



**FAIR POLITICAL PRACTICES COMMISSION**

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**To:** Vice Chair Eskovitz and Commissioners Casher, Wasserman and Wynne

**From:** Zackery P. Morazzini, General Counsel

**Subject:** Monthly Report on Legal Division Activities

**Date:** February 10, 2014

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**A. OUTREACH AND TRAINING**

On January 17th, Commission Counsel Scott Hallabrin participated in a panel presentation on ethics issues for the administrative law judges at the Office of Administrative Hearings. There were approximately 80 attendees at the presentation.

**B. FINDINGS OF PROBABLE CAUSE**

***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.***

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

**In the Matter of Amy Bublak, Amy Bublak for City Council, Kurt Vander Weide, Friends of Kurt Vander Weide, Carl Fogliani, Milton Richards and Mark Hall, FPPC No. 08/814.** On November 4, 2013, probable cause was found to believe that Respondent Carl Fogliani committed four violations of the Political Reform Act, as follows:

- COUNT 1: On or about October 11, 2008, a recorded political message was broadcast via approximately 13,248 automated telephone calls. The calls referred to Mary Jackson, a candidate for Turlock City Council, in a negative manner. Although the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), the calls falsely purported to be paid for by “Taxpayers for Safer Neighborhoods.” Respondent Carl Fogliani aided and abetted in the carrying out of this deception (within the meaning of Section 83116.5) by serving as campaign consultant for said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. (Respondents Amy Bublak and Kurt Vander Weide also were candidates for Turlock City Council at the time.) In this way, Respondents Amy Bublak, Amy Bublak for City Council, Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.
- COUNT 2: On or about October 14, 2008, a recorded political message was broadcast via approximately 5,593 automated telephone calls. The calls solicited votes for Amy Bublak and Kurt Vander Weide for Turlock City Council, referring to both candidates in a positive manner. Although the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), the calls falsely purported to be paid for by “Taxpayers for Safe Neighborhoods.” Respondent Carl Fogliani aided and abetted in the carrying out of this deception (within the meaning of Section 83116.5) by serving as campaign consultant for said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. In this way, Respondents Amy Bublak, Amy Bublak for City Council, Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.
- COUNT 3: On or about October 22, 2008, a recorded political message was broadcast via approximately 5,614 automated telephone calls. The calls referred to Mary Jackson, a candidate for Turlock City Council, in a

negative manner, and the required identification regarding who paid for the calls was not provided. Although the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), this information was not disclosed during the calls. Respondent Carl Fogliani aided and abetted in the carrying out of this nondisclosure (within the meaning of Section 83116.5) by serving as campaign consultant for said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. (Respondents Amy Bublak and Kurt Vander Weide also were candidates for Turlock City Council at the time.) In this way, Respondents Amy Bublak, Amy Bublak for City Council, Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.

COUNT 4: On or about November 2, 2008, a recorded political message was broadcast via approximately 17,096 automated telephone calls. The calls featured a woman who falsely claimed to be Mary Jackson. The woman espoused a position against Proposition 8 and stated, “Turlock must support a rich, vibrant community that includes everyone and regardless of whom they choose to love. If you agree, I urge you to vote Mary Jackson for Turlock City Council. . . .” Although the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), the calls falsely purported to be paid for by “the Friends of Mary Jackson.” Respondent Carl Fogliani aided and abetted in the carrying out of this deception (within the meaning of Section 83116.5) by serving as campaign consultant for said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. (Respondents Amy Bublak and Kurt Vander Weide also were candidates for Turlock City Council at the time.) In this way, Respondents Amy Bublak, Amy Bublak for City Council, Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.

**In the Matter of Familias Por Maywood Aka Familias Por Maywood Supporting Aguirre Magana Varela For Maywood City Council, Felipe Aguirre, Oscar Magana, Edward Varela, Veronica Guardado, Ana Rosa Rizo, And Elsa Solorio, FPPC No. 12/422.** On January 3, 2014, probable cause was found to believe that the named Respondents committed fifteen violations of the Political Reform Act, as follows:

