



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

To: Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda
From: Zackery P. Morazzini, General Counsel
Subject: Monthly Report on Legal Division Activities
Date: July 2, 2012

I. OUTREACH AND TRAINING

Commission Counsel Heather Rowan presented an ethics workshop to fulfill the AB 1234 ethics training requirement for local officials in Salinas. In attendance were members of the Tri-County Association of Latino Elected Officials, who hosted the training, and other local officials serving on the Salinas, Monterey, and Santa Cruz city councils, parks and recreation districts, and school boards. Amber Maltbie, an attorney at Nossaman, LLP co-presented with Ms. Rowan.

II. UPDATE ON ADVICE LETTERS

Between April 27 and June 27, 2012, the Legal Division received 35 advice letter requests and issued 41 advice letters.

Advice Letter Summaries from April 27, 2012 to June 27, 2012

Section 84308

David DeBerry

A-12-072

“Oversight boards” monitor the activities of “successor agencies” in connection with the dissolution and windup of redevelopment agencies throughout California. Section 84308 of the Act concerning campaign contributions and conflicts of interest applies to the City of Orange Oversight Board because it is an “agency” as defined by Section 84308(a)(3) that has appointed members who receive campaign contributions. The restrictions of Section 84308 apply when an elected official who has been appointed to the oversight board is making a decision about an item on the recognized obligation payment schedule. These items are a “license, permit or other entitlement for use.”

Behested Payments

Helen Homes Peak

A-12-094

Whether an elected officer is “featured” in a fundraising solicitation for charitable organizations depends on whether the formatting and design of the letter displayed the elected officer’s names in such a way that would lead a reasonable person to conclude the solicitation was from or on behalf of the elected officer. The behested payment reporting requirement applies to all communications, regardless of the delivery method, that solicit payments for legislative, governmental, or charitable purposes and that feature an elected officer.

Conflict of Interest

Kevin B. Briggs

I-12-032

A county supervisor may not take part in decisions of the Board of Supervisors regarding approval or denial of a mining project and certifying its Environmental Impact Report unless there will be no reasonably foreseeable material financial effect upon the official’s economic interests, including sources of income to her spouse.

Stacey Fulhorst

I-12-045

A planning commissioner may not appear before or communicate with a staff member of another city department, on behalf of a client, if the city staff member is assigned or involved in a project that is or will be brought before the Planning Commission, and it is reasonably foreseeable that the Planning Commission’s decision regarding the project will have a material financial effect on one or more of the commissioner’s economic interests.

Marti Klein

A-12-046a

The Act does not prohibit concurrent employment by both the South Coast Air Quality Management District and the California Air Resources Board as they are both government agencies. The one-year ban does not apply to a person who is at the time of the appearance before or communication with his or her former agency a board member, officer or employee of another public agency. **Supersedes** *Klein* Advice Letter No. A-12-046.

Alisha M. Winterswyk

A-12-062

The mayor does not have a direct, indirect, or beneficial interest in a trust because while the mayor is a named beneficiary of the family trust established by his parents or any property held by the trust, so long as his parents, the current trustees, may revoke the trust at their discretion, and so long as the Mayor is not receiving income from the trust. Accordingly, the Mayor does not have a disqualifying economic interest in decisions relating to the real property..

Christina L. Talley

A-12-063

By transferring his entire ownership interest in an LLC to his adult children, a mayor will no longer have a disqualifying economic interest in the LLC’s real property, which is located within 500 feet of a city-owned stadium involved in an upcoming governmental decision. However, the mayor will still have an economic interest in a leasehold related to the real property which will be *directly* involved in the decision. Therefore, the mayor may not make, participate in making, or influence the upcoming decision unless he can (1) rebut the presumption of materiality by showing that it is not reasonably foreseeable the decision will have any financial effect on *any* of the factors enumerated in Regulation 18705.2(a)(2)(A)-(E) with respect to his leasehold interest.

Patrick Tang

I-12-051

The plain-language of Regulation 18707.10 (the public generally exception for small jurisdictions) requires a city to consider all land lying within the boundaries of the jurisdiction, including bodies of water and other uninhabitable areas, when determining whether the geographical area of the city is 10 square miles or less.

