



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: May 7, 2012

I. STAFF PROJECTS

- **Ethics Training in Fountain Valley:** On March 19th Commission Counsel Sukhi Brar along with Technical Assistance Division Staff Services Manager Trish Mayer traveled down to Fountain Valley, California to conduct ethics training for the Municipal Water District of Orange County. Sukhi provided training on conflicts of interest and prohibitions on mass mailings while Trish spoke about Form 700s (Statements of Economic Interests). The training was conducted in conjunction with attorneys from Nossaman, LLP and Best, Best & Krieger, LLP who spoke on topics related to the Act and ethics laws outside of the Act including Government Code Section 1090.
- **Interested Persons Meeting:** On April 6th staff met with a group of interested parties, including the California League of Cities and a representative of the County Counsel's Association, to address questions posed concerning the adoption of conflict-of-interest codes and the filing of Statements of Economic Interests by officials serving in or on, "successor agencies" and "oversight boards" created by the passage of Assembly Bill 1 X 26 (Stats. 2011, 1 Ex. Sess. 2011-2012, ch. 5), a measure dealing primarily with the winding-up of redevelopment agencies. The Legal Division and the Technical Assistance Division worked cooperatively to provide a thorough expedited advice letter to the League of Cities. Among other things, the letter advises that if a city or county becomes the "successor agency" for a redevelopment agency, it is the code reviewing body and thus responsible for determining the form and scope of the conflict-of-interest code for both the "successor agency" and its "oversight board."

- **Future Commission Meeting Agenda Item:** Government Code Section 19990 prohibits state officers and employees from engaging in an activity or enterprise that is in conflict with his or her public duties. The prohibition is executed by each appointing authority, which determines those outside activities that fall within the prohibition. In light of last year's substantial revisions to the gift regulations, staff is reviewing and modifying the "Statement of Activities Incompatible with the Duties as an Officer or Employee of the Fair Political Practices Commission." A draft will be presented to the Commission for adoption at a future Commission meeting.

II. UPDATE ON PUBLIC RECORDS ACT REQUESTS AND ADVICE LETTERS

Between March 21, 2012 and April 26, 2012, the Legal Division received and responded to 10 CPRA request. During the same period we received 20 advice letter requests and issued 17 advice letters.

Advice Letter Summaries from March 21, 2012 to April 26, 2012

Campaign

David Bauer

I-12-015

Mr. Bauer was advised the slate mail organization has to list the name of its treasurer on its statement of organization under Section 84108(b)(2).

Sarah S. Zamora

A-12-044

Treasurer of her late husband's campaign committee unable to redeposit campaign funds into a committee bank account on behalf of her husband, after withdrawing the funds in an attempt to organize her husband's estate, may donate the surplus funds to charitable, educational, civic, and religious nonprofit organizations so long as the donations will not have a material financial effect on her or any member of her immediate family, and the expenditures are reported on the committee's next campaign statement. As a former candidate herself, the treasurer may also accept a returned cashier's check to her previously terminated committee for elective office and donate the funds to another charitable nonprofit organization without reopening her committee so long as the donation will not have a material financial effect on her or any member of her immediate family and the terminated committee files a campaign statement disclosing the transactions.

Conflict of Interest

Jim Cook

I-12-019

County Supervisor was advised that he may seek employment as a consultant within his county or neighboring counties. He was also advised that if he accepts employment and earns \$500 or more in a 12-month period, he should not make, participate in making, or influence any governmental decisions that will have a reasonably foreseeable financial effect upon his economic interests.

Rudy Ramirez

A-12-023

City council member has a disqualifying conflict of interest in decisions regarding the city's Mobile Home Housing Assistance Ordinance where he owns real property within 500 feet of a mobile home park, if the decision will have a reasonably foreseeable financial effect of even one penny on his real property.

