



(Approved April 15, 2021)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
March 18, 2021
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Cardenas,
Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Loressa Hon, Chief of Administration
Angela Brereton, Chief of Enforcement
Dave Bainbridge, General Counsel
Lindsey Nakano, Legislative Counsel
Katelyn Greene, Commission Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:00 AM.

Chair Miadich introduced Commissioner Abby Wood who was appointed to the Commission by Secretary of State Dr. Weber.

1. Public Comment for Items not on Agenda.

Kirk Cavanaugh, Baldwin Park, had a comment on employment law; stating that more enforcement of the laws is required. Mr. Cavanaugh gave a brief background of his situation and Chair Miadich told Mr. Cavanaugh that someone from the FPPC office would reach out to him to help him find the right department to make his complaint.

2. Approval of February 2021 Commission Hearing Minutes.

MOTION: To approve the February 2021 meeting minutes. Moved by Commissioner Baker, seconded by Commissioner Cardenas. Motion approved 4-0, with Commissioner Wood abstaining from the vote.

3-7. Approval of Enforcement Consent Calendar.

Item 8 was pulled from the agenda by the Enforcement Division. Angela Brereton, Chief of Enforcement, mentioned a typo that would be corrected in the stipulation for item 3.

Steven Petzold, Santa Clarita, gave public comment asking for the Commission to table item 3. Mr. Petzold stated that he found a copy of a mailer by the City of Fountain Valley that contains the signatures of city manager, police chief, and fire chief and an excerpted impartial analysis by Colin Burns, the Attorney for the City of Fountain Valley. There is paid US postage that was not included in the stipulation. Mr. Petzold stated that he filed a complaint with the enforcement division, 21-00551 to investigate the item and include it in the stipulation. He states that there were many concerns about all the possible violations and that the penalty as proposed is not significant. He requests this item to be tabled and the administrative hearing scheduled for next week to be canceled.

MOTION: To approve the Enforcement Consent Calendar items 3-7, with the proposed corrections to item 3. Moved by Commissioner Wilson seconded by Commissioner Cardenas. Motion approved 5-0.

9. Appointment of Vice Chair.

MOTION: To nominate Commissioner Baker as Vice Chair. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 5-0.

10. Prenotice Discussion of Proposed Adoption of Regulations 18952, 18953, and 18954, Permissible Campaign Expenditures.

Erika Boyd, Senior Commission Counsel, went over the political, legislative, and governmental purpose regulations to help further clarify personal use provisions of the Act. Ms. Boyd gave a brief history on the provisions and clarified that the funds held in a candidate campaign account are not the personals funds of a candidate and that they are held in a trust to be used for a political, legislative, or governmental purpose. Central to the analysis is how to distinguish between direct and reasonable relationship which has not been defined in the general definition term throughout the statute or by regulations. Sections 89513 through 89522 address specific instances where the legislature has decided that an expenditure is directly or reasonably related, but these portions don't cover every

possible expenditure that may arise. Political purpose is already defined within the Act, but we are defining a legislative purpose and a governmental purpose. The goal of the project was to look through the body of advice to help provide better guidance to practitioners and the agency in terms of interpretation about permissible expenditures.

Chair Miadich asked Ms. Boyd why \$10 and if there was a significant reason to choose \$10. Ms. Boyd stated that amount was the number they landed on for the minimum and that it could be changed.

Chair Miadich asked about the elections code provision that prohibits candidates from gifting items of value to induce the public to vote a certain way and asked where the line would be drawn to not violate that elections code. Ms. Boyd stated that they would be happy to take a closer look to see if an issue would be created with that elections code provision.

Ms. Boyd stated that under regulation 18953 of legislative purpose one of the advice letters cited, the commission had specifically advised that expenditures related to legislative monitoring and advocacy would be directly related to the political purpose of the committee.

In regulation 18954, the definition of governmental purpose helps clarify that an expenditure would need to be related to the office holder's agency or helping to facilitate the office holder's agency duties. The example included is the matter of Chris Norby, where a county supervisor had used funds to charge a week-long stay to a residential motel. He had made comments about marital issues then changed his statements to say that he used that time to study families staying in those places.

The matter moved to an ALJ, and they found that the expenditure was directly related. The regulation would assist in providing a clearer standard for the ALJ and that any expenditure of funds which would provide a direct personal benefit must also benefit the officeholder agency or the work they're doing for their agency.

Commissioner Baker stated that there was a rule for office holders where they were not permitted to use the campaign funds to pay their official staff to supplement their income and would like to flag

this issue as it will overlap with governmental purpose. Karen Harrison, Senior Commission Counsel, stated that there are a few advice letters dealing with the concerns Commissioner Baker raised. Commissioner Baker asked if there are specific areas where there are patterns of uncertainty and where there are gaps.

Chair Miadich asked about the definitions for the legislative and governmental and discussed the overlap with gift limits and behested payments. He then stated the agendas should be more clear that these regulations have a broader reach than just political, legislative, and governmental purpose so the public is not caught off guard as this moves forward. Chair Miadich asked if new definitions are adopted, what would happen to prior advice letters. Dave Bainbridge, General Counsel, stated advice given is specific to each requestor and it is written to comply with the law at the time written.

Commissioner Wilson stated advice letters that are no longer applicable need to be identified as such.

Commissioner Wood asked whether the sections including fair market value should be relocated because, as is, it seems gifts and in-kind services are being folded in and not directly related.

