



FAIR POLITICAL PRACTICES COMMISSION

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To: Chairman Schnur and Commissioners Garrett, Hodson, Montgomery and Rotunda

From: Roman G. Porter, Executive Director

Subject: Monthly Report on Commission Activities

Date: January 31, 2011

A. Personnel

Hires

Adrienne Tackley, Commission Assistant, Executive Office

Separations

None.

B. Divisional Updates

Technical Assistance Division

The Division's advice line received 3,980 telephone calls and staff also responded to over 100 questions submitted by email. Sandy Johnson presented to candidates and treasurers in Pasadena, and in Oakland, Sarah Olson conducted a workshop on the Statement of Economic Interests Filing Officer duties, attended by local clerks.

Enforcement Division

Between the period of January 1, 2011, and January 25, 2011, the Enforcement Division opened 75 proactive cases and received 5 sworn complaints. Four of these sworn complaints are currently in the intake process, and 1 was assigned to active investigation. During this time, the Division closed a total of 80 cases with 21 cases receiving warning letters, 2 receiving advisory letters, 36 prosecuted by the Commission, 2 finding no violation of the Act and 19 cases closing without action.

Currently, the Enforcement Division has 387 cases in various stages of resolution, which include the 13 cases before the Commission as listed in the February 2011 agenda.

Legal Division

From January 3, 2011 through January 31, 2011, the Legal Division received 18 requests for written advice and completed 20 requests (8 formal, 10 informal, and 2 withdrawn). From January 1, 2011 through January 31, 2011, the Division received 7 public records act (CPRA) requests, and completed 5 requests during this period.

C. Advice Letter Summaries from January 3, 2011 to January 31, 2011**Campaign****Randy Dickey****A-10-173**

The Walnut Creek Police Officer's Association (POA), a multi-purpose committee, asks whether its contribution activity would qualify it as a recipient committee. This letter concludes that POA has not yet qualified as a recipient committee, but does qualify as a Major Donor Committee.

Thomas A. Willis**I-10-180**

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Jesse Mainardi**A-10-191**

A company that is not hired by a committee to act as the committee's collection agent, has filed with the IRS as a political organization and has filed a campaign statement in which it identifies itself a general purpose committee, is a "committee" under Section 82013. When such a committee transmits payments attributable to earmarked contributions from third parties, the recipient committee must report the payments as contributions received through an "intermediary" under Section 84302.

Christine Nolan**I-10-193**

Proprietor of online advertising business sought advice regarding whether independent expenditure committees can place online ads that encourage readers to "click-through" to a candidate's web page, or any URL on the Internet of their choosing. Requestor advised that generally a link alone is insufficient to establish cooperation, consultation, coordination or to show that an independent expenditure committee is acting in concert with or with the consent of a ballot measure committee or candidate committee. In addition, recently approved electronic media advertising regulations do not dictate that ads must "clickthrough" to a particular website.

Fred L. Starrh**I-10-205**

The letter discusses endorsements of a candidate by a local water district and publication of the endorsements. The Act does not restrict from whom a candidate may receive an endorsement. An endorsement itself is not a "contribution" to a candidate, but the publication of an endorsement may be a contribution to a candidate or an independent expenditure.

Conflict of Interest**John Bezmalinovic****A-10-137(a)**

A state transportation commissioner may not vote to approve construction of a highway interchange on a major highway because it is reasonably foreseeable that the decision will increase the value of real property in which he has an indirect economic interest. The property abuts a partially built six-lane super arterial roadway that will provide fast and unimpeded access to the new interchange.

Thomas McCormick**I-10-178**

City councilmember and mayor requested advice regarding a potential conflict as the city council makes decisions about the downtown area of Orinda. The mayor owns property within 500 feet of the downtown area, though there are not many decisions in the upcoming proposals that affect the areas that are within 500 feet of his property. Staff advised that the mayor will have to engage in the 8-step conflicts analysis as each decision comes before the city council.

Nancy L. Klein**I-10-184(a)**

Disqualification under the Act's conflict-of-interest provisions is personal as to the official. Assuming an official is disqualified for making, participating in making, or influencing a school board's decision, the Act's conflict-of-interest provisions do not preclude the school board from deliberating and voting on the matter. However, should the disqualified official take part in the decision, any action taken by the school board may be void or voidable. Notwithstanding the fact that a disqualified school board member may not make, participate in making, or use his or her official position to influence the school board's decision, a board member may not necessarily be disqualified from a decision if an exception to the Act's conflict-of-interest provisions applies.