Lori Barker

A-12-052

Under the facts presented there is no foreseeable material financial affect on any of the economic interest described. Therefore, the Mayor and Council Members may vote on the smoking regulation affecting Bidwell Park and the regulation applicable to all businesses in Chico.

Andrea S. Visveshwara

I-12-053

As a planner and a member of the Cultural and Historical Committee (CHC), the requestor would have a conflict of interest in decisions in which her potential employer (a local environmental consulting firm) is directly involved if her decision would have an effect on her employer. The Act does not prevent her from accepting a job with a private firm that contracts with a public entity.

Patricia Cowett

I-12-054

Without facts identifying a specific governmental decision the Commission is unable to determine if a member of the Law Revision Commission has a disqualifying conflict of interest. The official asked whether she could participate in discussions regarding law applicable to small or all common interest developments in the state when she owned a condominium in a small complex from which she leases out.

Rod Sinks

I-12-056

General guidance on the Act's conflict-of-interest provisions applicable to a member of the Cupertino City Council whose spouse is an employee of Apple Computer, and who owns Apple stock. The councilmember anticipated a number of land-use decisions in which Apple would be indirectly involved, and was advised that he may participate in those decisions so long as it is not reasonably foreseeable that they would have a material financial effect on Apple. It did not appear that the "public generally" exception to the Act's conflict-of-interest rules would permit the official to participate in a decision that would have a reasonably foreseeable material financial effect on Apple.

Stephen Snodgrass

I-12-066

President of the Pajaro Sunny Mesa Community Services District does not have a conflict of interest if his granite company bids on the contract for construction of a park because he has not identified any future governmental decisions of the District in which he will be participating that will affect his company.

Victor James

A-12-067

A member of the Housing Finance Board does not have a disqualifying conflict of interest in decisions of the Board that may affect a nonprofit for which he works since his yearly salary from the non-profit will be \$1.

John P. Doering

A-12-068

County Supervisor's membership in the Del Rio Golf and Country Club is an interest in real property as defined by the Act and as such gives rise to a potentially disqualifying conflict of interest. The proprietary membership makes him a beneficial owner of the real property owned by the Club and due to the proximity to the Del Rio Villas Project to the club, the financial effect is presumed to be material. Given the fact that the Villas project also intends to incorporate access to and provide a physical and aesthetic transition to the existing Del Rio Country Club, it is reasonably foreseeable that a decision on the project could have some financial affect on the club's real property.

Mark Arapostathis

A-12-070

A city council member may take part in a city council decision as to whether to sign a petition to create a property based improvement district even after a representative from the school district where the member is employed as a teacher requested at a public hearing that the city council refrain from signing the petition. As an employee of a local government agency, the city council member has no economic interest in the school disqualifying him from participating in the decision.

William B. Wolpert

A-12-071

A planning commissioner is not prohibited from communicating with the planning commission staff regarding requirements and processes for submitting the drawings or submissions for his Architecture firm's application pending before the Commission in Petaluma.

Michael Casinelli

A-12-076

An uncompensated member of a city Planning Group is not a public official because the Group is not a decision making Board or Commission. The Group only made recommendations and did not make final governmental decisions, nor could they compel or prevent a governmental decision. Consequently, the member was not a public official within the meaning if Section 87100 and did not have a conflict of interest.

David M. Fleishman

A-12-079

A mayor owns a triplex within 500 feet of a city-owned elevated water tank. The tank has antennas and other telecommunication equipment for various cellular providers affixed to the top. Therefore, the mayor's real property will be *directly* involved in upcoming governmental decisions involving certain aspects of the easements for the equipment on the elevated tank. However, the mayor may participate in the upcoming decisions absent facts demonstrating that the decisions will have any reasonably foreseeable financial effect on his real property.

Gabrielle P. Whelan

I-12-080

A city planning commissioner who is also the Project Manager at a local housing non-profit corporation may not make or participate in making decisions as planning commissioner that involve housing projects. The "nexus test" provides that any reasonably foreseeable financial effect on a source of income is material if the official is also promised income to achieve the related goal or purpose. Because it is reasonably foreseeable that housing decisions could have "any effect" on the public official's private employer, he may not participate in the public decisions.

