



**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:** May 17, 2011

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**A. Divisional Updates**

**Technical Assistance Division**

Calls to the Commission's toll-free advice line in March totaled 2,961 and in April totaled 5,144. On March 29th and 30th, staff responded to more than 350 calls each day.

The Division held four seminars explaining procedures on amending a state agency conflict-of-interest code. These were presented by MaryJo Tobola and Sarah Olson.

The Division prepared the Form 804-Disclosure of Consultants and New Positions as provided for in recent regulations. The Division is still accepting comments and plans to present the form at a future Commission meeting.

Due to a number of local elections in June and November the Division is adding filing schedules for general purpose recipient committees and major donor and independent expenditure committees, and will post the 2012 filing schedules soon.

The Division also revised a campaign fact sheet to include the new rule for sender identification on mass mailings.

**Enforcement Division**

Between the period of March 26, 2011, and May 2, 2011, the Enforcement Division opened 102 proactive cases and received 28 sworn complaints. Ten of these sworn complaints are currently in the intake process, 4 were assigned to active investigation, 2 were closed with warning letters and 12 were closed without action. During this time, the Division closed a total of 100 cases with 31 cases receiving warning letters, 1 receiving an advisory letter, 30 prosecuted by the Commission, 2 cases receiving no violation of the Act letters and 36 cases closing without action.

The 31 cases that were sent warning letters for the period of March 26, 2011, through May 2, 2011, included: 1 Statement of Economic Interests Reporting violation; 15 Statement of Economic Interests Failure to File violations; 13 Campaign violations; 1 Gift violation; and 1 Mass Mailing violation. The one advisory letter sent during the same period was for a Statement of Economic Interests Failure to File violation.

Currently, the Enforcement Division has 468 cases in various stages of resolution, which include the cases before the Commission as listed in the June 2011 agenda.

### **Legal Division**

During March 21 through April 29, 2011, the Legal Division received 36 requests for written advice and completed 26 requests (9 formal, 15 informal, and 2 withdrawn). During the same period the Division received 14 Public Records Act (CPRA) requests, and completed 15 requests during this period.

### **B. 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**

Bay Area Schools Insurance Cooperative  
South Bay Regional Public Safety Training Consortium  
Sacramento San Joaquin Delta Conservancy  
So California Community College District JPA  
Panoche Drainage District

#### **Amendments**

Coast Life Support  
Dublin San Ramon Services District  
Bay Area Air Quality Management District  
Hanford Joint Union High School District  
Castaic Lake Water Agency  
Kings River Conservation District  
Coachella Valley Water District  
Monterey Bay Unified Air Pollution Control District  
Modesto Irrigation District  
Nevada Irrigation District

### **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:

**Barbara Alby** and her controlled committee **Taxpayers For Barbara Alby For Board of Equalization 2010**. Ms. Alby was a candidate for Board of Equalization in the 2010 Primary Election.

**Rae Williams**. Ms. Williams was a candidate for Board of Equalization in the 2010 Primary Election.

### **D. Advice Letter Summaries from March 21 through April 29, 2011**

**Campaign****Nancy L. Warren****A-11-060**

Where an Assembly Member's 2010 committee received a small refund of \$441 from a governmental agency, the State Compensation Insurance Fund, and funds from that committee were permitted to be carried over to the subsequent committee for the same Assembly office, the refund check may be directly deposited into the bank account of the 2012 committee without being required to reopen the 2010 committee.

**Governor Brown****A-11-063**

Given the facts that the Governor will not request or solicit any contributions for the Council on Physical Fitness and Sports or engage in any other fundraising efforts on the Council's behalf, and that no one on his staff or acting as an agent of his is soliciting contributions to the organization on his behalf, donations made to the California Council on Physical Fitness and Sports do not need to be reported by Governor Brown as "behested payments."

**Conflict of Interest****Patti Walker****A-11-007**

A city council member may participate in a decision involving a city home loan program unless it is reasonably foreseeable that the decision will affect (1) his mortgage company's annual gross revenues or assets by \$20,000 or annual expenses by \$5,000, or (2) the income, investments, or assets or liabilities (other than real property) of any of the company's clients by \$1,000.

A city council member may not participate in a decision regarding the continued employment, performance evaluation or salary of the city manager, who rents property from a real estate partnership in which the council member is a partner because it is reasonably foreseeable that the decision will affect the city manager's income, investments, liabilities or assets (other than real property) by \$1,000.

