



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Cardenas, Hatch and Hayward

From: Dave Bainbridge, General Counsel
Brian Lau, Assistant General Counsel

Subject: Advice Letter Report and Commission Review

Date: December 9, 2019

The following advice letters have been issued since the November Advice Letter Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. Full copies of FPPC Advice Letters, including those listed below, are available at: <http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Campaign

Nick Warshaw

[I-19-144](#)

A general purpose committee that acts as an intermediary for contributions to candidates and collects an “administrative fee” from each contribution must report these fees as miscellaneous increases to cash. The recipient candidates must report the fees deducted by the intermediary as part of the full amount of each contribution received and the fees withheld are reportable fundraising expenditures by the recipient candidates. A contributor who qualifies as a committee and earmarks a contribution to a specifically identified *committee* must disclose on its campaign statements both the specifically identified committee as the recipient and the other committee as an intermediary. A contributor who qualifies as a committee and earmarks a contribution to a specifically identified *candidate* must disclose on its campaign statements the committee intermediary that received the contribution, with a notification that the contribution was earmarked for the specific candidate.

Colin Burns

[I-19-145](#)

The Act does not prohibit a city from “tagging” council members on the city’s Facebook page. The Facebook page is neither a matching fund nor a cash subsidy for the public financing of elections. Further, Facebook is an online forum so the messages would not be considered a tangible item and thus Facebook “tagging” would not be considered a mass mailing. However, the tags may result in a campaign contribution if the linked pages include express advocacy, reference to a candidacy, or urge a particular result in an election. If the tags result in a contribution, the city would be required to file campaign statements if it qualifies as a committee.

Lacei Amodei

[I-19-192](#)

Nothing in the Act prohibits multiple local candidates from controlling one committee. Additionally, the Act does not currently contain contribution limits for local committees and local contribution rules are not within the purview of Act. Regarding the contribution exception

for small home and office fundraisers, supplies provided for a home fundraiser fall within this exception so long as the total costs of the fundraiser do not exceed \$500. Finally, a payment made by a candidate for a communication publicizing an endorsement by another candidate is not generally a contribution to the other candidate unless the communication expressly advocates for the candidate or against the candidate's opponent.

Conflict of Interest

Heather Whitham

[A-19-153](#)

Where multiple officials are disqualified from a decision and the agency must invoke the "legally required participation" exception to move forward with the decision, an official who is the actual applicant in the decision should not participate in the random selection process used to achieve a quorum when deciding which disqualified officials may take part in the decision.

Steven Lilley

[A-19-160](#)

It is reasonably foreseeable that decisions pertaining to the proposed conversion of an existing commercial center into a hotel located within 500 feet of an official's residence will have a material financial impact on the official's real property interest.

Stacy Corless

[A-19-204](#)

The Act's conflict of interest provisions prohibit a county supervisor from taking part in governmental decisions relating to a development project to build, among other things, approximately 100 workforce housing units because it is reasonably foreseeable that those decisions may have a material financial effect on the supervisor's interest in her husband's resort business by reducing that business's employment expenses by more than one percent of its annual gross revenues. Construction of the additional workforce housing units may allow the resort business to eliminate employment expenses resultant from currently having to purchase and maintain housing for some employees.

Hilda Cantu Montoy

[I-19-209](#)

A councilmember who also worked as a salaried employee of a non-profit organization that advocates on behalf of unions would likely be disqualified from decisions involving Project Labor Agreements involving contracts with labor unions given the nexus between such decisions and the work he is paid to do for the non-profit organization.

Jeremy Brown

[A-19-212](#)

An official who is also a cannabis grower may participate in an application to rezone highway commercial parcels to allow a cannabis storage and distribution facility, where the parcels are over 1,000 feet from his real property and there is no indication of other impacts on the official's business. The official may also participate in decisions regarding the environmental impact report for county cannabis program, which will impact a significant segment of the businesses in the County and not uniquely affect the official. However, the official may not participate in a cannabis tax initiative vote, as the rate structure varies depending on the type of business, and his business will be uniquely affected.

