



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

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: September 9, 2019

The following advice letters have been issued since the August 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

Phaedra Norton

[I-19-115](#)

City may use a vendor to conduct a public opinion survey to obtain feedback on key issues facing the community without triggering campaign reporting or other disclaimer requirements under the Act, so long as the survey does not constitute campaign activity. The City may also send educational or informational materials so long as the materials are educational or informational in nature. However, if the City uses the information gathered through the public opinion survey to conduct campaign-related activity, then the cost of conducting the survey, as well as the cost of making the communication, would be reportable expenditures at the time the communication is distributed, and the City would have to register as a campaign committee if its activity meets the relevant Section 82013 committee qualification threshold.

Amar Shergill

[I-19-140](#)

Contributions to a local committee established by a political party caucus are not required to be aggregated with contributions to the political party if the local committee will be conducting activity related only to local non-partisan races, and there is no involvement of the political party in the local committee's operations.

James R. Sutton

[I-19-165](#)

Section 84504.2 as applicable to large print campaign advertisements, such as billboards and yard signs, requires a disclosure to have a solid contrasting background color, with a text line height of five percent of the height of the advertisement per line. The background color is not required to be white, and there are no "box" and centering requirements.

Conflict of Interest

William M. Carroll

[A-19-067](#)

The Act prohibits a planning commissioner from taking part in decisions relating to an agricultural tourism zoning ordinance that would authorize additional uses of certain properties designated rural and agriculture because the commissioner is currently engaged in some of those uses and it is foreseeable that the decision will have a material effect on the commissioner's business and property interest. The planning commission, however, may invoke the Legally Required Participation Exception in order to take action on that ordinance if it is unable to form a quorum of members who are not disqualified from those decisions. Additionally, the Act does not prohibit the commissioner from taking part in decisions relating to a separate multispecies zoning ordinance because it is not foreseeable that the ordinance would have a material financial effect on the value the commissioner's business or real property interest.

William M. Carroll

[A-19-068](#)

The Act does not prohibit a county planning commissioner from taking part in decisions relating to a zoning ordinance that would authorize youth agricultural projects and actively managed pasture grazing of hogs or poultry on certain rural and agriculture properties because it is not foreseeable that those decisions would have a material financial effect on any of the commissioner's interests related to her five-acre real property or the commissioner's family business raising and selling pigs as part of a 4-H youth agricultural project.

Douglas B. Lyon

[I-19-090](#)

A planning commissioner with a residence within 500 feet of a project to revitalize the area, including replacing a vacant hotel with new housing, adding a grocery store, and renovating existing commercial complexes, is disqualified from taking part in the decision. Evidence that the project will have minimal impacts in some respects, such as traffic/transportation, noise and housing populations, is not clear and convincing evidence to refute that the revitalization of the specific plan area will have a measurable impact on the official's real property interest under Regulation 18702.2(a)(7).

Lori Parlin

[A-19-091](#)

A county supervisor is disqualified from taking part in a decision to implement aesthetic design standards for commercial and multi-family parcels, which would apply to the unincorporated community in which the supervisor owns a home, because it will have a reasonably foreseeable material financial effect on her interest in residential real property, which is within 1000 feet of eight undeveloped properties and 500 feet of an undeveloped property subject to the standards.

Randy J. Risner

[A-19-139](#)

The Act's conflict of interest provisions do not prohibit a city manager from taking part in decisions relating to one of the city's community facilities district assessments upon parcels within the district because the decisions' effect on the city manager's property interest would be indistinguishable from their effect on the public generally pursuant to Regulation 18703(e)(1), which permits an official to take part in a decision to adjust an assessment that applies equally, proportionally, or by the same percentage to all other properties subject to the assessment.

Christine Dietrick[A-19-152](#)

Councilmembers are disqualified from decisions to establish a business improvement district in light of their property interests in or within 500 feet of the district because it is foreseeable that the improvements in the district will have a material effect on their interests. However, the council may invoke the legally required participation exception in order to convene a quorum of its members. When an official is selected to take part in a decisions under the legally required participation exception, the official is selected for the duration of the proceedings in all related matters until his or her participation is no longer legally required, or the need for invoking the exception no longer exists.

