



FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Remke and Commissioners Casher, Eskovitz, Wasserman and Wynne

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: August 11, 2014

A. OUTREACH AND TRAINING

Senior Commission Counsels Scott Hallabrin, Jack Woodside, and Heather M. Rowan presented ethics training for new employees of the Commission. The training satisfies the Commission's State Ethics Training requirements under Government Code Section 11146.1.

B. PROBABLE CAUSE DECISIONS

Please note, a finding of probable cause does not constitute a finding that a violation has actually occurred. The 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 Iris Merriouns, FPPC No. 13/267. After a hearing on July 17, 2014, probable cause was found to believe Respondent Iris Merriouns committed the following violations of the Act:

Count 1: Respondent Iris Merriouns, a designated employee of the City of Oakland, failed to timely file a statement of economic interests for the 2008 calendar year by April 1, 2009, in violation of Government Code Section 87300.

- Count 2:** Respondent Iris Merriouns, a designated employee of the City of Oakland, failed to timely file a statement of economic interests for the 2009 calendar year by April 1, 2010, in violation of Government Code Section 87300.
- Count 3:** Respondent Iris Merriouns, a designated employee of the City of Oakland, failed to timely file a statement of economic interests for the 2010 calendar year by April 1, 2011, in violation of Government Code Section 87300.
- Count 4:** Respondent Iris Merriouns, a designated employee of the City of Oakland, failed to timely file a statement of economic interests for the 2011 calendar year by April 1, 2012, in violation of Government Code Section 87300.
- Count 5:** Respondent Iris Merriouns, a designated employee of the City of Oakland, failed to timely file a statement of economic interests for the 2012 calendar year by April 1, 2013, in violation of Government Code Section 87300.

The following cases were decided based solely on the papers. The respondent did not request a probable cause hearing.

In the Matter of Monique Dollonne, Monique for School Board, Thomas Rohrbecher, FPPC No. 13/0311. On July 23, 2014, probable cause was found to believe that the named Respondents committed six violations of the Political Reform Act, as follows:

- Count 1:** Respondents failed to file a Semi-Annual Statement (Form 460) for the January 1, 2011 through June 30, 2011, reporting period, by the August 1, 2011, due date in violation of Government Code Section 84200, subdivision (a).
- Count 2:** Respondents failed to file a Semi-Annual Statement (Form 460) for the July 1, 2011 through December 31, 2011, reporting period, by the January 31, 2012, due date in violation of Government Code Section 84200, subdivision (a).
- Count 3:** Respondents failed to file a Semi-Annual Statement (Form 460) for the January 1, 2012 through June 30, 2012, reporting period, by the July 31, 2012, due date in violation of Government Code Section 84200, subdivision (a).
- Count 4:** Respondents failed to file a Semi-Annual Statement (Form 460) for the July 1, 2012 through December 31, 2012, reporting period, by the January

31, 2013, due date in violation of Government Code Section 84200, subdivision (a).

Count 5: Respondents failed to file a Semi-Annual Statement (Form 460) for the January 1, 2013 through June 30, 2013, reporting period, by the July 31, 2013, due date in violation of Government Code Section 84200, subdivision (a).

Count 6: Respondents failed to file a Semi-Annual Statement (Form 460) for the July 1, 2013 through December 31, 2013, reporting period, by the January 31, 2014, due date in violation of Government Code Section 84200, subdivision (a).

In the Matter of Michael Rogers and Mike Rogers for Supervisor 2012, FPPC No. 13/280. On June 27, 2014, probable cause was found to believe that the named Respondents committed one violation of the Political Reform Act, as follows:

Count 1: Respondent failed to timely file a pre-election campaign statement in violation of Government Code Section 84200.5.

In the Matter of Nancy Johnson, FPPC No. 13/075. On July 28, 2014, probable cause was found to believe that the named Respondent committed two violations of the Political Reform Act, as follows:

Count 1: As a designated employee and Director of the Marin City Community Services District, Respondent Nancy Johnson failed to file a 2012 annual statement of economic interests by the April 1, 2013, due date, in violation of Section 87300 of the Government Code.

Count 2: As a designated employee and Director of the Marin City Community Services District, Respondent Nancy Johnson failed to file a 2013 annual statement of economic interests by the April 1, 2014, due date, in violation of Section 87300 of the Government Code.

C. LEGAL ADVICE TOTALS

- **Email Requests for Advice:** In July, Legal Division attorneys responded to more than 103 email requests for legal advice.
- **Advice Letters:** From July 1 to July 31, 2014, the Legal Division received 14 advice letter requests and issued 16 advice letters.

- **Section 1090 Letters:** From July 1 to July 31, 2014, the Legal Division received 5 advice letter requests concerning Section 1090 and issued 5 advice letters. This year to date we have received 23 requests (not including conflict of interest letters that incidentally deal with Section 1090).

D. ADVICE LETTER SUMMARIES

Campaign

Betty Ann Downing

A-14-148

If a state candidate elects to use existing campaign funds to make independent expenditures in support of or in opposition to another candidate, any such expenditure must be made from the candidate's one campaign account using funds raised under the candidate's applicable campaign contribution limit.

Conflict of Interest

Quinn M. Barrow

A-14-084(a)

Under the Act's conflict-of-interest provisions, it is not reasonably foreseeable that a decision regarding the adoption of an interim ordinance prohibiting changes in land-use pending the completion of a downtown plan will have a material financial effect on a council member's interests in two business entities, operated on leased properties, in the downtown plan area because the councilmember had operated the businesses for seven years and had no intent to change the use of the leased properties during the interim period.