Emily Andrews, CPAA, gave public comment said there are no substantive comments today but CPAA remains interested in the subject.

11. Advice provided regarding local contribution limits.

Dave Bainbridge, General Counsel, gave background on the item.

Chair Miadich asked what the process is for elevating advice that comes in. Mr. Bainbridge said most advice requests goes to a Political Reform Consultant and they respond if they can answer the question with a direct source. If there are any questions in that process, it would be elevated to an attorney who has the same process, and if they cannot answer, directs the question to their supervisor. It would then go to Mr. Bainbridge if there still needs further clarification.

Chair Miadich asked about the timing of the Commission's two options: a regulation or an opinion.

Mr. Bainbridge stated a regulation would be a minimum of 45 days based on OAL noticing periods.

For an opinion, there would be a memo presented to the Commission with public input. Staff would

then bring back an opinion for adoption. Chair Miadich asked if an opinion could be brought back next month with two interpretations for the Commission to pick.

Commissioner Baker said the Commission should help clarify this issue and if the opinion process is the quickest, then that would be the best route.

Commissioner Wilson asked if there was consideration to ask the author for an intent letter on AB 571 to further clarify the issue.

Commissioner Wood asked if there are staff that do data analysis because she would like to know how many candidates are affected by this issue. She also asked how much outreach was sent to the jurisdictions.

KC Jenkins, CPAA, gave public comment discussing the helpfulness of the memo staff presented but stated CPAA disagrees with the conclusion. Ms. Jenkins asked that the Commission update the FAQ sheets or issue an opinion.

Chair Miadich stated, as a general matter, when Staff received email or telephone advice that raises issues of statutory interpretation where there's no clear answer, then that issue should be elevated to the full Commission.

MOTION: To bring an opinion back in April. Moved by Chair Miadich. The motion was withdrawn by Chair Miadich.

MOTION: To bring an opinion back in April discussing the aggregation of AB 571 with two arguments: the rationale used to support Staff given advice that aggregation is required, and aggregation not required. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 5-0.

12. Discussion of disclosure on electronic media advertisements.

Toren Lewis, Commission Counsel, gave a presentation discussing the current trends and issues around disclosure of electronic media advertisements.

Chair Miadich asked if the Commission has regulatory authority to require disclosure on influencer paid posts. Sukhi Brar, Assistant General Counsel, said no, the Commission does not have authority.

Commissioner Baker stated the tagging of the candidate/committee in an influencer post doesn't give

any information. Chair Miadich asked whether the intent of the DISCLOSE Act was to prohibit the Commission from regulating the disclosure on influencer posts. Ms. Brar said she does not believe that was the intent.

Chair Miadich asked in the blogger regulation whether it is the recipient committees' choice on whether there is extra reporting on the campaign report or if there's extra disclosure on the post. Mr. Lewis stated that is correct. Chair Miadich asked why that's the case. Ms. Brar said the thought at the time was that most bloggers included the information in the post and if that did not happen, the disclosure would happen in the campaign report.

Chair Miadich asked if a ballot measure committee posted an ad to a newspaper, it would have advertisement disclosure. If that same committee paid him to write an article in the paper supporting the ballot measure, it would not need to include the disclosure. Mr. Lewis stated yes, this was his understanding.

Commissioner Baker stated the presentation talks about editorials, but the examples given are for op-eds in a newspaper. Mr. Lewis clarified the example is for op-eds.

Commissioner Wood stated the op-eds would be tricky to require disclaimers but if the committee specified exactly what they're paying for, you could get the disclosure on the backend.

The Commission adjourned for break at 12:04 p.m. and reconvened in open session at 12:18 p.m.

13. Committee Updates.

MOTION: To appoint Commissioner Baker to the Law and Policy Committee, appoint Commissioner Cardenas to the Budget and Staffing Committee, and appoint Commissioner Wood to the Litigation Committee. Moved by Chair Miadich, seconded by Commissioner Cardenas. Approved 5-0.

Chair Miadich gave an update on the March Law and Policy Committee and Public Outreach and Technology Committee meetings.

14. Legislative Update.

Lindsey Nakano, Legislative Counsel, gave an update on the current status of Commission related

bills.

Commissioner Baker confirmed the Glazer and Berman bills are identical and whether Ms. Nakano is reaching out in search of bipartisan authors. Ms. Nakano confirmed that to be true and stated she has been in contact with the authors offices to explain the search for bipartisanship.

Commissioner Wilson asked whether the Commission votes on bills after they've been amended because his understanding is that the Commission doesn't update their position. Mr. Bainbridge stated in the past, the Commission has voted to change their position on bills if there are substantive amendments that the Commission disagrees with.

Ms. Nakano stated the Commission has approved the general ideas and language for specific bills and those bills today do not have positions attached to them.

Commissioner Baker stated she would rather wait for the comments and opposition letters before making a decision.

MOTION: To support AB 378, and sponsor AB 236, SB 686, and AB 1367. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 4-0, with Commissioner Baker abstaining from the vote.

15. Executive Staff Reports.

Executive Staff Reports were accepted as submitted.

16. Commissioner Comments and Proposed Future Agenda Items.

MOTION: To adjourn the meeting. Moved by Commissioner Cardenas, seconded by Chair Miadich. Motion approved 5-0.

The meeting concluded at 12:53 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved April 5, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission