



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*February 18, 2016 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of January 6, 2016 through February 4, 2016, the Enforcement Division received 68 referrals and complaints as detailed in the chart below.

Type	SWORN	PROACTIVE/INFORMAL	NON-FILER
Number Received	19	28	21
Case Opened	6	7	20
Complaint Rejected	7	12	0
Under Review	6	9	1

Also during this time, the Division closed a total of 109 cases including:

- 39 warning letters,
- 1 Advisory Letter
- 23 no violation letters, and
- 46 as a result of the adoption of stipulations and defaults at the January Commission meeting.

The Division had 848 cases in various stages of resolution at the time of the January Monthly Report and currently has 788 cases in various stages of resolution, including the 26 cases before the Commission as listed in the February 2016 agenda.

To give an overview of all cases within the Enforcement Division, in addition to the numbers provided above, below is a second chart to track the outcome of the 2,460 \$50 Annual Fee referrals that the Enforcement Division received from the Secretary of State's office on May 1, 2015.

	<b>2013 \$50 ANNUAL FEE: Total Referral – 2,460</b>
<b>Referrals Rejected</b>	625
<b>Administratively Terminated</b>	109
<b>Slated for Administrative Termination (Pending)</b>	959
<b>Other Terminations</b>	296
<b>Incumbent Cases*</b>	81
<b>Administrative Fine</b>	170 (+2 proposed on February agenda)
<b>Warning Letters</b>	87
<b>No Violation Letters</b>	46
<b>Under Review</b>	85

\* These cases were removed from the “Slated for Administrative Termination (Pending)” category once it was determined that they were regarding officials currently holding office who are not current with their filings or fees that required action.

## II. LEGAL DIVISION

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STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

HEATHER ROWAN, SENIOR COMMISSION COUNSEL

### A. Pending Litigation

*Frank J. Burgess v. Fair Political Practices Commission.*

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission's decision and order in *In re Frank J. Burgess*, Case No. 12/516. Following an administrative hearing in front of an Administrative Law Judge (ALJ), Mr. Burgess challenged that decision to the Commission. After oral argument before the Commission on March 19, 2015 and a thorough review of the record, the Commission rejected the ALJ's decision and decided the case based on the record, oral argument, and the parties' supplemental briefing on the "governmental decision" element of the case. The Commission found that Mr. Burgess violated Government Code Section 87100 of the Political Reform Act (the Act)<sup>1</sup> and imposed a \$5,000 fine on July 7, 2015. Mr. Burgess challenges that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. After a status conference on January 20, 2016, the parties agreed on a briefing schedule and the court will schedule the hearing on the matter at the conclusion of briefing, which is scheduled to be complete on June 3, 2016.

### B. Outreach and Training

None to report.

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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.

### C. 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 proven in a subsequent proceeding.*

***In the Matter of Dan Peate, Peate for Community College Board of Trustees 2012 and John Peate (Treasurer).<sup>2</sup>***

Probable cause was found to believe Dan Peate, the Committee and the Treasurer (hereinafter referred to as Respondents) committed nine violations of Section 84200, subdivision (a), based on the failure to file Semi-Annual statements as follows:

- Count 1: Respondents failed to file a Semi-Annual statement for the January 1, 2011 through June 30, 2011 reporting period, by the August 1, 2011 deadline.
- Count 2: Respondents failed to file a Semi-Annual statement for the July 1, 2011 through December 31, 2011 reporting period, by the January 31, 2012 deadline.
- Count 3: Respondents failed to file a Semi-Annual statement for the January 1, 2012 through June 30, 2012 reporting period, by the July 31, 2012 deadline.
- Count 4: Respondents failed to file a Semi-Annual statement for the July 1, 2012 through December 31, 2012 reporting period, by the January 31, 2013 deadline.
- Count 5: Respondents failed to file a Semi-Annual statement for the January 1, 2013 through June 30, 2013 reporting period, by the July 31, 2013 deadline.
- Count 6: Respondents failed to file a Semi-Annual statement for the July 1, 2013 through December 31, 2013 reporting period, by the January 31, 2014 deadline.
- Count 7: Respondents failed to file a Semi-Annual statement for the January 1, 2014 through June 30, 2014 reporting period, by the July 31, 2014 deadline.
- Count 8: Respondents failed to file a Semi-Annual statement for the July 1, 2014 through December 31, 2014 reporting period, by the February 2, 2015 deadline.
- Count 9: Respondents failed to file a Semi-Annual statement for the January 1, 2015 through June 30, 2015 reporting period, by the July 31, 2015 deadline.

