



## MEMORANDUM

**To:** Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne  
**From:** Hyla Wagner, General Counsel  
**Subject:** Legal Division's Monthly Report  
**Date:** August 5, 2015

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### A. OUTREACH AND TRAINING

On July 18, 2015, Senior Commission Counsel Emelyn Rodriguez conducted an ethics workshop for elected officials organized by Assemblymember Cristina Garcia. The presentation included an overview of campaign and conflicts of interest laws that the Commission interprets and enforces, and an interactive discussion about state ethics rules using case studies.

### 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 Political Reform Act (the Act)<sup>1</sup> unless a violation is proved in a subsequent proceeding.*

The two matters that follow were decided based solely on the papers. The respondents did not request a probable cause hearing.

***In the Matter of Vallejo Citizens Deserve Better and Richard Grant.*** On July 27, 2015, probable cause was found to believe that the Respondents committed three violations of the Political Reform Act as follows:

COUNT 1: Respondents failed to file a Late Independent Expenditure Report by the October 17, 2013 due date, for an independent expenditure of \$3,000 made on October 16, 2013, in violation of Section 84204.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

COUNT 2: Respondents failed to timely file the Semi-Annual campaign statement for the reporting period October 20, 2013 through December 31, 2013, by the January 31, 2014 due date, in violation of Section 84200.

COUNT 3: Respondents failed to timely file the Semi-Annual campaign statement for the reporting period January 1, 2014 through June 30, 2014, by the July 31, 2014 due date, in violation of Section 84200.

***In the Matter of Michael Aldapa.*** On July 28, 2015, probable cause was found to believe that the Respondent committed four violations of the Political Reform Act as follows:

COUNT 1: As a candidate for the Los Angeles Community College Board of Trustees in the March 5, 2013, primary election, Respondent failed to file an officeholder and candidate campaign statement-short form for by the January 24, 2013 deadline, in violation of Sections 84200.5(c), 84200.7, and 84206(a).

COUNT 2: As a candidate for the California State Assembly in the June 3, 2014, primary election, Respondent failed to file a pre-election campaign statement for the period covering January 1, 2014, through March 17, 2014, by the March 24, 2014 deadline, in violation of Sections 84200.5(c), and 84200.8(b).

COUNT 3: As a candidate for the California State Assembly in the June 3, 2014, primary election, Respondent failed to file a pre-election campaign statement for the period covering March 18, 2014, through May 17, 2014, by the May 22, 2014 deadline, in violation of Sections 84200.5(c), and 84200.8(b).

COUNT 4: As a candidate for the California State Assembly in the June 3, 2014, primary election, Respondent failed to file a semi-annual campaign statement for the period covering May 18, 2014, through June 30, 2014, by the July 31, 2014 deadline, in violation of Section 84200(a).

### C. MISCELLANEOUS

***In the Matter of Frank J. Burgess; OAH No. 2014060674; FPPC No. 12/516:*** At the March 2015 Commission meeting, the Commission considered and rejected a decision of an Administrative Law Judge regarding Respondent Frank J. Burgess and determined to decide the case themselves upon the record. The Commission considered the matter on the record and submitted briefs in closed session at the June 18, 2015 Commission meeting and concluded that Respondent Burgess violated the Act and should be fined in the amount of \$5,000. The Commission issued its written decision in the matter on July 7, 2015. On August 3, 2015, Mr. Burgess' attorney contacted staff about the timeline for filing a petition for a writ of mandate. Nothing has been filed at this time.

## D. LEGAL ADVICE

In June and July 2015, the Legal Division attorneys responded to the following requests for legal advice:

***Email & Telephone:*** Responded to more than 185 email and telephone requests for legal advice.

***Advice Letters:*** Received 30 advice letter requests and issued 25 advice letters.

***Section 1090 Letters:*** Received 10 advice letter requests concerning Section 1090 and issued 9 advice letters. This year to date we have received 29 requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

## E. ADVICE LETTER SUMMARIES

### Campaign

#### **Pamela Parra**

#### **I-15-041**

- An individual that files a candidate intention statement (501), forms a controlled committee that receives a contribution or makes an expenditure, but does not appear on the ballot for the specific elective office for which he or she intended to seek nomination or election is considered a “candidate” under Section 82007.
- An individual who has not terminated his or her filing obligations as a candidate for a prior election, files a 501 and forms a new candidate-controlled committee for a different office but is not listed on the ballot for election to that office retains the status of candidate until that status is terminated by the individual’s leaving elective office and terminating their controlled committee(s).
- An individual who files a 501 for an office, forms a controlled committee for that office, and receives contributions or makes expenditures meeting the audit thresholds is subject to mandatory audit under Section 90001, even if they do not ultimately appear on the ballot for that office.
- If the aforementioned individual meets the definition of “candidate” all expenditures are counted to determine whether a candidate’s committee has met the mandatory audit thresholds of Section 90001, including civic donations, contributions, or administrative expenses.

