



FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

To: Chairman Schnur and Commissioners Garrett, Hodson, Montgomery and Rotunda
From: Roman G. Porter, Executive Director
Subject: Monthly Report on Commission Activities
Date: January 18, 2011

This memorandum is a summary of administrative actions and other activities of Commission staff since my November report. Additionally, I have included divisional summaries of the projects and accomplishments completed in 2010. The electronic version of this document includes links to pertinent information.

It is important to note that in 2010, like 2009, the Commission was subjected to furlough days, resulting in more than 17,700 lost worker hours, or the equivalent of approximately 8.5 full time positions.

During the last half of 2010, Governor Schwarzenegger reduced nearly \$500,000 from what the Commission was provided in our approved 2010/2011 budget. These cuts were an effort to reduce spending in personnel costs and were in addition to the furlough days. While Governor Brown's budget proposal does not rescind the previous cuts, I am happy to tell you that it does not include any additional reductions from the Commission's budget and these earlier cuts will be met by the end of this fiscal year, most importantly, without anyone on staff losing their job.

Chairman Ross Johnson resigned on April 30, 2010, due to health concerns and Chairman Dan Schnur was appointed on June 1, 2010, for the remainder of Chairman Johnson's term. In 2010 the Commission adopted many first-in-the-nation proposals suggested by the subcommittee on the Political Reform Act & Internet Political Activity, established in 2009, by Chairman Johnson. Upon his arrival, Chairman Schnur convened a 25 member Chairman's Advisory Task Force comprised of a wide range of stakeholders, including Commission employees representing each division, practitioners and watchdog groups, all tasked with the goal of identifying regulatory and legislative remedies to many of the complexities found within the Political Reform Act. The important findings of the Task Force and their implementing regulations will be presented to the full Commission on January 28, 2011.

A. Personnel

Hires

Josephine Goodenow, Budget Analyst (Retired Annuitant), Administration Division

Separations

Kevin Moen, Political Reform Consultant II, Technical Assistance Division
Tino Salinas, Special Investigator, Enforcement Division

B. Divisional Updates

Prior to beginning a run down of all of the efforts undertaken by Commission staff, I believe it is important to provide some perspective as to the scope of the Commission's responsibilities. Below is information regarding the types of committees regulated by the Commission. In the coming months I hope to provide additional details on the other individuals and groups we regulate.

Recent information from the Political Reform Division within the office of the Secretary of State indicates that, as of January 15, 2011, there are more than 16,500 registered committees in California:

State Recipient Committees	8,843
Local Recipient Committee	5,488
State Candidate Controlled Committee	1,227
Major Donor Committee	945
<u>Slate Mailer Committee</u>	<u>53</u>
Total Campaign Committees in California	16,556

Technical Assistance Division

Advice

The Technical Assistance Division responded to over 48,000 telephone calls requesting advice in 2010, with a record 7,749 calls in March. In August, TAD began accepting advice questions through email and answered more than 650 emails by year's end. The Division also wrote twelve advice letters, six of which were formal advice letters.

Election Reports

The Division prepared and posted several reports on the Commission's website that provided the public and media with a one-stop location to review important campaign spending information in an easy to understand format. Overall, more than 1,600 staff hours were devoted to these reports. Special thanks to former Communications Director Susie Swatt for dedicating the majority of her time at the Commission to making certain these reports were of the highest caliber, as was her custom.

Education/Training

Staff conducted a total of 41 educational and training workshops during 2010. There were 19 educational sessions devoted to candidates and treasurers at various regional locations throughout the state, 10 workshops trained state and local filing officers on their duties for handling campaign statements and statements of economic interests, five regional workshops focused on amending a local agency's conflict-of-interest code, and seven onsite training sessions at state agencies to assist filing officers understand their day-to-day responsibilities. All workshops were well received, with more than 1,400 total attendees. In addition to in-person training, staff developed a YouTube presentation for candidates and treasurers to assist the Commission's efforts at making training presentations available to as many as possible, even when they can not attend in person.