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<sup>2</sup> The matter was decided based solely on the papers. The respondents did not request a probable cause hearing.

### D. Conflict of Interest Codes

The FPPC is the code reviewing body for over 200 state agencies and 600 multi-county agencies. In 2015, we reviewed and approved 146 conflict of interest code amendments and adoptions. Since the last report, the following conflict of interest codes were approved:

#### State Agencies:

- Air Resources Board
- California Housing Finance Agency

#### Multi-County Agencies:

- Authority for California Cities Excess Liability
- California Collaborative for Educational Excellence
- Municipal Insurance Cooperative
- Nevada Joint Union High School District
- Oxford Preparatory Academy
- Rocketship Education, Inc.

### E. Advice

In January 2016, the Legal Division responded to the following requests for advice:

- ***Email & Telephone Requests for Advice:*** Legal Division attorneys and Political Reform Consultants collectively responded to more than 1,000 email and telephone requests for advice.
- ***Advice Letters:*** Legal Division received 14 advice letter requests and issued 15 advice letters.
- ***Section 1090 Letters:*** Legal Division received two advice letter requests concerning Section 1090 and issued six advice letters.

### F. Advice Letter Summaries

#### Campaign

##### Steven S. Lucas

##### A-15-210

A membership organization that receives contributions of \$2,000 or more from its members for political purposes in California would qualify as a committee under Section 82013, subdivision (a), and be required to file periodic reports. If the organization follows proper procedures regarding the recordkeeping and reporting of contributions directed by donors for specific candidates, these earmarked contributions will count towards the original contributor's contribution limit, not toward the membership organization's contribution limit. The organization itself may also contribute to each candidate endorsed by the organization up to the

contribution limit. However, if the membership organization determines which candidates will receive contributions from its members, then the organization is considered the source of the contribution.

**Tricia Crane****A-15-233**

Absent a unique local ordinance, a local initiative becomes a measure under the Act when proponents first circulate petitions to qualify the initiative for the ballot. Once a proposal becomes a measure, all contributions received and expenditures made must be reported, including those received and made before the campaign reporting requirements were triggered. An individual affiliated with the committee, or not affiliated, can directly pay for advertisements out of her personal funds, and donate a portion of her personal advertising space to promote the potential or actual ballot initiative as a contribution. The committee reports this as non-monetary contributions. There would be no reportable value for a committee's use of a meeting space if the costs related to the meeting or fundraiser are under \$500 for the following locations: a private home, a private apartment unit, or a local private business' office that is not available for rent as a meeting space. Also, there is no reportable value for the use of a facility such as a local retail or restaurant facility that is open to the general public.

**Jen Slater****A-15-236**

"Shawn Nelson for Supervisor 2014," an officeholder controlled committee, changed its name to "Shawn Nelson for Supervisor 2018," intending to indicate that the committee's purpose was to cover officeholder expenses and not campaign debt. The committee then received donations addressed to "Shawn Nelson for Supervisor 2018." Later, because the year 2018 in its name suggested that Supervisor Nelson was running for reelection in disregard of term limits, the committee changed its name back to "Shawn Nelson for Supervisor 2014."