Lobbying

Patrick W. MacCurtain **A-12-059**

A Boston based placement agent has specific questions regarding soliciting the institutional investors, the University of California Retirement Plan (UCRP) and University's General Endowment Pool (GEP). UCRP is considered a Retirement Board but GEP is not. The lobbyist must register in California if they plan to market to the UCRP. Any agent, who only markets to GEP is not considered a lobbyist and the restrictions are not applicable. Therefore marketing to GEP separately can include a contingency contract. A partnership with UCRP and GEP, with GEP as the majority investor, would not trigger the lobbyist provisions because it does not satisfy the requirements for an investment vehicle and is not a state public retirement system.

Revolving Door

Kurt A. Schaefer **A-12-055**

Former state official who previously participated in executive level meetings regarding a construction project for the University of California, Davis, is prohibited under the Act's permanent ban from assisting the project's design team, for compensation, in a legal claim filed by the university against the design team relating to the project that involves the same parties, subject matter, and factual issues.

John McCamman **I-12-057**

The "revolving door" provisions of the Act apply to all former state employees upon leaving state employment, even if they go to work for a federal government agency. The permanent ban on "switching sides" in a judicial or quasi-judicial proceeding does not prevent a former official with California Department of Fish and Game from working with that agency on actions involving the protection of the California condor since that type of project is not a proceeding within the meaning of Section 87400(c). However, the one-year ban will prohibit him from making certain appearances before Fish and Game.

Rick Kreutzer **A-12-064**

The chief of a division of the Department of Public Health does not violate the Act's post-governmental employment provisions by working for a nonprofit which partners with the division in conducting research projects, developing training programs and arranging federal funding for the joint projects, and the nonprofit receives no compensation from the state. Under the one-year ban, the nonprofit's work does not involve legislative or administrative action because it does not involve the proposal, drafting, developing, amendment, awarding or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Under the permanent ban, such work does not involve a judicial, quasi-judicial or other proceeding involving a specific party in a court or state administrative agency.

Aram Shumavon **I-12-074**

A former designated employee of California's Public Utilities Commission can appear before an administrative law judge on behalf of a client for the non-profit Distributed Energy Consumer Advocates during the one-year ban period as per the *Harris* Advice letter A-10-183a. The one-year ban does not apply to an appearance in a court of law or before an administrative law judge. Moreover, the post-governmental employment statutes apply only to the former government employee, not to his new, private employer or new co-workers.

Christy Quinlan

I-12-077

As the former Acting Secretary of the California Technology Agency (“CTA”), the one-year ban prohibits Quinlan from making an appearance or communication before the CTA in representation of another person, for compensation, for the purpose of influencing any legislative or administrative 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” such as an appearance or communication related to IT procurement, for one year after she leaves the agency. Additionally, the lifetime ban also applies. Should Quinlan return to the state as a retired annuitant for a different agency, the one-year and permanent bans may potentially apply if in her private capacity and for compensation she were to make an appearance or communication or assist another person in an appearance or communication before the CTA. Upon leaving the subsequent retired annuitant position, the one-year ban would begin anew for appearances before the subsequent agency.

Joe and Nancy del Valle

A-12-086

A state employee who did not work on his agency’s formation of a contract with an outside contractor, but, as part of his state job duties, worked with the outside contractor in performance of the contract, is not prohibited under the Act from leaving state employment to work for the same contractor. However, the Act restricts his work for the contractor in relation to his former state employer as follows: (1) Under the Act’s lifetime “revolving door” ban he is permanently prohibited from being paid by the contractor or any other non-state entity to aid, advise, counsel, consult with or in any way assist the contractor or entity or communicate with his or her former state agency’s staff or representatives for the purpose of influencing: (i) the amendment or revocation of the existing contract; (ii) the issuance or awarding of a substantially similar contract; or (iii) agency decisions that, although still within the contract’s terms, are likely to result in more than a de minimis change in the level of services or goods provided by the contractor from the that originally contemplated by the agency; (2) Under the Act’s one-year ban, he may not, for one year after separation from the state agency, be paid by the contractor or any other non-state source to appear before or communicate with staff at the state agency on behalf of that source for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or. Other ethics laws, such as Public Contract Code Section 10411, may also apply.

SEI

Melissa L. Hunt

A-12-069

According to the facts provided, the travel expenses paid by another person are considered income to the official that must be reported on an official’s SEI. The payment is not considered a gift because in return for the travel payment, the official will be providing services as a visual assistant in consideration for the payments.