Statement of Economic Interests (Form 700)

Division staff logged and reviewed over 24,700 Form 700s, a near 11 percent increase in filings from 2009. Over 6,000 letters were sent to address filing obligations and over \$25,000 was collected in filing officer fines for statements filed after the deadlines. This is only a fraction of all Form 700s filed throughout the state.

During 2010, The FPPC posted on its website Form 700s filed by legislators, constitutional officers and Boards of Supervisors to provide the public and media greater access to the statements of

elected officials. In addition to accessing the forms online, more than 400 requests were made for statements, with over 21,000 pages copied.

Informational Material

During 2010, more than 10 new and updated fact sheets were posted on our website that provide timely, accurate information to assist the regulated community in complying with the Political Reform Act. Also, 10 specialized filing schedules for campaign statement deadlines were posted on our website for state candidates and committees, five of which were created for special state elections, and over 30 filing schedules were created for local elections, most of which were customized for local special elections.

Conflict-of-Interest Codes

The analysis of conflict-of-interest codes is an integral component of ensuring that appropriate positions are designated to file the Form 700 and tailored disclosure categories are adopted for each required position. Staff coordinated the approval of three new state agency conflict-of-interest codes, 19 state agency amendments, nine new multi-county codes, and 33 code amendments for multi-county agencies. One state agency was granted an exemption from adopting a conflict-of-interest code.

Special Presentations

Twice in 2010, Technical Assistance Division Chief Lynda Cassady was called by prosecutors to testify as an expert witness. The Division conducted an Interested Persons Meeting regarding the Form 700 and the Form 802 and Assistant Division Chief Dixie Howard made a presentation to 300 attendees at the California City Clerks Association's Annual Conference.

Enforcement Division

In 2010, The Enforcement Division received 1,563 complaints, opened 1,123 cases and closed 1,308 cases. Of the cases opened, 945 were proactive investigations and 178 were sworn complaints. Of the closed cases, 739 were closed by the Enforcement Division with proven violations with 223 cases resulting in \$650,593 in fines assessed by the Commission. The Division also issued 516 warning letters, seven advisory letters and 54 no violation letters.

At the close of 2010, the Enforcement Division had 391 cases in various stages of resolution, which include the 34 cases before the Commission as listed in the January 2011 agenda. Only 10 of these open cases are older than 2 years.

On September 13, 2010, the Commission began posting the letters sent to individuals or entities notifying them that they are the subject of an investigation. These letters clarify that no violation has been proven, simply that an investigation has begun to determine whether or not a violation of the Political Reform Act has occurred.

Between the period of November 1, 2010, and December 31, 2010, the Enforcement Division opened 127 proactive cases and received 28 sworn complaints. Five of these sworn complaints are currently in the intake process, 12 were assigned to active investigation, one is in resolution pending, 7 were closed with warning letters, 1 closed with an advisory letter, and 2 were closed without action. During this time, the Division closed a total of 372 cases with 194 cases receiving warning letters, 8 receiving advisory letters, 15 prosecuted by the Commission, 5 finding no violation of the Act and 150 cases closing without action.

Legal Division

During the nine Commission meetings held in 2010, the Division adopted 3 new regulations, amended 21 regulations and repealed 1 regulation. These regulations included measures to close gift reporting loopholes, adopt a definition of “express advocacy,” consistent with the U.S. Supreme Court findings in *Citizens United v. FEC*, and adopt proposals of the subcommittee on Internet Political Activity and the Political Reform Act.

In 2010, the Division received 211 requests for advice and issued 91 letters of formal advice and 69 letters of informal advice. In 35 instances the requestor withdrew their letter and a response is pending for 16 requests. These totals include the letters written by TAD. The Division also processed 209 California Public Records Act (CPRA) requests in 2010.

From October 25, 2010 through December 31, 2010, the Legal Division received 34 requests for written advice and completed 39 advice letters (12 informal and 17 formal, 10 withdrawn). During the same period, the division received 23 public records act (CPRA) requests and completed 15 requests for records.