Christine Dietrick

1-14-102

The Mayor, who owns a residence within 500 feet of a local university, does not have a conflict of interest and may make or participate in making of decisions involving the City's negotiations or "collaborative efforts" with the university in order to mitigate impacts of the university's decision to build a new dormitory and parking structure on campus. So long as the "collaborative efforts" do not involve benefits that specifically address concerns particular to the neighborhood in which the Mayor resides, and applies to the city as a whole, she may participate in these discussions.

Jannie L. Quinn

A-14-106(b)

A City Councilmember has a conflict of interest in a large-scale redevelopment project 1,045 feet away from his condominium, and in an interlinked decision proposing amendments to a specific plan that must be approved prior to the project decision. The two decisions are interlinked because the proposed amendment to the specific plan is a necessary prerequisite to the approval of the redevelopment project and will effectively determine, affirm, nullify, or alter the result of that project. Thus, because the council

member has a conflict of interest with respect to one of the decisions, he will not be able to participate in the other interlinked decisions.

Melissa M. Crosthwaite *A-14-109*

An elected City Treasurer may negotiate his compensation and the terms and conditions of his employment by encouraging staff to draft, and members of the City Council to adopt, an ordinance or resolution to change the City Treasurer position from part-time to full-time, with a commensurate increase in pay, since it will apply to all future treasurers as well.

Molly S. Stump *A-14-119*

Despite the fact that initial revisions to the General Plan include focus areas in the city, the proposed decisions are not tied to specific parcels or projects and are very general in nature. Thus, the exception in Regulation 18705.2(c)(2) applies to permit city officials to participate in discussions, vote on broad policy alternatives, and participate in community discussions and study sessions regarding the Update.

Theodore J. Reynolds *A-14-128*

Planning Director may receive free admission to a conference because it is informational material and therefore not a gift or income. Food and lodging will be considered income so long as consideration of equal or greater value is provided in exchange for the food and lodging. Whether consideration of equal or greater value has been provided in exchange for the food and lodging is a fact question left to the official.

Gifts

Kurt T. Overmeyer *I-14-118*

Public officials may accept payments for travel, provided the payments are made to and coordinated with the officials' agency, the agency chooses the participants, the trip is for official agency business, the trip is only as long as necessary to complete the agency business, and Regulation 18950.1 is otherwise satisfied.

Samantha A. Arens *I-14-125*

General discussion regarding the differences between the exception for certain travel in Section 89506 and the exception in 18950(c)(2). Section 89506 is an exception to the gift limits of the Act. Despite the application of Section 89506, a payment is still considered a gift to the official for purposes of reporting and disqualification. Regulation 18950(c)(2), on the other hand, was intended to carve out a more limited exception by which a payment would not be considered a gift or income under limited circumstances. In essence, that exception recognizes that in some circumstances money is exchanged between agencies so that an official may perform his or her job duties. These transactions were never intended to be reportable or potentially disqualifying gifts or

income to the official because the payments were used to conduct agency business and not to provide a personal benefit to the official.

Honoraria

Donna Johnston

A-14-115

A county Registrar of Voters does not violate the honoraria provisions of the Act by accepting payment for teaching a course in a program offered by the California Association of Clerks and Elections Officials. "Honoraria" does not include earned income for personal services that are customarily provided in connection with the practice of a bona fide business, trade or profession. The official is engaging in a bona fide profession even though the Association is not a government approved or independently accredited college or university. The exception in Section 89501(b) for payments received from such colleges or universities is only an example of a bona fide profession and the Association's program is similar to courses offered by such colleges and universities.

Section 1090

Ariel Pierre Calonne

A-14-073

A city council member who owns residential rental property in, and pays for water services from, a water district outside the jurisdiction of the city does not have a conflict of interest under the Act in a city contract to provide desalinated water to the water district because it is not reasonably foreseeable at this point that the contract will have a material financial effect on the council member's personal finances. The council member also is not financially interested in the contract for purposes of Government Code Section 1090.

Ellen A. Pansky

I-14-096

A private attorney who contracts with a government agency to regularly consult with the agency's Executive Director on whether to settle or litigate construction claims and, if litigation ensues, receive additional pay from the agency to handle the litigation, is a "consultant" under the Act and subject to the Act's financial disclosure and conflict of interest provisions. However, the attorney does not have a conflict of interest under the Act when he or she participates in agency decisions under which it is reasonably foreseeable the decision will result in additional compensation for handling litigation pursuant to the contract. This contracting arrangement also does not violate Government Code Section 1090 because, at the time the attorney or the attorney's law firm negotiates the contract, he or she is not acting in an official capacity.

Delyn Kies

A-14-101

Owner of a business who is a member of a Local Task Force ("LTF") affiliated with the Marin County Hazardous and Solid Waste Joint Powers Authority ("JPA") may submit a

proposal for an advertised JPA consulting position without violating the conflict of interest provisions under the Act or Section 1090, where she had no role in the development of the consulting contract itself or any aspect of the process that eventually leads to awarding the contract. It is the JPA Board, not the LTF, which will enter into the contract with the consultant, and the LTF will have no input at any stage of the JPA Board's decision-making process.

Ms. Cruz Ramos

A-14-105

Section 1090 prohibits a mayor from participating in decisions that affect contracts between the hardware store he owns and the city. The "rule of necessity" allows the city to enter such contracts if there is an emergency and no other source but the hardware store is available.

Robert Khuu

I-14-107

After being elected to the Fullerton City Council, a councilmember accepted a position with a firm that provides various services to clients who currently have contracts with the City, and clients who are looking to contract with the City. The councilmember agreed to a compensation package that included a monthly salary, a commission for new clients the councilmember acquired, and a year-end bonus. The councilmember has a financial interest in all contracts between the City and the clients of his firm. Therefore, Government Code section 1090 prohibits the councilmember and the Fullerton City Council from entering into or renewing contracts with clients of the councilmember's firm.