### Conflict of Interest

#### **D. Wayne Leech**

#### **A-15-057**

A city council member whose business is in a business improvement district may participate in decisions to impose an annual assessment on businesses in that district, approve the funding of programs and activities the district’s advisory board recommends, appoint members to the advisory board and disestablish the district. These decisions will not have a reasonably foreseeable material financial effect on his interests.

**Sue Novasel****A-15-063**

A county supervisor owns real property, as well as other financial interests, located within a proposed Meyers Area Plan. Any decisions involving the specific plan will have a reasonably foreseeable material effect on the supervisor's real property interest. Therefore she is prohibited from voting, participating, or influencing any decisions regarding the plan. Moreover, as a voting member of the Tahoe Regional Planning Agency's governing board, she is similarly disqualified from any decisions regarding the specific area plan.

**Lance H. Olson****I-15-065**

A lobbying firm owned by a registered lobbyist may host a campaign meeting that is not a fundraising event in its office for the benefit of an officeholder or candidate for an office the lobbying firm is registered to lobby if the total cost of the meeting is \$500 or less, exclusive of the value of the office as a venue. However, the lobbying firm owned by a registered lobbyist, may not rent its firm's offices as a fundraising venue to an officeholder or candidate the firm is registered to lobby. And it may not rent its firm's offices as a fundraising venue to one of its clients (a lobbyist employer) to benefit an officeholder or candidate the firm is registered to lobby. **SUPERSEDES:** *Watson* Advice Letter, No. I-94-219; *Paiva* Advice Letter, No. A-06-014, *Pomer* Advice Letter, No. A-09-258 and *Olson* Advice Letter, No. I-10-092.

**Deb Machen****A-15-090**

A planning commissioner may participate in a decision to upgrade a restaurant's alcohol license where the restaurant is located across the street from her business office. It is not reasonably foreseeable that the decision would contribute to a change in the value of her business. The commissioner may also participate in decisions to rezone property located within 500 feet of her residence that she rents on a month-to-month basis. An official does not have a financial interest in property that is leased on a month-to-month basis.

**Debora Fudge****I-15-091**

General discussion of conflict of interest impacts resulting from an official forming a consulting business with two other persons who may be considering entering into a contract with a developer that may contract with the official's agency.

**Blaise J. Jackson****I-15-093**

District board members also serving as board members for a corporation operating a district-owned hospital do not have interests in the corporation or its parent corporation merely because they have received a stipend from the district for attending the corporation's meetings. Barring any other interests they may have, the Act does not disqualify the board members from taking part in governmental decisions affecting the corporation or its parent corporation.

**Aaron C. Harp****A-15-094**

The councilmember has several interests that may be impacted by his decision-making including a boat building and sales business, leases on two properties in the city under long term leases, and sources of income (clients and the business). However, decisions to review and potentially modify: (1) mooring regulations; (2) mooring transfer rules; (3) mooring rental fees; and

(4) other mooring issues, will not foreseeably and materially affect the councilmember's property or business.

**Graham St. Michel**

**I-15-098**

A mining claim and mineral right is an interest in real property that may be the basis of a conflict of interest. However, using the interest in property for recreational or "hobby" gold mining (panning and non-motorized hand sluicing), and camping with their families does not constitute an interest in a business entity. Finally, based on the facts, it appears unlikely that any decision that the officials make in performing their duties will trigger a conflict of interest with respect to the property.

**Albert S. Yang**

**A-15-101**

Neither official (a councilmember and planning commissioner) has a conflict of interest in the decisions to: (1) expand an existing ground floor retail requirement in the city's California Avenue area to encompass adjacent streets; (2) place limits on certain types of uses (including formula retail or "chain store"), restaurants, financial institutions, hair & nail salons; or (3) revision to parking requirements for new restaurant uses and conversions from restaurants to office uses. None of the decisions will affect the commissioner's leased residence as contemplated by Regulation 18702.2(b) or materially affect the councilmember's interest in her business, sources of income, or property.

**Minh C. Tran**

**A-15-106**

A county supervisor is, in his private capacity, the Executive Director of New Dawn Communities (a ministry of World Christian Outreach) and an officer of World Christian Outreach, which is a 501(c)(3) nonprofit corporation. The supervisor does not have conflict of interest in decisions affecting third party donors (persons or entities) to NDC or WCO as contemplated by Sections 87100 and 87103. However, the supervisor may have behested payment reporting requirements.