Administration Division

During 2010, Personnel and Fiscal staff formalized new policies and procedures to tighten internal security and facilitate operations including updated payroll procedures, a new accounts payable procedures manual, and formalized employee separation procedures. Staff was also involved with the State Personnel Board and the Department of Personnel Administration in the Human Resources Modernization Project and the State Controller's Office in the MyCalPays Project.

Business Services staff completed an audit of the agency's physical inventory, set in motion new controls on agency supplies, and transitioned the agency to a new fiscal travel accounting system, CalAters. Staff also provided coordination and oversight for health and safety and ADA improvements related to the lease renewal of the Commission's offices. Included in this effort was the creation of a new work area for the IT staff, allowing more efficient use of leased space.

Information Technology staff significantly improved system performance and functionality through increases in agency bandwidth, allowing IT staff remote support functions, restructuring website posting processes, and electronic security enhancements. With the November gubernatorial election, staff was busy assisting with posting information to the website relating to special reports, campaign information, independent expenditures, and gifts and behested payments.

Staff spent considerable time redesigning the Commission's website making it easier to use, setting up the new email advice program and posting notices of investigations and select Form 700 filings. In addition, staff improved the Enforcement and Technical Assistance Division database systems including developing a new intake module for the Enforcement Division. During 2010, IT staff took on new responsibilities of supporting the audio visual needs of the agency. The system within the hearing room was reconfigured to provide recording redundancy and a PC for presentations was also added.

Legislation

During the 2010 legislative year 13 bills affecting the Political Reform Act were introduced. There were also 3 PRA bills that were introduced in 2009 and ultimately considered in 2010. Of these 16 proposals, six became law, effective on January 1, 2011. The Commission's Legislative Coordinator Tara Stock met with and assisted more than a half dozen legislative offices as they drafted their measures. And in the latter half of 2010, she met with staff members from at least four offices to discuss the Chairman's Task Force recommendations.

Media

In 2010, the Commission issued 31 press releases and media advisories and received nearly 1,300 media inquiries, resulting in the Commission being mentioned in more than 1,800 newspaper articles/web posts, television and radio reports, and blog postings throughout the state and nation—an average of nearly 5 stories each day of the year. It is important to note that, in addition to her responsibilities as Legislative Coordinator, Ms. Stock assists me with researching and responding to media inquiries.

C. Audit Reports

Pursuant to Sections 90001, 90004 and 90006 of the Government Code, the Commission periodically conducts audits and prepares audit reports. Since my last report, the following audits have been completed:

Jerome Horton and his controlled committee **Democrat Jerome Horton for Board of Equalization**. Mr. Horton was a candidate for Board of Equalization in the 2006 Primary Election.

D. Finding of Probable Cause

Pursuant to Regulation 18361, I have found sufficient evidence in the following cases to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that the following respondents committed or caused a violation of the Political Reform Act. **A finding of probable cause does not constitute a finding that a violation has actually occurred. Respondents are presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding.**

In the matter of Sean MacNeil, FPPC No: 09/645, probable cause was found to believe that respondent Sean MacNeil violated the Political Reform Act, as follows:

Count 2 Respondent failed to report \$2,000 in income received from the Friends of Pat Wiggins for State Senate 2010 campaign in March 2007 on his 2007 annual Statement of Economic Interests, in violation of Section 87302 of the Act.

In the matter of Chris Norby, Norby for Supervisor, and Betty Presley, Treasurer, FPPC No. 09/773, probable cause was found to believe that respondent Chris Norby and Betty Presley violated the Political Reform Act, as follows:

Count 1 On or about August 14, 2007, Respondents Chris Norby, Norby for Supervisor, and Betty Presley, Treasurer, used campaign funds for purposes not directly related to a political, legislative or governmental purpose when there was substantial personal benefit to Respondent Chris Norby, in violation of Sections 89511.5, 89512, and 89513, subdivision (a).

E. Advice Letter Summaries from October 25 through December 31, 2010**Campaign****Heidi Hawkins****A-10-150**

Treasurer for a PAC requested information regarding whether the PAC could return funds to its umbrella organization's general fund. Staff explained that contributions to a campaign are held in trust and could only be used for limited purposes. Funds raised for a particular measure cannot be returned unrestricted to the organization's general fund, but the Act does allow several options for these 'leftover' funds.

Ash Pirayou**A-10-159**

An elected official may have some limited involvement in a general purpose independent expenditure committee without the committee being considered the elected official's controlled committee under Section 82016. However, if an elected official exerts "significant influence" over the committee's activities, the elected official is considered to control the committee and the committee would be subject to the prohibition of Section 85501. The statutory standard of control is based on a candidate's total involvement with a committee.

Christine M. Nolan**I-10-194**

Payments made to internet publishers, who host internet ads, by a company that directs and places the ads must be reported as expenditures by the candidate or committee on whose behalf the payments are made. Under Regulation 18431(d), a vendor that makes these payments is required to provide the information needed for reporting these expenditures.

Conflict of Interest**Andrew Shen****A-10-136**

City Attorney sought advice regarding whether a member of the Treasure Island Development Authority may make, participate in making, or influence a governmental decision regarding a transition plan despite the fact that the official's personal finances are directly affected by the decisions. Based on the facts provided, official qualifies under the public generally exception in Regulation 18707.1 and therefore, may make, participate in making, or influence governmental decisions regarding the transition plan.

Sandra Levin**A-10-144**

Councilmember was advised he would have a disqualifying conflict of interest involved in an upcoming City Council decision involving a source of income to him, if that source provided income to him of \$500 or more within 12 months prior to the governmental decision.

Karl H. Berger**I-10-153(a)**

Upon his appointment to a city position, an official may not take part in decisions regarding a development if the official's business was paid by the developer to provide consulting services relating to the development. However, to the extent that decisions regarding private projects or the merging of the project areas will have no reasonably foreseeable potential effects on the official's economic interests other than the amount of financial assistance available for the development, the official may take part in the decisions in light of a resolution passed by the city expressing its intention not to provide financial assistance to the development, so long as additional facts do not indicate the possibility that the city may reopen its decision not to provide financial assistance to the development.

Pamela Bensoussan **A-10-156**

A city council member may vote to adopt an ordinance setting forth procedures and criteria for designating and delisting property as historic property because, even though she has economic interests in real property and a source of income that are designated as historic properties, it is not reasonably foreseeable that the decision will have a material financial effect on any of her economic interests.

Nance L. Klein **I-10-166**

A member of the school district's board of trustees is not disqualified from taking part in a collective bargaining decision regarding salary schedules that will affect his or her spouse's income as an employee of the district, so long as the official's spouse will not receive a salary different from other district employees in the same job classification or position. However, other collective bargaining decisions -- including, but not limited to, staffing and budgetary decisions that could impact the classes or programs in which the board member's spouse serves -- must be analyzed individually to assess whether specific decisions fall within the exception to the personal financial effects rule for decisions affecting governmental salary.

Bryan Felber **I-10-168**

A Planning Commission representative on Chula Vista's Growth Management Oversight Commission does not have an economic interest, within the meaning of the Act's conflict-of-interest rules, in decisions that could potentially affect the employment of his adult son, employed as a city firefighter. A public official's economic interest in his or her personal finances are limited to the personal finances of his or her spouse and members of his or her "immediate family," a term that does not include a 28-year old adult son.

Scott A. Mann **I-10-171**

A public official is not generally disqualified from taking part in agency decisions regarding a reimbursement. However, under the "personal financial effects" rule, an official may not take part in a decision regarding his own reimbursement of \$250 or more if the reimbursement differs from reimbursements provided under similar circumstances to other agency employees in the same classification or office.

Richard D. Jones **A-10-174**

A city councilmember may not participate in a decision involving a proposed oil and gas drilling project that entails laying underground pipes under a street that is adjacent to an office building if it is reasonably foreseeable that the decision will have a material financial effect on any of her economic interests. The city councilmember has a 10% direct interest plus an indirect community property interest in the small corporation that leases the office. She also has a source of income interest in 10% of the corporation's income and her community property share of her spouse's income from the corporation. She does not have a real property/leasehold interest in the property because the property is leased on a month-to-month basis.