Bruce D. Goldstein

A-12-035

County Counsel was advised that he may not participate in or influence any decisions between a government agency he represents regarding a contract between his spouse's business and the contracting agency if it would have a reasonably foreseeable financial effect on his spouse's business. The County Counsel is not prohibited from assigning the legal work to another attorney, provided that the attorney independently advises the contracting agency without the County Counsel's input or participation, and does not apply policies or procedures that the County Counsel has established for the particular contract.

The County Counsel is not prohibited from advising the contracting agency where they agency will subcontract with his spouse to perform some of the work, so long as (1) his spouse neither initiates, nor is named in, the bidding process, and (2) the reasonably foreseeable financial effect of the decision will not increase or decrease her business entity's gross revenues, liabilities or asset value by \$20,000 or more, or its expenses by \$5,000 or more.

Jennifer A. Mizrahi

A-12-36

Assuming a disqualifying conflict of interest exists, a mayor with no "personal interest" in decisions related to a development project may not appear before the city council, even as a member of the audience, to discuss the project during the council's deliberations. The mayor may, however, communicate with the general public or the press outside of the city council forum.

Philip D. Kohn

I-12-038

A city councilmember who is the director of a playhouse that is in the vicinity of a city project could have a disqualifying conflict of interest if the decision has a reasonably foreseeable financial effect on her source of income (the playhouse). Without knowing what decisions will come before the city council, staff is unable to provide specific advice.

Carol Ann McDaniel

A-12-038

A public official does not have a conflict of interest under the Act when the decisions that could implicate her economic interests were made before she was appointed to the agency.

Julia M. Lew

A-12-041

Per Diem income from a local government does not create a cognizable economic interest under the Act as it is excluded from the definition of "income." That being the only listed economic interest; the official does not have a conflict of interest in the described decisions.

Monthly Report on Legal Division Activities

Mark Brown

A-12-042

A city council member does not have a disqualifying conflict of interest in a decision regarding a development project located slightly more than 500 feet from his real property. The decision will not have a reasonably foreseeable material financial effect on his real property. However, he does have a disqualifying conflict of interest in such a decision if it is reasonably foreseeable that the decision will affect his medical practice's annual gross revenues or asset value by \$20,000 or more, or its expenses by \$5,000 or more in a fiscal year.

John Bakker

I-12-043

A public official has a "financial interest" in a governmental decision under the Act and may not participate in city council's consideration of issues related to parking in a neighborhood where the official and his wife own a residence.

Joseph A. Medrano

A-12-048

A month-to-month tenancy does not create a cognizable economic interest under the Act, as it is excluded from the definition of "interest in real property." That being the only listed economic interest; the official does not have a conflict of interest in the described decisions.

David A. Prentice

A-12-050

The Act does not prohibit staff or board members of a regional health authority from simultaneously serving as uncompensated board members for an independent nonprofit organization that promotes health issues in the same jurisdiction and may support the goals of the health authority. Also, because the staff or board members are not compensated by the nonprofit and the nonprofit is not a "business entity," they do not have a conflict of interest under the Act if they participate in health authority decisions on whether to provide funds to the nonprofit. However, elected officers who serve on either the health authority's or nonprofit's board and solicit donations to the nonprofit may have to file "behested payment" reports on those donations. The letter notes that the advice does not offer an opinion on the application, if any, of other conflict of interest laws such as common law conflict of interest or Government Code Section 1090.

Patrick Whitnell

I-12-060

The letter addresses several conflict-of-interest code and Statement of Economic Interests filing issues in connection with newly formed "successor agencies" and "oversight boards" under Assembly Bill 1X 26, passed in 2011, concerning the dissolution of redevelopment agencies.

Gifts

Dorothy Birsic

A-12-047

City council candidate that sometimes receives gifts in connection with a website she maintains listing music and cultural events in Orange County must report on her statement of economic interests gifts from a single source totaling \$50 or more in the past 12 months. In addition, the candidate may not accept gifts totaling more than \$420 in a calendar year from a single source.