**Ernest Schmidt**

**A-15-108**

A planning commissioner will have a conflict of interest in decisions on applications for development that reduce the overall allowed development in the Downtown Precise Plan area because the commissioner's private employer will also be seeking approval of a project subject to the same cap on development.

**Joan Borger**

**I-15-110**

General discussion about whether segmentation is appropriate when a board member owns a home near a development project and is asked to approve a transfer to a new developer. Segmentation was found appropriate if the new developer completes the project as is, with no modifications to terms, as the decision would be an "implementation" of previously finalized decisions. No particular developer had yet been identified, so requestor was warned that new facts and specifics could affect the analysis.

**Michael Jenkins****A-15-116**

Since the Act only prohibits financial conflicts of interest, the councilmember would not have a conflict of interest under the Act with respect to an application submitted by a corporation owned by a distant relative of the councilmember's wife.

**Richard Mendelsohn****A-15-118**

Decisions regarding guidelines and criteria for the selection of art at the roundabout location near property that the member owns and leases to a commercial tenant will not financially affect any of the member's interests (the property, the business or the source of income) and therefore he does not have a conflict of interest.

**Eric S. Veil****A-15-126**

Because more than 25 percent of the businesses in Las Tunas are in the proposed project area (or within 250 feet of it), and the councilmember's business will not be uniquely or disproportionate affected, the public generally exception would apply and the councilmember may participate in the decision.

**Jennifer Gore****A-15-071**

A project manager for a joint powers authority may not take part in decisions regarding a contract for engineering and environmental documentation on a 7.2 mile segment of a project where his former private-sector employer would bid on the contract. Interest payments he receives on a promissory note after he left his former private-sector employer are considered "income" under Section 87103(c). Since it is reasonably foreseeable that the financial effects of such decisions on his former employer would be material he will have a conflict of interest

**Gifts****Orry P. Korb****A-15-105**

Payments for the travel, lodging and subsistence in connection with a trip to Israel for the Educational Seminar in Israel for Pacific Northwest Progressive Leaders are reportable gifts, but not subject to gift limits because they will be provided in connection with a legislative or governmental purpose by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

**Michael G. Biddle****A-15-120**

Payments for the travel, lodging and subsistence in connection with "The Mayors of Silicon Valley on an Expedition to China" are reportable gifts, but not subject to gift limits because they will be provided in connection with a legislative or governmental purpose by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

### Revolving Door

**Barton Newton****A-15-085**

The one-year ban applies to a former state employee who wishes to participate on an advisory board created by his former state employer because he will be serving on behalf of his current private employer. The permanent ban may apply in some circumstances depending on the topics and decisions before the advisory board. The FPPC does not advise on past conduct and therefore did not opine regarding the former employee's applying for the advisory board.

**Shannon Crossen****A-15-102**

A former employee of the California Department of Transportation is not subject to the revolving door prohibitions in the Act because: (1) her position was not a designated position in her former agency's conflict of interest code, and (2) she did not have responsibility for any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity, in her former position.

**David Hutchinson****I-15-111**

The Act imposes a one-year revolving door ban applicable to high-level local officials, including local elected officials such as directors of the Livermore Area Recreation and Parks Department (the Department). However, so long as the former official's future employment will not involve communicating with the Department in an attempt to influence the Department's decisions in an administrative or legislative action (whether quasi-legislative or quasi-judicial) or any action involving a permit, license, contract, or transaction involving the sale or purchase of property or goods, the Act's post-governmental employment restrictions would not apply.

**John Courtis****I-15-095**

A supervisor at the Air Resources Board will be subject to the one-year ban and the permanent ban after retiring from his position. Since the requestor had not yet left his position, he was also advised that he is prohibited from making, or using his position to influence, decisions affecting persons with whom he is negotiating prospective employment or with whom he has made an arrangement concerning employment.

### Section 1090

**Ryan O. Hodge****A-15-068**

Section 1090 prohibits a public official whose office requires him to review or approve Mills Act contracts from applying for a Mills Act contract. If the public official's office is not involved with Mills Act contracts, however, Section 1090 does not prohibit participation.

**William D. McMinn****A-15-069**

A port commissioner does not have a conflict of interest under the Act or under Section 1090 as a result of his son's income from the city. Therefore, the commissioner may participate in decisions affecting the city. These rules, if they apply, only apply when the child is a *dependent* of the official.

**Sarah Carrillo****A-15-075**

Section 1090 precludes a county supervisor from applying for a community development block grant loan while holding office. To the extent that the supervisor intends to apply for a loan upon leaving office, he may be precluded from applying if he takes part in a decision regarding the community development block grant loan program that would increase or decrease the chances of qualifying or receiving the loan.

