



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

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

**Subject:** Advice Letter Report and Commission Review

**Date:** February 10, 2020

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The following advice letters have been issued since the January 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**

**Bianca Pirayou**

**[A-20-003](#)**

The Act does not prohibit former State Senator from contributing surplus funds from his candidate committee, or his candidate-controlled ballot measure committee, to a 501(c)(3) nonprofit graduate school to fund scholarships and a mentoring program. Under Section 89519(b)(3) and Regulation 18521.5(d)(3), a candidate may spend surplus funds on “donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the candidate, any member of his or her immediate family, or the campaign treasurer.”

**Rafael Menis**

**[I-20-007](#)**

A committee may reuse leftover campaign yard signs and business cards for another election so long as they were purchased by the prior committee with the intention of being used in the previous campaign (i.e., they include candidate and committee information from previous campaign) and are reported as an in-kind contribution to the new committee. The value of the in-kind contribution is the purchase price of the yard signs and business cards at the time they were initially purchased by the prior committee.

### **Conflict of Interest Code**

**Christopher J. Diaz**

**[I-19-210](#)**

Members of an architecture review board and administrative hearing panel have been correctly designated in town’s conflict of interest code, because the bodies have decision-making authority. Members of a financial advisory committee are correctly designated as Section 87200 filers because they manage public investments. In reporting business interests, an interest is disclosable if doing business in the jurisdiction. However, merely marketing via the Internet,

telephone, television, radio, or printed media does not alone constitute doing business in the jurisdiction.

### **Conflict of Interest**

#### **Stephen C. Harrell**

[I-19-216](#)

The Act does not prohibit an individual from seeking or holding multiple public offices. However, an individual seeking to hold multiple offices should consult the attorneys for his or her current and prospective agencies because laws outside the Commission's purview may apply.

#### **Steve Mattas**

[A-19-235](#)

City's Mayor Pro Tem, whose spouse worked for the company the city contracted with to serve as its leasing agency, could not take part in city council's decisions related to negotiation and approval of a lease of city-owned retail property. Under the Act, the lease would have a foreseeable and material effect on the official's interest in the company as a source of income.

#### **Rebecca L. Moon**

[A-19-236](#)

Where the official's residence is within 640 feet of a specific plan boundary, it is reasonably foreseeable that the decisions to amend the plan with sizable changes proposed to building density, height and type of use for proposed developments will have a material financial effect on the market value of his residence under Regulation 18702.2(a)(8). Generally, officials with a conflict of interest in specific plan decisions, may only participate in later specific project decisions to the extent that the official does not otherwise have a conflict of interest in the decision, the decision is properly segmented under Regulation 18706, and the decision will not reopen, determine, affirm, nullify, or alter prior decisions.

#### **Celia Zavala**

[A-19-239](#)

Amended Education Code Section 47604 clarifies existing law that charter schools, and entities that manage charter schools, are subject to various bodies of California law including the Act. Section 47604 does not amend the Act in stating what constitutes the most decentralized level for purposes of adopting a conflict-of-interest code, something that is not specified in the Act, and does not conflict with the provisions of the Act.

#### **Lisa A. Travis**

[A-20-001](#)

It is not reasonably foreseeable that decisions solely impacting a clearly defined project area within a large specific plan and general plan will have a material financial effect on an official's real property where the property is over 13,000 feet from the project's boundary and no evidence suggests the decisions will have a substantial effect on her property.

#### **Jeffrey L. Berk**

[A-20-008](#)

Two city councilmembers could take part in a decision, whether to implement a city-wide rental property inspection program, despite the councilmembers being rental property owners themselves, because the program would financially affect a significant segment of the public and the effect on the councilmembers' economic interests was not unique compared to the effect on the significant segment of the public.

## Behested Payments

### **Amber Mace**

[I-19-238](#)

Elected officer or PUC member, who coordinates or consents to the placement of “science fellows” in his or her state agency, must report the payments for the fellows as “behested payments” pursuant to the requirements of Section 84224. Where a 501(c)(3) has earmarked funds to another 501(c)(3) organization that will be used for the placement of a fellow, the behested payment report should reflect the 501(c)(3) that earmarked the funds, or in other words, the original source of the funds.

## Section 1090

### **Stephen M. Fischer**

[A-19-122](#)

Because of the foreseeable and material effect on the official’s interest in a company as a source of income, the Act prohibits a city manager from taking part in an exclusive negotiating agreement with the company for a 12-month period commencing on the date the official sold his interest in three entities, managed by the company, back to the company. Because the official has divested his interests in the Company, Section 1090 would not prohibit the City from entering into a contract with the Company as long as the City Manager does not participate in the decisions for the 12-month period required under the Act.

### **James H. Wilkins**

[A-19-177](#)

Section 1090 prohibits a councilmember from proposing a project that will require city to acquire a specific property and subsequently purchasing the property in his private capacity prior to the city purchasing the property.

### **Rubin E Cruse, Jr.**

[A-19-179](#)

The Act does not prohibit a county supervisor from taking part in decisions relating to a large residential development project because it is not reasonably foreseeable that the decisions will have a material financial effect on the official’s various financial interests associated with a 5,000-acre real property approximately one mile from the project. Moreover, Section 1090 does not prohibit the official from making or participating in the making of a development agreement because the official is not financially interested in the agreement for purposes of Section 1090.

### **Krishan Chopra**

[A-19-214](#)

Because a city council had previously adopted a formal policy delegating review and approval of the contract to the city manager or the director of public works, Section 1090 does not prohibit city from entering into a master license agreement with a large telecommunications company for small cell wireless installations provided the city council and a councilmember employed by the company completely refrain from participating in the contract.

### **Daniel J. McHugh**

[A-19-231](#)

Neither the Act nor Section 1090 prohibit city department director from taking part in decisions regarding lease agreements with a nonprofit organization if he becomes an uncompensated member of the nonprofit’s board of directors. Under the Act, the official would not have an interest in the nonprofit organization because it is not a source of income to the official. In

addition, the official would have a noninterest in the nonprofit pursuant to the exception in Section 1091.5(a)(8) because he would receive no compensation and one of the nonprofit's primary purposes, providing free quality performing arts for the community, supports a function of the city.

**Gary S. Winuk**

**[A-19-234](#)**

City councilmember whose company leased a property from city could continue to rent the property after the lease converted to a month-to-month tenancy, as the contract was created prior to the councilmember taking office and specifically contemplated the lease converting to a month-to-month tenancy with a substantial increase in the rent. For purposes of Section 1090, the continuation of the lease would not constitute the "making" of a contract. However, the councilmember is prohibited under the Act from taking part in any decisions that would have a reasonably foreseeable and material financial effect on his business, including any discussion or decision regarding the termination of the month-to-month tenancy.