- COUNT 1: Respondents Committee, Guardado, Rizo, and Solorio failed to file a semi-annual campaign statement for the January 1, 2008 through June 30, 2008 reporting period by the July 31, 2008 deadline in violation of Section 84200, subdivision (a).
- COUNT 2: Respondents Committee, Guardado, Rizo, and Solorio failed to file a semi-annual campaign statement for the July 1, 2008 through December 31, 2008 reporting period by the February 2, 2009 deadline in violation of Section 84200, subdivision (a).
- COUNT 3: Respondents Committee, Guardado, Rizo, and Solorio failed to file a semi-annual campaign statement for the January 1 through June 30, 2009 reporting period by the July 1, 2009 deadline in violation of Section 84200, subdivision (a).
- COUNT 4: Respondents Committee, Aguirre, Magana, and Varela failed to file a semi-annual campaign statement for the October 18, 2009 through December 31, 2009 reporting period by the February 1, 2010 deadline in violation of Section 84200, subdivision (a).On
- COUNT 5: Respondents Committee, Aguirre, Magaiia, and Varela failed to file a semi-annual campaign statement for the January 1, 2010 through June 30, 2010 reporting period by the August 2, 2010 deadline in violation of Section 84200, subdivision (a).
- COUNT 6: Respondents Committee, Aguirre, Magana, and Varela failed to file a semi-annual campaign statement for the July 1, 2010 through December 31, 2010 reporting period by the January 31, 2011 deadline in violation of Section 84200, subdivision (a).
- COUNT 7: Respondents Committee, Aguirre, Magana, and Varela failed to file a semi-annual campaign statement for the January 1, 2011 through June 30, 2011 reporting period by the August 1, 2011 deadline in violation of Section 84200, subdivision (a).

- COUNT 8: Respondents Committee, Aguirre, Magana, and Varela failed to file a semi-annual campaign statement for the July 1, 2011 through December 31, 2011 reporting period by the January 31, 2012 deadline in violation of Section 84200, subdivision (a).
- COUNT 9: Respondents Committee, Aguirre, Magana, and Varela failed to file a semi-annual campaign statement for the January 1, 2012 through June 30, 2012 reporting period by the July 31, 2012 deadline in violation of Section 84200, subdivision (a).
- COUNT 10: Respondents Committee, Aguirre, Magana, and Varela failed to file a semi-annual campaign statement for the July 1, 2012 through December 31, 2012 reporting period by the January 31, 2013 deadline in violation of Section 84200, subdivision (a).
- COUNT 11: Respondents Committee, Aguirre, Magana, and Varela failed to file a late contribution report for the \$1,000 contribution received on or before November 2, 2009 from Fiesta Taxi Co-Op, Inc., in violation of Section 84203.
- COUNT 12: Respondents Committee, Aguirre, Magana, and Varela failed to properly report on their 2009 pre-election statements cumulative contributions of \$100 from six contributors in violation of Section 84211, subdivision (f).
- COUNT 13: Respondents Committee, Aguirre, Magana, and Varela received six cash contributions of \$100 or more in violation of Section 84300, subdivision (a).
- COUNT 14: Respondents Committee, Aguirre, Magana, and Varela made six cash expenditures of \$100 or more in violation of Section 84300, subdivision (b).
- COUNT 15: Respondents Committee, Aguirre, Magana, and Varela failed to maintain detailed accounts, records, bills and receipts necessary to prepare campaign statements and to establish campaign statements were properly filed in violation of Section 84104.

The following case was decided after a probable cause conference.

**In the Matter of Philip Harvey, FPPC No. 12/159.** On January 9, 2014, probable cause was found to believe that the named Respondent committed three violations of the Political Reform Act, as follows:

**COUNT 1:** In December of 2010 and January of 2011, as a member of the Sacramento Planning Commission, Respondent Philip Harvey attempted to use his official position to influence a governmental decision in which he had a financial interest, by communicating with a City of Sacramento Senior Planner, concerning the preparation of an addendum to a Negative Declaration in connection with the Curtis Park Village project on behalf of his employer, in violation of Section 87100 of the Government Code.

**COUNT 2:** On January 31, 2011 as a member of the Sacramento Planning Commission, Respondent Philip Harvey attempted to use his official position to influence a governmental decision in which he had a financial interest, by communicating with City of Sacramento employees, stating that certain conditions of the removal proposal (Draft Conditions v.2) were unacceptable, in connection with the Curtis Park Village project on behalf of his employer, in violation of Section 87100 of the Government Code.

**COUNT 3:** On February 2, 2011, as a member of the Sacramento Planning Commission, Respondent Philip Harvey attempted to use his official position to influence a governmental decision in which he had a financial interest, by communicating with City of Sacramento employees, submitting a draft heritage tree removal application which provided that Tree #108 would not be treated as a heritage tree or subject to tree removal mitigation requirements, in connection with the Curtis Park Village Project on behalf of his employer, in violation of Section 87100 of the Government Code.