Gary Steube **A-10-176**

The conflict-of-interest provisions of the Act do not bar a board member of an airport district, who leases a hangar from the district, from participating in the district's decision to purchase land adjacent to the airport even though the hangar is within 500 feet of the property. The board member leases the hangar on a month-to-month basis. For purposes of the Act, property leased on a month-to-month basis is not considered an interest in real property.

Jannie Quinn**I-10-172**

City attorney requested advice on “public generally” exceptions to conflict-of-interest disqualification. Staff advised that High Speed Rail entering the city does create a conflict of interest, as described in the request, but that the public generally exception would likely apply in most decisions before the councilmember and the councilmember must engage in the appropriate analysis for each decision.

Daniel Stone**I-10-181**

FPPC comment provided to the Office of the Attorney General regarding an opinion request that they received from the California State Council on Developmental Disabilities. The Council asked about the effect of member abstentions on the outcome of a vote by the Council, and whether the Council could change quorum requirements. We advised:

(1) The rule of legally required participation does not apply if the members determine that they do not have a conflict of interest under the Act, but nevertheless choose not to vote. Voluntary abstention is not a basis for invoking legally required participation.”

(2) We advised that while the Act does define a quorum, it describes it only as the minimum number of members required to conduct business. Thus, ultimately, the determination of how many members constitute a quorum is left to each state and local government agency to decide.

Richard Breitwieser**A-10-188**

Members of a community service district board of directors were advised that though they own real property that would be indirectly involved in governmental decisions before them, they would not have conflicts of interest when participating in those governmental decisions so long as there are no factors present to rebut the presumption that the decisions will not have a reasonably foreseeable material financial effect on any of the their economic interests.

Robert Bergman**A-10-189**

Mayor sought advice whether he could participate in the city council's vote on a proposed ordinance allowing former bed and breakfast operators in the city to reacquire their abandoned use permits and reopen. Mayor's residence is not within 500 feet of former bed and breakfast operations, the subject of the governmental decision, but is within 500 feet of existing B&Bs, that are not subject to the proposed ordinance but would be affected by any general ordinance regarding B&Bs that the city council may take up in the future. Official was advised that based on the facts provided, he may participate in the proposed B&B ordinance vote if the decision will not have a reasonably foreseeable material financial effect on his real property. However, should the city council address the need of a more comprehensive B&B policy, official should request further advice as he may have a conflict of interest depending on the nature of the decision.

Paul R. Zink**I-10-190**

An appearance by a member of the city's architectural board of review before the city council is not an appearance before the board member's own agency and, therefore, only implicates the Act's conflict-of-interest provisions if the board member acts or purports to act on behalf of the board of review.

Sue Mitchell**A-10-192**

A recreation and park district board member was advised that he may not participate in decisions related to a bond measure because he owns real property within 500 feet of the property that would be the subject of the governmental decision before him and therefore he is presumed to have a disqualifying conflict of interest. However, he was also advised there may be certain decisions in

which he can participate if they are not inextricably interrelated to the decisions in which he has a conflict. The board member was also advised that he may remain in the public meeting, listen to the discussion, and speak as a member of the public *solely* regarding his personal interests as it relates to the bond measure if he qualifies under the exception in Regulation 18702.4.

Steve Thomas **I-10-198**

The Act would not preclude a school board member from continuing in an agreement with the school district to place vending machines on the District's High School campus. However, in cases where a decision will have a foreseeable and material financial effect on the officials economic interests, disqualification is required. We do not advise on Section 1090 since it is not a part of the Political Reform Act.

Steve Herfert **A-10-202**

A Mayor pro Tem who is also an employee of Southern California Edison (SCE) may participate in governmental decisions regarding a proposed cellular tower so long as the decision will not have a reasonably foreseeable material financial effect on SCE. Since SCE is not the applicant on the cell tower decision, SCE would be indirectly involved in the decision. Where SCE is indirectly involved in a governmental decision, the effect is considered material if the governmental decision will result in an increase or decrease in SCE's gross revenues for a fiscal year of \$10,000,000 or more, or the value of its assets or liabilities by \$10,000, or the governmental decision will effect SCE's expenses by \$2,500,000 or more.

