

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

FPPC No. 10/620

12
13 JOSEPH J. JELINCIC, J.J. JELINCIC
FOR CALPERS – 2009, and FRANK
14 LUNA

STIPULATION, DECISION, AND ORDER

15 Respondents.
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18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondents Joseph J. Jelincic, J.J. Jelincic for CalPERS – 2009, and Frank Luna (Respondents) hereby
21 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
22 at its next regularly scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
24 matter and to reach a final disposition without the necessity of holding an additional administrative
25 hearing to determine the liability of Respondents.

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by
6 accepting a campaign contribution for the 2009 CalPERS Board of Administration election after the
7 December 4, 2009 election day that exceeded the amount of the net debts outstanding from the election
8 in violation of Section 85316, subdivision (a) as described in Exhibit 1. Exhibit 1 is attached hereto and
9 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
10 the facts in this matter.

11 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
12 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
13 Two Thousand Dollars (\$2,000). Respondents submitted with this Stipulation a cashier's check from
14 Respondents in said amount, made payable to the "General Fund of the State of California," as full
15 payment of the administrative penalty that shall be held by the State of California until the Commission
16 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
17 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
18 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
19 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
20 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
21 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
22 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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24 Dated: _____ Gary S. Winuk, on behalf of the Enforcement Division
25 Fair Political Practices Commission

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27 Dated: _____ Joseph J. Jelincic, individually, and on behalf of J.J.
28 Jelincic for CalPERS – 2009, Respondents

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Dated: _____
Frank Luna, individually, and on behalf of J.J. Jelincic
for CalPERS – 2009, Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Joseph J. Jelincic, J.J. Jelincic for
3 CalPERS – 2009, and Frank Luna,” FPPC No. 10/620, including all attached exhibits, is hereby
4 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
5 execution below by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

_____ Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Joseph J. Jelincic (“Respondent Jelincic”) was elected to the California Public Employees’ Retirement System (“CalPERS”) Board of Administration in 2009. Respondent J.J. Jelincic for CalPERS – 2009 (“Respondent Committee”) was a candidate-controlled recipient committee formed for that election. Respondent Frank Luna (“Respondent Luna”) was, at all time relevant, the treasurer for Respondent Committee. Under the Political Reform Act (the “Act”)¹ a candidate cannot accept a campaign contribution after the date of the election if the contribution exceeds the net debts outstanding for the campaign. Respondents violated the act by accepted a campaign contribution after the election even though it had no outstanding debt.

For purposes of this Stipulation, the proposed violation of the Act is as follows:

COUNT 1: Respondents accepted a campaign contribution for the 2009 CalPERS Board of Administration election after the date of the election that exceeded the net debts outstanding from the election in violation of Section 85316, subdivision (a).

SUMMARY OF THE LAW

Late Contributions

Section 85316, subdivision (a) permits a candidate to accept a contribution for an election after the date of the election only to the extent that the contribution does not exceed the net debts outstanding from the election. For purposes of the Act, a candidate or committee receives a contribution on the date that the candidate or committee obtains possession or control of the check. (Regulation §18421.1, subdivision (c).)

Treasurer Liability

Section 84100 provides that every committee shall have a treasurer. Under Section 84100 and Regulation §18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations by the committee.

¹ 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE FACTS

Respondent Jelincic was elected to the CalPERS Board of Administration member-at-large seat in 2009. Respondent Jelincic and Respondent Luna filed a Statement of Organization for the Respondent Committee on February 23, 2009. The election was held on December 4, 2009. Respondents received a contribution for the election on December 16, 2009 from the Committee to Re-Elect Chuck Valdes in the form of a check in the amount of \$3,600. The check was dated December 9, 2009. Respondents deposited the check in the campaign account on December 16, 2009.

Respondents' final campaign statement shows total contributions of \$78,679.41 and total expenditures of \$20,293.91. Respondents received only one other contribution after the election. This contribution was in the form of a refund from a vendor in the amount of \$262.93. So Respondents did not have outstanding net debt for the campaign after the election.

After the election, Respondent Jelincic sought advice from the Commission regarding a few of the campaign provisions of the Act. One of his questions concerned receiving campaign contributions after an election. The Commission sent Respondent Jelincic an advice letter dated January 27, 2010. In that letter, the Commission stated that the Act prohibited him from accepting contributions after an election if he did not have campaign-related debts. Despite the advice letter, Respondents did not return the late contribution from the Committee to Re-Elect Chuck Valdes.

In July 2010, the Commission Enforcement Division initiated a mandatory audit of Respondents campaign pursuant to Section 90001.

COUNT 1

Acceptance of a Campaign Contribution After the Election

On December 16, 2009, Respondents accepted a campaign contribution in the amount of \$3,600 for the 2009 CalPERS Board of Administration election after the December 4, 2009 election. The contribution exceeded the amount of the net debts outstanding from the election in violation of Section 85316, subdivision (a).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate,

negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

A case with a violation of Section 8516, subdivision (a) has not come before the Commission for approval in recent years so there are no comparable cases to consider in determining the appropriate fine.

Respondents accepted a campaign contribution after the election despite not having any outstanding campaign debt in violation of the Act's prohibition against post-election fundraising. Post-election campaign contributions serve no legitimate campaign fundraising purpose. Respondents did not return the contribution despite receiving the Commission's advice letter in January 2010 informing Respondent Jelincic that he could not accept a contribution after the election. Also, the contributor sent the contribution well after the election, which is a more egregious violation than a situation where a contribution is sent before the election and received by the candidate after the election.

In mitigation, Respondents' did not attempt to conceal the contribution or deceive anyone regarding the timing of their receipt of the contribution. Also, Respondents do not have a significant history of violating the Act.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, including whether the violation in question was inadvertent, negligent or deliberate and whether Respondents' intended to deceive voters, as well as other relevant factors, the imposition of a penalty of \$2,000 is recommended.