### **C. LEGAL ADVICE TOTALS**

- ***Email Requests for Advice:*** In January, Legal Division attorneys responded to more than 63 email requests for legal advice.
- ***Advice Letters:*** From January 1, 2014 to January 30, 2014, the Legal Division received 15 advice letter requests and issued 19 advice letters. The total number of advice requests received during 2013 was 160.

### **D. ADVICE LETTER SUMMARIES**

#### **Campaign**

**Ernest A. Conant**

**A-13-136**

Public agencies are required to organize as a committee and file campaign reports if they collect or spend \$1,000 attempting to influence the actions of voters or a LAFCO for or against the qualification, adoption, or passage of a LAFCO proposal.

**Brandt Grotte A-13-144**

A public official not specifically named in a lawsuit, but named in related discovery requests, may transfer surplus funds in his candidate controlled committee to a legal defense fund to be used to defend his interests in legal proceedings against the City Council.

**Igor A. Tregub A-14-003**

A candidate committee in the process of terminating failed to file its committee termination by year-end and was fined \$50 by the Secretary of State. The candidate is not required to reopen his committee and may pay the fee with personal funds.

**Conflict of Interest**

**Claudia Quinatana A-12-013a**

Public officials are prohibited from participating in decisions that would uniquely affect the governmental income of the official or the official's spouse (akin to hiring or firing the individual). Public officials may participate in decisions that affect the governmental income of a class in the same manner, even if the class includes the official or his spouse.

**Sonia R. Carvalho A-13-086**

Council member may not participate in public transportation decisions that affect his real property. He may participate in segmented decisions not affecting his property, including decisions to select contractors.

**Frank Hotchkiss A-13-129**

A city council member who is also employed as a real estate agent may participate in the city's zoning information report ordinance decision because the potential financial effect to the council member is not sufficient to qualify as a material financial effect on the member's financial assets which include an interest in the member's real estate brokerage, the member's clients, those who may receive referral fees for referring a client to the member.

**Elizabeth M. Calciano A-13-130**

The Act does not prohibit gifts of airfare and lodging from the government of Taiwan. However, the gift is reportable and may subject the official to a conflict of interest.

**Mary Henrici I-13-137**

Under the government salary exception, the general manager of the Rio Linda/Elverta Community Water District may serve as contract negotiator for negotiations between his union and the district, irrespective of the negotiations' effects on his medical insurance and retirement benefits.

**Donald Jensen                    A-13-138**

City may not hire an engineer to conduct an engineering assessment report for the development of that engineer's own real property.

**Barbara Hannah, Esq.        I-13-142**

An employee responsible for contracting with outside investment managers is not prohibited under the Act from soliciting funds from those investment managers on behalf of his son's high school.

**Peter M. Thorson                A-13-157**

The conflict of interest prohibition in Section 87100 of the Act does not apply to ministerial decisions, including the approval of a final map, so long as no substantive issue arises before the official as to whether the final map is in fact in substantial compliance with the tentative map.

**Gift Limits**

**Daniel J. Powell                I-13-143**

Governor may use privately-owned airplanes to attend events as an official function of the Office of the Governor where commercial flights are not readily available.

**Revolving Door**

**Gregory Franklin                I-13-150**

The Act's revolving door provisions apply to public official upon leaving state service and going on to work in the private sector.

**Chris Downey                    A-13-152**

Under the Act's honorarium ban, a payment to a public official, who is also a licensed architect, to conduct a class or lecture regarding architectural services at a trade convention is not a prohibited honorarium. The class or lecture is a service "customarily provided" by the profession.

**Section 1090**

**Ryan Hodge                        C-14-012**

The "public services generally provided" exception under Section 1090 does not permit a Santa Ana City Councilmember to enter into a Mills Act contract with the City of Santa Ana because local government officials will be required to exercise judgment and discretion in the approval of the contract and continued enforcement of the terms therein.



**Section 84308**

**Jennie Unger Skelton I-13-145**

A subcontractor named in a bid is “the subject of” a proceeding and therefore is a “party” under Section 84308. Contributions made by a subcontractor at the direction of a prime contractor are aggregated for purposes of Section 84308.

**SEI**

**Melissa M. Crosthwaite A-14-005**

Because a raffle prize was awarded to a Mayor Pro Tem and her participation in the raffle was permitted only because of her official position, she must report the value of the prize on her Statement of Economic Interest (Form 700). The exceptions for agency raffles and bona fide competitions do not apply.