We advised that the 2014 committee could accept contributions addressed to "Shawn Nelson for Supervisor 2018," since the contributions were intended for the 2014 committee. The name change did not constitute an effective redesignation of the committee or its campaign bank account for a future election. To redesignate a campaign committee, an officeholder must do more than just change the year in its name; the officeholder must file a new Form 501 indicating the officeholder's intention to run for a future election, and he or she must file an amended Form 410 redesignating the committee for a future election.

**Rob Williams****A-15-240**

The Act does not prohibit a San Juan Capistrano Planning Commissioner from taking part in the decision on whether to recommend approval of amendments to the Historic Town Center Master Plan because there is no reasonably foreseeable financial effect of the decision on the Commissioner's financial interests. In addition, because contributions to the Commissioner's 2014 City Council campaign were more than 12 months prior to the decision, Section 84308 is not applicable to the Commissioner with respect to the decision.

**Ivy M. Tsai****A-15-241**

A reimbursement payment made pursuant to a proposed ordinance of the City of West Covina would not be a "contribution" because it is clear from the surrounding circumstances that such a payment would not be for political purposes. The ordinance authorizes the city to reimburse the

costs of a recount in an election for a city office if the margin of victory between two candidates is less than one-half of one percent of the ballots casts after completion of the official canvass. The express purposes of the ordinance is to encourage citizens to run for city offices and to minimize the risk that vote-counting errors will go uncorrected, and these are not inherently political purposes.

**Mondi Taylor****A-16-005**

Campaign funds may not be used to install a security system in the supervisor's home based on generalized concerns for her safety. The statute requires verification of actual threats to the supervisor's physical safety that arise from her activities, duties, or status as a candidate or elected officer. The statute requires that the threats have been reported to and verified by an appropriate law enforcement agency.

**Conflict of Interest****Martha O'Connell****A-15-220**

Generally, under the Act, a personal financial interest in a mobile home may bar participation in decisions regarding mobile homes if the issue will cause a reasonable, foreseeable material effect on personal finances. A decision to enact nominal increases in rent fees may fall under the exception if the financial impact is nominal, inconsequential, or insignificant.

**Heather Lenhardt****A-15-230**

A councilmember may not participate in a decision that will have a reasonably foreseeable financial effect on one of his sources of income. That source of income is the main funder of a skate park and has been identified in the applicable city application.

**Bruce Burton****A-15-231**

The Act does not prohibit a city council member from purchasing a large property where the city council must approve the sale. But the city council member may not participate in any council decisions relating to the property because there is a reasonably foreseeable financial effect on his personal finances.

**Amanda L. Charne****A-15-234**

An official with residential rental property within 500 feet of the boundaries of the city's specific plan is prohibited from making, participating in making, or using his position to influence a decision regarding the specific plan. In light of the objective and magnitude of the specific plan, and the fact that the property is adjacent to an undeveloped lot within the boundaries of the plan, there are insufficient facts to indicate that there will be no reasonably foreseeable measurable impact on property.

**Jerry Shefren****A-15-237**

The Act does not prohibit a board member of the Sequoia Healthcare District from taking part in governmental decisions about the Samaritan House Clinic, a free medical facility at which the board member also serves as an unpaid volunteer physician. Because Mr. Shefren is an unpaid volunteer, Samaritan House Clinic is not an economic interest as a source of income. Likewise,



the board's decisions about the clinic are unlikely to have a reasonably foreseeable financial effect on Mr. Shefren's personal finances or those of his immediate family.

**Christi Hogin****A-15-238**

The Act does not prohibit a San Juan Capistrano City Councilmember from taking part in the governmental decision on whether to extend the city's Concession Agreement with the Palos Verdes Beach and Athletic Foundation to operate the Palos Verdes Beach and Athletic Club due to the councilmember being on the waitlist to join the Club. Because a position on the waitlist to join the Club is nontransferable, the decision cannot affect the value of the councilmember's waitlist position. Given that the city does not intend to raise or lower the Club's initiation fees or monthly dues for Club membership through the decision, there is no other potential basis for the decision to affect the councilmember's personal finances. Therefore, there is no reasonably foreseeable financial effect of the decision on the councilmember's financial interest in his personal finances, and he may take part in the decision.