Casey Strong [A-19-213](#)

Where a proposed mixed-use development is adjacent to the offices of an official's employer and source of income, and would cause significant and unavoidable traffic impacts, it is reasonably foreseeable the project decisions would have a material financial impact on the official's interest.

Anthony R. Taylor [A-19-217](#)

A city councilmember may take part in a decision to approve a conditional use permit application submitted by a school district, despite the fact that the councilmember's spouse is a compensated member of the school district's board. A spouse's government salary and benefits do not qualify as "income" under the Act, and the decision would not have a reasonably foreseeable material effect on the councilmember's personal finances.

Charley Hesse [A-19-219](#)

The conflict of interest provisions do not prohibit a state employee from obtaining a permit on the same terms and conditions as any other member of the general public to operate a business on park property so long as the official does not act or purport to act in his official capacity.

Andrea Visveshwara [A-19-225](#)

Two public officials could take part in decisions pertaining to the development of an Art Center across the street from their residences. One official did not have an economic interest under the Act because her residence was a month-to-month tenancy, and the project would not have a reasonably foreseeable material effect on the other official's leased property.

Gift Limits

Leon J. Page [A-19-191](#)

Where a county supervisor's duties involve establishing water management policies and the exercise of powers directly related to water use, travel provided by a water district that provides water to two municipalities within the county is related to inter-agency education and training and therefore not a reportable gift.

Lobbying

Patrick Brennan [A-19-161](#)

To ensure centralized public access to lobbyist information, an individual contract lobbyist who is the sole proprietor of a lobbying firm must register and report as one lobbying firm.

Section 1090

Amy Webber [A-19-063](#)

Section 1090 does not prohibit a city councilmember from accepting a job for a large private communications company, but it would prohibit the councilmember, and generally prohibit the city council, from entering into a contract between the city and the company. If the councilmember is negotiating, or has any arrangement concerning prospective employment with the company, the Act prohibits him from taking part in any decision directly relating to the

company. If the councilmember becomes a company employee, the Act's conflict of interest provisions would also apply.

Donna Mooney

[A-19-168](#)

Section 1090 does not prohibit a city from entering into a potential contract for review and redaction services provided by a business operated by a former city police lieutenant so long as the lieutenant refrained from participating in the making of the potential contract in his official capacity as a city employee.

Prabhakar Somavarapu

[A-19-175](#)

Section 1090 does not prohibit consultants who provided services to sanitation district for its recycled water project to submit proposals to be the district's Construction Program Management Office consultant for the same project because none of the consultants participated in making the proposed contract for the proposed managing consultant through the services they provided under their initial contracts.

Hilda Cantu Montoy, Esq.

[A-19-176](#)

Sanitation district does not have a prohibitory conflict of interest under Government Code Section 1090 in contracting with an engineering firm for construction management on a liquor line improvement project in which it previously performed pre-construction design bid plan and specifications as there is no indication that the engineering firm exerted influence over the district's award of the construction management contract through its performance of pre-construction design services under the initial contract.

David Gehrig

[A-19-208](#)

Section 1090 does not prohibit construction company from bidding on two requests for proposals under healthcare district's master plan. While the company provided project management services that involved some limited assistance with the master plan, the company did not participate in the making of the two proposed master plan contracts through its services under the initial contract because the district removed the company from any involvement in the development of those proposed contracts, and the company was never in a position to influence the scope of services related to either of the proposed contracts.

Tom F Schroeter, Esq.

[A-19-215](#)

Government Code Section 1090 does not prohibit the city council from exercising its "right of first refusal" under an existing lease with a councilmember who operates a business on the leased property and is seeking to sell the improvements made to the leased property. The city may invoke the rule of necessity to determine whether to purchase the improvements. However, the financially interested councilmember must abstain from the decision.