**Howard Vipperman****A-11-009**

A Councilmember was advised that he may participate in a governmental decision regarding a code enforcement action when the action concerns property owned by someone with whom he has a personal and business relationship so long as there is no reasonably foreseeable material financial effect upon any of his economic interests.

**Mark A. Blum****A-11-029**

The city council is considering a new Walmart development project. The councilmember owns and operates three Subway restaurants in the region as a franchisee. Subway has a historic relationship with Walmart stores, frequently locating Subway franchises in Walmart's. As part of the councilmember's franchise agreement, he has the right of first refusal for any new Subways in the region, including any located in the new Walmart. Based on these facts, it appears reasonably foreseeable that the Walmart Project will have a material financial affect on his business.

**Arnold M. Alvarez-Glasman****I-11-030**

A Councilmember was advised that he may participate in the governmental decisions related to potential wine and food establishments in his town, provided they do not have a material financial effect on his deli. Ultimately, it is up to the public official to make the determination through a good faith effort to assess the financial effects of the decision by using some reasonable and objective method of valuation. The councilmember's analysis of the materiality standard will determine whether it is reasonably foreseeable that any of the materiality standards will be met related to the potential decisions before the city council.

**Steve Paine****A-11-035**

An explanation of the limitations imposed by the Act on an official with a conflict of interest in a governmental decision, and of the official's right to seek to influence a decision by addressing the decisionmakers as a member of the public representing his own personal interests as a landowner.

**Gary Yep****A-11-037**

Mayor sought advice as to whether he may participate in decisions regarding a Super Wal-Mart project when he has a one-third interest in a retail grocery store whose sales will likely be impacted by the project. Official may not make, participate in making, or influence decisions regarding the proposed Wal-Mart project because the governmental decisions will have a reasonably foreseeable material financial effect on the official's business interest. In addition, based on the facts provided, the official does not qualify under the public generally exception.

**Loren A. Stephen-Porter****I-11-038**

The board secretary of a fire protection district sought advice on behalf of the agency as to whether a conflict interest would exist if a director participated in decisions involving salary and benefit negotiations for the district's labor groups when the negotiations likely have an impact on the salary and benefits of director's son-in-law, who is employed by the district as a firefighter/paramedic. We advised the requestor that under the facts presented, the director does not have an economic interest in decisions involving the labor groups' salary and benefits negotiations. Absent an economic interest in a decision, a conflict of interest does not exist.

**Ronald R. Ball****I-11-044**

Officials' economic interests in properties, within 500 feet of street improvements included in a proposal for the city's downtown area, are directly involved in decisions regarding the proposal. The financial effect of the decisions on these economic interests is presumed to be material. Accordingly, the officials may not make, participate in making, or influence the decisions unless they can (1) rebut the presumption of materiality by showing that it is not reasonably foreseeable the decisions will have *any* financial effect on their properties and (2) determine that there will be *no* reasonably foreseeable material financial effects on any other economic interest they may have. In addition, decisions regarding the proposal may be "segmented" only to the extent that the decision regarding the street improvements is considered first, without the officials' participation, and future decisions regarding other more specific projects (1) will not have a reasonably foreseeable material financial effect on any of officials' economic interests and (2) will not act to determine, affirm, nullify, or alter the decision regarding the street improvements.

**David L. Erwin****A-11-049**

Generally, where a source of income represents an applicant before the official, rather than being the actual applicant or subject of the decision, the source of income is indirectly involved in the decision because the source is appearing before the official in a representative capacity.

**John A. Russo****A-11-052**

A sitting city councilmember or a staff attorney in the City Attorney's Office, seeking an appointment to the City Attorney position by the city council, is not prohibited from discussing the appointment or the specific parameters of his or her potential employment with other city council members in his or her private capacity.

**Philip M. Jay****I-11-055**

A former employee of an air pollution control district is prohibited under Section 87406.1 from appearing before or communicating with his former governmental employer, for a period of one-

year upon leaving his position, if the appearance or communication is made for the purpose of influencing a regulatory action.

**Anthony Lewis****I-11-057**

An agency counsel sought advice regarding conflict of interest provisions of the Act. The official wished to know whether a senior manager in his agency would have a conflict-of-interest due to her stock investments in companies that do business with the agency.