**Section 1090****Caroline L. Fowler and Walter Kieser**      **A-15-228**

Section 1090 prohibits the City of Santa Rosa from awarding a contract to update the city's development impact fees to Economic & Planning Systems, Inc. (EPS). Since EPS was intricately involved in the development and formation of that contract through its performance as a corporate consultant on a preceding contract with the City to review the development impact fees, EPS is considered an "employee" subject to civil liability under Section 1090.

**Yvette M. Abich Garcia****A-15-239**

Neither the Act nor Section 1090 restricts the city from entering the contracts identified or the councilmember from participating in decisions regarding the contracts. Under the Act, decisions regarding contracts between the city and a school district would not have a foreseeable material financial effect on a councilmember's interest in his business or his business's lease merely because his business has a separate unrelated contract with the school district. Moreover, with respect to decisions that may affect the school district (as a source of income) the councilmember may take part in the decisions identified under the public generally exception in Regulation 18703(e) (7). For purposes of Section 1090, the councilmember does not have an interest in the contracts identified.

**Amber Maltbie****A-15-243**

The Act does not prevent Councilmember O'Connell from participating in decisions related to persons that have donated to the nonprofit entity that employs him, so long as the decisions do not have a financial effect on him or his employer. Since decisions on permits, variances, or other entitlements for use by developers who have donated to the nonprofit, and employment agreements with law enforcement or fire safety unions that have donated to nonprofit, will not affect him or the nonprofit, he will not have a conflict of interest. Further, because his nonprofit employer is not a party to any of the contract decisions in question and there are no facts to suggest that the donors have or will condition future donations to the nonprofit on approval of their applications, the councilmember does not have a financial interest in the decision under Section 1090 and it does not apply.

### G. Upcoming Regulations

The proposed regulations schedule for the upcoming two months is set forth below, subject to modification.

#### March 17, 2016

- **Lobbyist Definition (Regulation 18239).** Amend the definition of “direct communication” to clarify that the “ride along exception” does not apply to *any* person who meets or speaks with a qualifying official in the company of a registered lobbyist, but applies only in specific, limited circumstances.

#### April 21, 2016

- **Conflict of Interest Code Processes (Regulations 18750 et seq.).** Streamline the process to review conflict of interest codes submitted by agencies.

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: TARA STOCK, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to 768 telephone requests for advice in January.

### **Forms, Manuals and Other Materials**

The division is updating the campaign manuals to incorporate recent legislative and regulatory changes. The changes include, among other things, increasing the recipient committee threshold from \$1,000 to \$2,000, updating the advertisement disclaimer rules, and updating the independent expenditure rules to add several situations where an expenditure is presumed to be coordinated with a candidate or committee and therefore not independent.

### **Speaking Engagements**

The division conducted six in-person seminars in January. Consultant Deborah Hanephin made three presentations in San Marino to individuals required to file Statements of Economic Interests (SEI). Consultants Hanephin and Cynthia Fisher made a presentation at the FPPC for local agency staff responsible for performing the administrative duties on campaign statements. Consultants Alex Castillo and John Kim made two presentations at the Orange County Fire Authority – a presentation for staff responsible for performing the administrative duties on campaign statements and SEIs, and a presentation for SEI filers. There were over 100 attendees at the campaign/SEI presentation and 30 attendees at the presentation for SEI filers. The division will hold four presentations at the FPPC in February for SEI filing officers. In addition, the division will be scheduling several other presentations in the coming months and will resume “Webinar Wednesdays,” scheduling different types of webinars on three Wednesdays each month.

### **Filing Schedules**

Staff completed and posted 17 filing schedules, including the four schedules created for the Assembly District 31 special election called by the Governor in early January.