



FAIR POLITICAL PRACTICES COMMISSION

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

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: March 26, 2012

A. OUTREACH AND TRAINING

Commission Counsel Heather Rowan accepted an invitation to speak at the Goldman School of Public Policy at the University of California at Berkeley. Addressing a class of graduate students in Public Policy and undergraduates studying political science or public policy, Ms. Rowan discussed campaign finance theories, regulation of lobbyists, and the necessary balance between the First Amendment and campaign finance regulation. The class was lively and engaged, asking questions that ranged from how to trust our elected officials to details of disclosure and public oversight. She received well deserved accolades from the University for her presentation and a standing invitation to return. The Commission was well represented by Ms. Rowan.

Interested Persons Meetings: Since the March agenda mailing staff has conducted one additional Interested Persons Meeting to solicit public input on a regulatory project.

- **Discussion of Regulation 18701, Public Official Definition.** Staff invited comments and suggestions regarding the definition of "consultant" in Regulation 18701(a)(2) and whether further clarification was needed.

B. UPDATE ON PUBLIC RECORD ACT REQUESTS AND ADVICE LETTERS

Between February 28, 2012 and March 20, 2012, the Legal Division received 23 CPRA requests and responded to 22. During the same period we received 8 advice letter requests and issued 11 advice letters.

Advice Letter Summaries from November 14, 2011 to February 27, 2012

Campaign

Ana Maria Quintana

A-12-022

Discussion of campaign committee topics for a local city council member, including redesignating a committee for a future election, officeholder expenditures, and expenditure of funds for a newsletter or district workshops.

Theodore R. Meriam

I-12-031

If an official's economic interest in his private employer is directly involved in the decision before the official's agency, such as a contract between the agency and an employer or the purchase of products by the agency from the employer, the official may not take part in the decision unless he can rebut the presumption of materiality by showing that it is not reasonably foreseeable the decision will have *any* financial effect, even "one-penny," on the employer. If the economic interest is indirectly involved, such as a decision to purchase an off-the-shelf product of the employer or equipment utilizing software developed by the employer from a third-party source, the official may take part in the decision -- barring any other potentially disqualifying economic interests -- so long as the reasonably foreseeable financial effect on the employer is less than the applicable materiality standard in Regulation 18705.3(c)(1).

Conflict of Interest

Dominic T. Holzhaus

A-12-003

A Harbor official may participate in decisions relating to the purchase, lease, or construction of a building to house the Harbor Commission so long as there is no reasonably foreseeable material financial effect upon her economic interests. The question of whether financial consequences on a business entity are reasonably foreseeable at the time a governmental decision is made must always depend on the facts of each particular case. The determination of whether it is or is not reasonably foreseeable that this decision will materially affect the official's business or any of her economic interests is necessarily a factual question that is ultimately for her to decide.

Sue Mitchell

A-12-011

A board member may not participate in a decision regarding a community center if the decision would have a positive or negative impact on the official's property located 500 feet from the center. So long as there is even a one penny effect upon the official's property, he would have a conflict of interest. However, in the unlikely event that the official will be able to rebut the presumption of materiality and show that there will be zero impact on his property as a result of his participation in the decisions, then he may participate.

Caroline L. Fowler

A-12-020

Councilmembers seeking to vote on a settlement agreement between golf course and local community association regarding the supply of water to the golf course from city-operated water treatment plant did not have conflict of interest due to proximity of their properties to the golf course.

Daniel J. McHugh

I-12-026

A city official may discuss, deliberate and vote on a land use entitlement application when his employer owns developed property immediately adjacent to the proposed development, so long as the decisions will not have a reasonably foreseeable material financial effect on his employer.

Lobbying

Jesse Mainardi

A-12-002

A placement agent (lobbyist) filed a notice of termination (Form 606) where she should have filed a notice of withdrawal (Form 607); no lobbyist ethics training course was therefore required.

Revolving Door

Scott Kernan

I-12-17

Being subject to Section 87407, as a former executive officer specifically responsible for the oversight of the Strategic Management System, former officer is permanently banned under from participating in any proceeding before any state administrative agency regarding the management of the Strategic Offender Management System (SOMS) contract between Hellard Packard and California Department of Corrections (CDCR). He is also prohibited from making an appearance or communication before CDCR, or any employee for CDCR, on the behalf of another for compensation for one year from the date he left service, if the contract has any influence on administration or legislation.

Anthony Lewis

I-12-024

Former state employee who participated in the implementation of a contract may not “switch sides” and participate in further implementation of the contract on behalf of another party.

Neal Fishman

A-12-027

Former state official may work with a private consulting firm to develop rules and regulations for a state program when the official worked on a similar program while in state service and drafted legislation that reestablished the project because the drafting of legislation is not considered a *judicial, quasi-judicial, or other proceeding* under the Act’s revolving-door provisions. In addition, the project the official worked on as a state employee dissolved due to a sunset provision, and the reestablishment of a similar task force via new legislation is a proceeding separate and distinct from the proceeding in which the official previous participated.

Vilma Estrada

I-12-037

The permanent ban in the post-governmental employment restrictions apply if former employee participated in an audit while working for a state agency. However, the ban does not apply to “new proceedings” even if applied to the same company. A tax audit is not an “administrative or legislative action” under the Act and therefore not subject to the one-year ban.

Miscellaneous

Laura W. Halgren

A-12-025

Official and spouse advised they may list on their SEI an address related to their business, including their home address, the address of the agent of business, or the address of the rental property itself.