the event, or if a city that is a client of the lobbying firm pay for the event.

Requestor advised that the pro rata value of the event aggregates more than \$10, therefore the lobbyist gift provisions prohibit lobbyists and lobbying firms from giving any amount toward the event. The Act generally does not prohibit the spouse of a lobbyist from paying for an event honoring legislators. However, the owner of the lobbying firm cannot "arrange" to provide an official with a gift of more than \$10 a month. This includes suggesting his or her spouse hold the event, participate in arranging the event, attend the event, or permit dissemination of information indicating that he or she is associated with the event. In addition, a city that is a lobbyist employer may pay for the event. However, the lobbying firm and its lobbyists may not participate in arranging the event, or permit dissemination of information indicating that it is associated with the event.

Superseded Letter: This letter SUPERSEDES the *Garza II* Advice Letter, No. A-10-142.

Revolving Door**Carlos Zamarripa****I-11-012**

Additional information provided by the requestor does not generally affect the assistance regarding the Act's revolving door provisions previously provided in the *Zamarripa* Advice Letter, No. I-09-217. In short, an official may not communicate with his or her former state agency employer, for compensation, on behalf of another person for a period of one-year from the date the official left state service if that contact is made for the purpose of influencing an administrative or legislative action or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Additionally, an

official is permanently prohibited from “switching sides,” for compensation, to represent or otherwise assist any person, other than the State of California, in any proceeding involving a specific party or parties before a court or state agency if the proceeding is one in which the official participated while employed by the state.

Cheryl Hotaling**A-11-013**

A former public official sought advice as to whether her employer may participate in a state procurement process and whether she may participate on behalf of her new employer in an invitation for bid (“IFB”) relating to contract she worked on while in state service. Nothing in the Act prohibits her new employer from participating in procurements released by the state. However, the former official’s participation in the IFB may be prohibited by the Act’s post governmental employment provisions if the IFB is the same proceeding that she participated in while in state service. If the IFB is the same proceeding, then the former official is restricted by the permanent ban in Sections 87401 and 87402 and would be prohibited from aiding, advising, counseling, consulting or assisting her new employer or any other potential vendor with regard to the IFB.

Statement of Economic Interests**Dan Miller****A-11-018**

The Act does not regulate a local agency’s posting of public officials’ Form 700’s on the agency’s website, either in their entirety or redacted to remove private information. However, the agency must also provide paper copies, when requested, to comply with the requirement of Section 81008 that the statements must be “open for public inspection and reproduction during regular business hours.”