Superseded Letters:

"This letter has been SUPERSEDED by the *Klein* Advice Letter, No. I-10-184(a).

Marjorie Baxter**I-10-195**

City attorney requested advice regarding a city employee who owns property within 500 feet of a group home that receives city funds. After analyzing the potential issues, staff found that the employee was not "making or participating in governmental decisions" under the Act. Her tasks are analyzing and ministerial. For this reason, staff advised that the employee does not have a conflict under the Act.

John H. Linn**I-10-199**

Mayor sought advice regarding the Act's conflict-of-interest provisions on a wide range of issues involving various business interests and positions. Advised official those questions regarding contracts implicate Government Code 1090, and we cannot advise on these issues because they are outside the Act. Also advised official that nothing in the Act prohibits him from hosting a television show on local access channel. Based on the facts provided, the television show will not be an in-kind contribution to the official's campaign as long as the show: (1) does not expressly advocate his reelection; (2) does not make any reference to his candidacy for elective office, his campaign, or his opponents' qualifications for office; and (3) does not solicit contributions for his campaign.

Prescilla Dugard**I-10-200**

Because the public official's property is 500 feet or more from the property that is the subject of the governmental decisions regarding a development proposal, the official's economic interest in the property is only indirectly involved in the decisions and any financial effect of the decisions is presumed not to be material. Thus, the official may take part in the decisions so long as no additional facts establish a reasonably foreseeable material financial effect on her economic interest(s).

Diane Eisenberg**I-10-206**

Response to request for the views of interested parties prior to issuing a formal opinion of the Attorney General. The letter generally describes the Act's conflict-of-interest provisions in connection with the following question: "May a director of the County Water Authority (CWA) who represents one of the member agencies of the CWA vote on an action coming before the board of

the CWA in which the member agency has a financial interest, if the action does not concern any contract that is solely between the member agency and the CWA?"

Connie Boardman**I-11-003**

Discussion of the Act's conflict of interest rules as applied to a newly-elected city council member, who also serves without compensation as president of a non-profit land trust which is suing the city over recent land use decisions.

Robert J. Hoffman**I-11-005**

Letter provides general information regarding the exception applicable to government income. We advised generally that an official is not disqualified from taking part in salary and benefit decisions that will affect his or her income as an employee of the agency. However, the Act would prohibit the official from taking part in a salary and benefit decisions that will set a salary or benefits for the official different from other employees in the same job classification or position. Accordingly, while an official is not categorically prohibited from taking part in a decision that could impact his or her salary or benefits, the factual circumstances of each decision must be considered to determine if there will be any unique effect on the official.

Richard J. Chivaro**A-11-008**

The State Controller is not disqualified from making, participating in making, or influencing a decision by the Victim Compensation and Government Claims Board regarding a claim that the California Citizens Compensation Committee did not have the authority to reduce the salary and related benefits of all elected state officials by 18-percent because the decision is not a decision "to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position."

Gifts**Ashlee Titus****I-10-196**

Discussion of gift rules in connection with a training program for mid- and upper-level management personnel employed by government regulatory agencies, where the program would be administered by a non-profit corporation using funds solicited from third-party sponsors to pay travel and substance costs for the officials selected to participate in the program.

Revolving Door**Scott J. Harris****A-10-183(a)**

A former deputy attorney general does not violate the one-year ban by communicating with or making appearances before a state licensing agency that he represented while employed by the Department of Justice. This includes communications with agency staff and attorneys. The exception for appearances before an administrative law judge applies to prehearing communications regarding a matter that, if not settled, will be heard by an administrative law judge. The exception is triggered when a person reasonably concludes that a government agency has commenced an investigation.

*****Superseded Letters*****

Harris Advice Letter, No. A-10-183.

Reid Advice Letter No. I-05-187 and I-05-178.

Weil Advice Letter, No. A-97-247.

Monagan Advice Letter, No. A-93-473.

Albino Advice Letter, No. A-92-470.

Gilbert Granito**A-10-187**

A former public official for a state agency was advised that if he worked at the same state agency in a position that is not and should not be designated in the agency's conflict-of-interest code, he would not be further restricted by the Act's one-year revolving door ban as a result of having worked in that position. He was also informed that he may work in an undesignated position at the agency and as an independent contractor with a separate local agency simultaneously though he would be prohibited from engaging in any activities that are prohibited by the Act's one-year revolving door ban or Section 87100.