Joseph A. Medrano **A-10-204**

A city councilmember who held a periodic tenancy at a property where he operated a business located within 500 feet of property that was the subject of a governmental decision before him, was advised that he did not have an economic interest that would be materially affected by the governmental decision before him and therefore could participate in the decision.

Conflict-of-Interest Codes

Jennifer McCain **A-10-177**

A local mayor is advised that he does not have a conflict of interest in participating in a governmental decision regarding a location for a new minor league baseball park where his business property is located more than 1,000 feet from the site and there is nothing to indicate that the decision will have a reasonably foreseeable material financial effect on the rental value of the property.

Nancy Miller **A-10-197**

A local boardmember is advised that he does not have a conflict of interest in participating in a governmental decision regarding the establishment of a horse riding trail when it is located 5.5 miles and on the other side of a mountain from his Bed & Barn business unless the trail is such an enticement to potential guests that it will reasonably foreseeably increase his business revenues by \$20,000 or more.

Gifts

William McMinn **I-10-151**

Requestor asked if free attendance at the district's annual swearing-in-luncheon honoring the incoming officers and the outgoing Chairman of the Board of Port Commissioners, holiday dinner, and a reception hosted by the port at a conference put on by another entity were gifts needing to be reported on a Form 802. We advised that the payments need not be reported on a Form 802 because the admission to the events were not provided by a ticket, but by invitation, and were not events that were provided for an entertainment, amusement, recreational, or similar purpose.

The attendance of harbor police to participate in the district's honor guard performances at baseball games are also not gifts because the officers are performing a "ceremonial role" under Regulation 18942 (a)(13).

Christine Lally**A-10-201**

A 501(c) (3) is advised that there is no reportable gift to the elected official for the admission received when attending the California Museum's "2010 California Hall of Fame Gala", assuming the value of the ticket used by an elected official for his or her individual attendance at the event is \$420 or less, for that ticket has no value under Regulation 18946.2. That regulation provides that one admission, valued within the Act's gift limit, provided to an official by a 501(c)(3) organization for attendance at its fundraising event shall be deemed to have no value. In addition, the tickets provided for and used by the officials' spouses are not gifts to the officials because they were offered for the spouses and not for the discretionary use of the officials.

Revolving Door**Tom Sheehy****A-10-155**

This letter discusses how the revolving door provisions of the Act apply to an individual leaving his position as Undersecretary of the State and Consumer Services Agency.

Lisa A. Alviso**I-10-186**

A review of the Act's "revolving door" provisions as applied to a Caltrans official anticipating post-retirement employment by a private-sector business whose projects would be subject to Caltrans standards and requirements.

Mary Boyer**A-10-170**

California Air Resources Board supervisor is retiring and requested information regarding taking a new position as a trainer with a non-profit corporation. As a trainer, the supervisor would have no contact with her previous agency. Staff advised the supervisor that the Act's one-year or permanent bans would not apply to her position as a trainer because there would be no communications that are intended to influence her previous agency and no judicial, quasi-judicial, or administrative actions that would overlap her new position with her previous agency.

Scott J. Harris**A-10-183**

A deputy attorney general who left state employment less than one year ago may represent clients in *legal proceedings in a court of law or before an administrative law judge* in which a state agency is a party because, under the one-year ban, an appearance in a court of law, or before an administrative law judge, is not an appearance before an administrative agency. However, under the one-year ban, he may not make an appearance, or a communication, *before any state agency* he represented while employed by the state if the appearance or communication is made for the purpose of influencing an action or proceeding involving the issuance, amendment, award or revocation of a license or permit. The one-year ban does not preclude him from advising or assisting another attorney to represent clients in proceedings before an agency he formerly represented, so long as he is not identified in connection with the client's efforts to influence the agency, and so long as the permanent ban does not apply. The permanent ban on "switching sides" prohibits the former deputy attorney general from representing clients in a proceeding before an agency if he participated in the proceeding while employed by the state. In addition, the permanent ban prohibits him from assisting another attorney, whether "of counsel" or by "associating in," with a proceeding in which he participated while employed by the state.