Gwen Kellas[A-19-155](#)

Where the official's residential property is within 500 feet of a water treatment plant, and its mandated removal will likely threaten the ground stability in the area, the official may not participate in decisions related to the removal and restoration of the treatment plant or the adjacent creek site. The official may participate in decisions related to relocation of the treatment plant over 1,000 feet from her residence, to the extent it is required by a state agency, and the new location will not affect decisions related to the existing treatment plant site.

Daniel G. Sodergren[A-19-156](#)

A city councilmember may not take part in decisions pertaining to a specific plan update that would guide downtown preservation and development for more than twenty years, as the councilmember owns residential real property within 500 feet of the plan boundaries, and the project, which would be wide in scope and include numerous changes and improvements to the area, would have a foreseeable, material, and unique financial effect on the councilmember's real property.

Gift Limits**Tom Lutzenberg**[A-19-131](#)

Agency's assistant deputy director over fiscal implementation was not subject to the Act's gift limits in accepting a partial academic scholarship from an energy district because the award was received in a manner not related to the official's status in a bona fide contest pursuant to Regulation 18942(a)(14). However, the value of the scholarship is reportable income on the official's statement of economic interests.

Revolving Door**Shelley Whitaker**[A-19-132](#)

The Act does not prohibit former state employee from taking a job with another employer after she has ceased working for the state even though she remains on the state payroll to "run down" leave credits. However, once the former employee is no longer authorized to perform the duties of her job and stops performing the duties of the job, the Act's one-year ban and the permanent ban regarding post-governmental employment will apply. The one-year ban prohibits the former employee from appearing as a paid consultant for the purpose of influencing any administrative or legislative actions or any discretionary act involving a permit, license, grant, or contract, or the sale or purchase of goods or property before her former agency for one year. Further, the

permanent ban will prohibit the former employee from “switching sides” in any judicial, quasi-judicial, or other proceeding in which she participated while working at the state agency.

Section 1090

Lindsay Beavers

[A-19-028](#)

A local agency may enter into grant contracts with the individual members of a local grant steering committee, where the steering committee members do not meet the criteria for having decision-making authority under Regulation 18700(c)(2), and thus are not public officials under the Act. Section 1090 does not prohibit a contract where the State requires that the advisory body, the local steering committee, be comprised of stakeholders who may have financial interests in the award of grant funds.

Carlyn M. Drivdahl

[A-19-034](#)

Under Section 1090, a county and county supervisor may not appoint the supervisor’s wife to the position of Public Defender or a new Assistant Public Defender position because the supervisor has an interest in his wife’s employment contract. However, because the supervisor’s wife has been a deputy public defender for the past 7 years, the supervisor has a non-interest under Section 1091.5(a)(6) for decisions involving the approval of the Public Defender’s budget and bargaining with the Attorney Unit. Neither Section 1090 nor the Act prohibit the supervisor from participating in these decisions.

Allison E. Burns

[A-19-106](#)

Section 1090 prohibits district board from hiring a current board member as the district’s General Manager even if he first resigns from his position on the board because he has already participated, in his official capacity, in the making of the employment agreement concerning the General Manager position.

Krishan C. Chopra

[A-19-117](#)

Given that a city has numerous existing contracts and a potential future contract with a large telecommunications company that does business within the city’s jurisdiction, Section 1090 would generally prohibit the city council from entering into or renegotiating a contract between the city and the company if a city councilmember accepts the company’s employment offer. If the councilmember is “negotiating,” or has “any arrangement concerning,” prospective employment with the company, Section 87407 of the Act would also prohibit the councilmember from taking part in any decision directly relating to the company. Additionally, if the councilmember becomes an employee of the company, Sections 87100 and 87103 would prohibit the councilmember from taking part in a decision involving the company if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the councilmember’s financial interests, including the councilmember’s interests in the company.

