



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

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

From: John W. Wallace, Assistant General Counsel

Subject: Legal Division's Monthly Report

Date: February 3, 2015

A. OUTREACH AND TRAINING

- On January 14th, Senior Commission Counsel Sukhi K. Brar participated in a webinar training on the Act's Statement of Economic Interest (Form 700) reporting rules for the California Judges Association. During the program, Sukhi provided a comprehensive overview tailored to judges of all of the types of interests that need to be reported on the Form 700, including sources of income, real property, investments and gifts. Attorney Edith Matthai of the Robie & Matthai law firm in Los Angeles also provided a comprehensive overview of other rules pertaining to judicial ethics outside of the Political Reform Act. The program received a tremendous amount of positive feedback from the attendees.
- Senior Commission Counsel Heather M. Rowan participated in the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics' lobbyist ethics training course, required for all registered lobbyists in California. The presentation was on January 22, 2015, and three more are planned in the future.
- On January 26th, Senior Commission Counsel Sukhi K. Brar participated on a panel as part of the Office of Administrative Hearings' Access to Administrative Justice Administrative Law Judge Training in Costa Mesa. As part of a four-person panel of experts in government and judicial ethics laws, Sukhi helped explain the Act's gift rules, prohibitions on honoraria and travel rules, and their application to Administrative Law Judges, through a series of hypothetical questions touching on many ethical issues that affect Administrative Law Judges.

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")¹ unless a violation is proved in a subsequent proceeding.

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

In the Matter of Dan Peate for Community College Board of Trustees 2012 and

John Peate: Probable cause was found to believe Respondents committed the following violations of the Act:

- COUNT 1: Respondents Dan Peate, Peate for Community College Board of Trustees 2010, and John Peate 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 Section 84200(a).
- COUNT 2: Respondents Dan Peate, Peate for Community College Board of Trustees 2010, and John Peate 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 Section 84200(a).
- COUNT 3: Respondents Dan Peate, Peate for Community College Board of Trustees 2010, and John Peate 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 Section 84200(a).
- COUNT 4: Respondents Dan Peate, Peate for Community College Board of Trustees 2010, and John Peate 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 Section 84200(a).
- COUNT 5: Respondents Dan Peate, Peate for Community College Board of Trustees 2010, and John Peate 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 Section 84200(a).

¹ 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

COUNT 6: Respondents Dan Peate, Peate for Community College Board of Trustees 2010, and John Peate 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 Section 84200(a).

In the Matter of Vote Ralph 2012 Committee to Elect Ralph Denney to the Assembly 78 District, and Ralph Denney: Probable cause was found to believe Respondents committed the following violations of the Act:

COUNT 1: Respondents Ralph Denney and Vote Ralph 2012 Committee failed to file a Preelection Campaign Statement (Form 460) for the July 1, 2012 through September 30, 2012, reporting period, by the October 5, 2012, due date in violation of Section 84200.5(a).

COUNT 2: Respondents Ralph Denney and Vote Ralph 2012 Committee failed to file a Preelection Campaign Statement (Form 460) for the October 1, 2012 through October 20, 2012, reporting period, by the October 25, 2012, due date in violation of Section 84200.5(a).

COUNT 3: Respondents Ralph Denney and Vote Ralph 2012 Committee failed to file a Semi-Annual Campaign Statement (Form 460) for the October 21, 2012 through December 31, 2013, reporting period, by the January 31, 2012, due date in violation of Section 84200(a).

COUNT 4: Respondents Ralph Denney and Vote Ralph 2012 Committee failed to file a Semi-Annual Campaign Statement (Form 460) for the July 1, 2012 through September 30, 2012, reporting period, by the October 5, 2012, due date in violation of Section 84200(a).

C. LEGAL ADVICE TOTALS

- ***Email Requests for Advice:*** In January 2015, Legal Division attorneys responded to more than 108 email and telephone requests for legal advice.
- ***Advice Letters:*** In January 2015, the Legal Division received 18 advice letter requests and issued nine advice letters.
- ***Section 1090 Letters:*** During the same period, the Legal Division received two advice letter requests concerning Section 1090 and issued one advice letter. This year to date we have received two requests regarding Section 1090 (not including conflict of interest letters that incidentally deal with Section 1090 issues).

D. ADVICE LETTER SUMMARIES

Behested Payments

Debra Gravert A-14-214

The free or discounted rent for an Assemblymember's district office is a "behested payment" to the Assemblymember if the payment is provided by a private organization, and not by a local state, or federal government agency. A report detailing these payments must be filed by the official with the official's agency within 30 days after reaching the \$5,000 threshold and each 30 days thereafter for additional donations by the same donor.

Campaign

Steve G. Fox A-14-199

The expenses incurred to defend against an unfair labor practices/wage and hour complaint connected to a former Assemblymember's law practice are solely personal in nature and are not related to a political, legislative, or governmental purpose. Therefore, the official may not use campaign funds or set up a legal defense fund to pay these costs.

Conflict of Interest

Aaron C. Harp I-14-205

A city councilmember will have a conflict of interest in any decision materially affecting his personal interests, or the interests of any source of income that is doing business in the jurisdiction, planning to do business within the jurisdiction, or having done business in the jurisdiction during the two years prior to the time of the vote. Moreover, absent an exception, Section 1090 may prohibit the Councilmember from entering into a new commercial pier permit or lease with the City.

Margaret Kemp-Williams A-14-216 and A-14-216(a)

County supervisors do not have a conflict of interest in decisions regarding the designation of certain roads for use by off-highway motor vehicles, even where they own residential property located in proximity to a proposed combined-use roads. The only foreseeable effects on nearby residential property that might be material would be increased noise and reduced air quality. However, with the implementation of mitigation measures, the effects would not be material.

Zeny M. Agullana A-15-008

Under the Act, an appointee to a state board may be required to disqualify herself from decisions of the Board that will financially affect her private employer. Moreover, absent an exception, Section 1090 could prohibit a contract between private employer and her agency. However, based on the specific duties of the official's board in question and the nature of the private employer, it is unlikely either provision will be triggered.

Gifts

Tom Pico **A-14-190**

A public official must report a gift (and the gift may be subject to gift limits) only if the source is covered by the official’s disclosure category in the agency’s conflict of interest code. If the gift is from a source not covered by the official’s disclosure category it is not reportable or limited.

Stephen P. Deitsch **I-14-195**

(1) Funds collected for international travel that include the exploration of a potential sister city relationship in a foreign country does not constitute “official agency business” pursuant to Regulation 18950.1. (2) The Act does not address how a city may expend city funds except that payments made to officials that are not a lawful expenditure of public moneys are gifts to the officials from the city under Regulation 18944.3. In addition, in some circumstances where money is actually received from a private donor and given to the city as a means to benefit certain officials, it may still be considered a gift to those officials.

Mathew G. Jacobs **A-14-211 and A-14-211(a)**

In the case where CalPERS acquires an admission to a conference (whether at the full rate or discounted or free government rate) and the admission includes meals for the attending employees, no gift occurs to the employees. The fact that CalPERS acquires these benefits of admission to the conference and makes them available to their attending employees is a nonreportable event. However, food not included in the conference admission, is a gift unless another exception applies.

Revolving Door

Joe Panora **I-15-002**

Requestor was a designated employee at the CDCR and retired on December 30, 2014. Under the one-year ban, he will be prohibited for a one-year period from making appearances and communications before the CDCR on behalf of a private employer if made 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 property. Under the permanent ban, he is permanently disqualified from “switching sides” to participate in judicial or quasi-judicial proceedings in which he participated, if any, while employed by the CDCR.