Requestor was advised that a conflict of interest in a given situation is necessarily a fact-sensitive analysis and because his inquiry was general in nature and did not involve specific governmental decisions, the Commission will only provide general guidance. Several advice letters were enclosed for review: *Reiter* Advice Letter, I-06-113; *Larson* Advice Letter, I-06-073; and *Reyes* Advice Letter, A-04-210. Requestor told that should he have questions regarding a specific governmental decision to contact us for further advice.

**David Gordon****A-11-068**

An official who has refused payment from a business for his previously provided services, without “receiving” the payment, does not have an economic interest in the business or its parent business as a source of income. Accordingly, the official may take part in a decision regarding the parent businesses so long as there is no reasonably foreseeable material financial effect on any other economic interests the official may have.

**Lobbying****Philip R. Recht****I-11-015**

Requestor was advised on several questions related to the application and interpretation of Assembly Bill 1743 (“the Bill or AB 1743”). The Bill makes several amendments and additions to the Act to effectuate the overall goal of including placement agents under the definition of lobbyists. These additions and amendments to the Act have the effect of applying to placement agents all the regulations that currently apply to lobbyists. Thus, placement agents must register with the Secretary of State, complete certain disclosures, and may not accept payments that are contingent on the success of any administrative action.

**Robert Palmer****I-11-019**

An association consisting of retirement systems in 20 California counties was advised regarding Assembly Bill 1743 (“the Bill or AB 1743”). Its questions come down to determining which is the proper entity to interpret, implement, and enforce the placement agent rules regarding the local jurisdictions. While the Bill does not give guidance on this point, given that the Bill applies to persons acting as placement agents in connection with investments by a local retirement system and states that those persons should file applicable reports with a “local government agency that requires lobbyists to register and file reports,” we believe that it is the local government agency that oversees lobbyists that would also oversee placement agents.

**Peter C. Williams****I-11-031**

Requestor was advised on several questions related to the application and interpretation of Assembly Bill 1743 (“the Bill or AB 1743”). (1) Whether it has a “reach back” provision that would affect contracts into which parties entered before AB 1743 took effect. (2) Section 86300 exempts individuals working in the capacity of a state employee from the definition of lobbyist. (3) If the people in his firm who are working to obtain a contract with a California public retirement or pension system fit within the definition of “placement agent” in Section 82047.3, and no exception applies, they must register as lobbyists under the provisions of the Act. (4) In this instance, the Act does not

apply to local jurisdictions. The Bill, however, states that if a local jurisdiction contains provisions for lobbyists, than those provisions also apply to placement agents.

### **Miscellaneous**

#### **Jennifer Martin-Gallardo**

**A-11-046**

Requestor is advised that Section 87450, is a stand-alone rule that is not subject to the 8-step conflict-of-interest analysis under Sections 87100 and 87103. Because Section 87450 clearly states that it is “in addition to the provisions of [Section 87100];” and applies to state administrative officials rather than public officials and it does not require a conflict of interest per se, but, rather, is an outright prohibition on a specified form of conduct whether or not a conflict of interest exists.

### **Personal Use**

#### **Hal Stocker**

**A-11-051**

Public official sought advice whether he may donate left-over campaign funds from a prior election to public schools in his county. Advised the requestor that the donation may be made so long as the proceeds will not have a material financial effect on the official, a member of the official's immediate family, the official's campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds held by the official's committee.

### **Revolving Door**

#### **Paul Mount II**

**A-11-045**

Former state employee asks whether the post-governmental employment provisions of the Act prohibit him from working as a consultant for a private company in order to prepare and negotiate a proposal with his former employer.

Because he left state service on September 2008, the provisions of the one-year ban no longer apply to him; and because he did not participate “personally and substantially by making, participating in the making, or influencing of a governmental decision,” he is not prohibited under the Act's permanent ban from accepting employment as a consultant.

#### **Brian Killian**

**A-11-041**

A former member of a municipal Design Review Board is not barred by the Act's conflict of interest rules, or by the Act's “revolving door” provisions, from responding to the city's solicitation for bids to perform an equipment safety audit.

### **SEI**

#### **Maren Nelson and Scott B. Silverman**

**A-11-039**

An interest in a defined benefit pension plan, including a cash balance plan, qualified under Internal Revenue Code Section 401(a) and investments held in such a plan are not “investments” for purposes of the Act.

#### **David Aranda**

**I-11-059**

Generally, where a source of income represent an applicant before the official, rather than being the actual applicant or subject of the decision, the source of income is indirectly involved in the decision because the source is appearing before the official in a representative capacity.