Heather Whitham

[A-19-129](#)

Section 1090 does not prohibit a city council from entering into a joint powers agreement with the community power authority, pursuant to which the authority would become the City’s “Community Choice Aggregator” and effectively replace city’s current electricity provider,

notwithstanding a councilmember's interest in the current electricity provider, which employs the councilmember's husband. Based on the facts provided, Section 1091(b)(2)'s remote interest for an employee of a private contracting party applies to the councilmember's interest in her husband's income, so long as the councilmember abstains from decisions relating to that agreement as required by Section 1091(a).

Jose M. Sanchez

[A-19-137](#)

Section 1090 does not prohibit a city council or city councilmember, who is also a deputy sheriff for the county, from entering a tax sharing agreement between the city and the county, under the noninterest exception set forth in Section 1091.5(a)(9) for contracts between governmental agencies, because the agreement does not directly involve the deputy sheriff's department. However, the councilmember must disclose his interest in the county at the time the city council considers the agreement, and the interest must be noted in the city council's official records.

Gabrielle Whelan

[A-19-148](#)

A planning commissioner may take part in hearings related to a planning application for a large mixed-use development project, where his only connection to the project was that his employer (a construction company) had worked on other projects with an investor in the planned mixed-use project. Under the Act, it was not reasonably foreseeable that the project would have a material effect on the planning commissioner's interests in his employer, particularly given that his employer did not perform the type of construction work that the project would involve. Under Section 1090, the planning commissioner had no interest in a development agreement between the city and the project applicant.

Amanda Guy

[A-19-150](#)

Section 1090 does not prohibit a city from contracting with a consultant engineering firm to provide full design plans for a project notwithstanding the fact that the firm had initially provided partial design plans for the project under an earlier contract. Based on the facts provided there was no indication that the consultant engineering firm had exerted influence over the city's contracting decisions.

Robert Larivee Jr.

[A-19-166](#)

Section 1090 prohibits a community service district board from entering an employment agreement with a current board member to serve as the district's wastewater operator.

Steve Mitra

[A-19-167](#)

Under the Act and Section 1090, a county's Chief Operator Officer was not prohibited from taking part in the contracting process between the county and a non-profit organization, of which he was also a non-compensated member of the organization's governing board. Given the non-compensated nature of his work, his position did not constitute a disqualifying "financial interest" under the Act. Similarly, under Section 1090, his position as an uncompensated officer of a tax-exempt corporation is noninterest under Section 1091.5(a)(8). However, we note that Section 1090 requires that the interest is noted in the county's official records.

Statement of Economic Interest

Kereli Sengstack

[A-19-058\(a\)](#)

Members of nonprofit theatre group are not “consultants” or “designated employees” for the city required to file Statements of Economic Interests (Form 700) under the Act. Based upon the facts provided, the group is a 501(c)(3) non-profit charitable organization, and its members do not serve in a staff capacity for the city and do not perform substantially all the same tasks that normally would be performed by one or more staff members of the agency. The city has contracted with a for-profit company to manage the theatre, and the group has no contract with the city, no duty to manage the theatre, and no staff at the theatre. Additionally, the group does not use the theatre or have any special rights or privileges to use it.

Veronica Nebb

[A-19-127](#)

The Act requires a city councilmember to report a real property interest in a residential rental property and the date of that property’s disposal on the councilmember’s annual Statement of Economic Interests if he or she held that interest at any point during the reporting period, and to report any source of income interest on that Statement of economic Interests if the councilmember aggregated \$500 or more in income from that source during the reporting period. However, if the councilmember transfers the residential rental property to a third party who is not a member of his or her “immediate family,” then the councilmember would cease to have an interest in that residential rental property under the Act, and the Act’s conflict of interest provisions would not prohibit the councilmember from taking part in decisions relating to the funding for the reconstruction of a community theater, located within 300 feet of the property.