**John Driscoll****A-15-088**

Section 1090 prohibits the city from leasing a parking lot to a limited partnership of which a councilmember is a partner, even if the councilmember recuses herself from the decision. However, the city may lease the property to a new tenant of the limited partnership so long as the councilmember discloses her financial interest and abstains from the decision. The city may also assign the lease, grant a license, or grant a permit to a new tenant so long as the councilmember discloses her financial interest and abstains from the decision. Section 1090 does not preclude the city of Placerville from accepting rent payments until the expiration of the existing lease regardless of the source.

**Allison Burns****A-15-096**

Section 1090 prohibits a former board member of a transit authority from accepting employment as its executive director where, the matter was considered while he was a board member and he knew that the board would be hiring someone for the position. Even though a contract for employment would not be signed until after he resigned, he is deemed to have participated in making the contract because he had participated in board deliberations and decisions regarding the contract. He could not avoid the prohibitions of Section 1090 by resigning shortly after the deliberations and decisions were made.

**Benjamin T. Reyes, III****A-15-099**

Under Section 1090, a city councilmember may not participate in decisions regarding a project to upgrade the city's water pollution control plant where his private employer is a subcontractor on the project. However, because his interest in the contract is "remote" the city may nonetheless enter into the contract without his participation. The councilmember is not prohibited from taking part in decisions regarding the project labor agreement despite being a union member. He does not have a financial interest in the agreement.

**Jennifer S. Knight****A-15-112**

A city councilmember does not have a financial interest under either the Act or Section 1090 in decisions regarding a local school district solely by virtue of her husband's position on the school board. No decision will impact the stipend either she or her husband receives.

**Zakhary Mallett****A-15-119**

Under the Act, a member of the Bay Area Rapid Transit (BART) board of directors may not take part in decisions regarding contracts between BART and contractors for whom the board member serves as a subcontractor, even if he does not work on any BART projects. The contractors are a source of business to him and he has a conflict of interest if the decisions would contribute to a change in the value of the contractor's business.



## F. UPCOMING REGULATIONS

The proposed regulations schedule for the upcoming three months is set forth below, subject to modification. Before appearing on an agenda for adoption, the proposals will be part of our Interested Persons process to encourage input from the general public, other government agencies and the regulated community.

### September 17, 2015

- **Regulation 18422.5 - Expand Top Contributor Disclosure.** Expanded, easy-to-view disclosure for the public of top contributors to ballot measure and independent expenditure committees. In 2014, the FPPC began posting lists of the top 10 contributors to committees primarily formed to support or oppose a state ballot measure or to make independent expenditures on a state candidate that raises \$1,000,000 or more for an election. (Section 84223.) Pushing out more disclosure for the public, the proposed regulation will require that if a state general purpose committee, such as "Good Government California," is listed as a top contributor to a ballot measure or independent expenditure committee that committee's top donors will also be listed to inform the public of the nature and interests of that committee. The added disclosure proposed in this regulation gets at the problem of money passing through committees with uninformative generic names to obscure the interests funding a measure or independent expenditures on a candidate.
- **Regulation 18422 - Multipurpose Organization Political Activity Transparency.** The amendment to this regulation clarifies that so-called "dark money," originating from nonprofit 501(c)(4) or other organizations whose donors are not disclosed, is not permitted in California elections. The amendment clarifies that if a 501(c)(4) nonprofit organization contributes to a federal PAC for expenditures on a California ballot measure or state candidate, the sources of funds to the 501(c)(4) organization must be disclosed in California as required under the Act. (Section 84222.) In addition, the new rules on disclosure of contributors to multipurpose organizations in Section 84222 supersede the Act's prior rules; accordingly, old Regulation 18413 is proposed for repeal.

### October 15, 2015

- **Regulation 18225.7 - Made at the behest; Regulation 18550.1 - Independent and Coordinated Expenditures.** FPPC regulations contain guidelines to ensure that political expenditures made by outside groups and entities are truly independent of the candidate they are supporting. California's regulations on independent expenditures seek to require the highest degree of separation permitted by law between the outside spender and the candidate. To make sure expenditures by outside groups are actually independent of a candidate or measure committee, additional presumptions for when an expenditure will be considered to be coordinated with a candidate or committee will be proposed. In addition, the proposal will consider merging Regulations 18225.7 and 18550.1 into one regulation because they contain virtually the same language.

**November 19, 2015**

- **Regulation 18630 Complaints - Enforcement procedures.** Revision to Regulation 18630 to reflect current and future procedures and include the Commission's press policy. Review of other Enforcement procedural regulations.