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

10  
11 In the Matter of:

FPPC No. 13/1144

12 JON MCQUISTON AND DIANE  
13 OGLESBY,

STIPULATION, DECISION AND ORDER

14 Respondents.

15 **STIPULATION**

16 Complainant Fair Political Practices Commission and Respondents Jon McQuiston and Diane  
17 Iglesias hereby agree that this Stipulation will be submitted for consideration by the Fair Political  
18 Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
20 matter and to reach a final disposition without the necessity of holding an additional administrative  
21 hearing to determine the liability of Respondents, pursuant to section 83116 of the Government Code.

22 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at  
26 Respondents own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
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1 the hearing as a hearing officer, and to have the matter judicially reviewed.

2 As described in Exhibit 1, it is further stipulated and agreed that Respondent Diane Oglesby  
3 caused Jon McQuiston for 32<sup>nd</sup> Assembly 2012 committee to make an expenditure of campaign funds,  
4 totaling \$6,000, which conferred a substantial personal benefit on Respondent Oglesby, for purposes  
5 other than directly related to a political, legislative or governmental purpose, in violation of Section  
6 89512 (1 Count); and Respondent McQuiston caused Jon McQuiston for 32<sup>nd</sup> Assembly 2012 committee  
7 to make expenditures of campaign funds, totaling approximately \$1,872, which conferred a substantial  
8 personal benefit on Respondent McQuiston, for purposes other than directly related to a political,  
9 legislative or governmental purpose, in violation of Section 89512 (1 Count). Exhibit 1, which is  
10 attached hereto and incorporated by reference as though fully set forth herein, is a true and accurate  
11 summary of the facts in this matter.

12 Respondents agree to the issuance of the Decision and Order, which is attached hereto, and  
13 Respondents agree to the Commission imposing upon Respondent Ogelsby an administrative penalty in  
14 the amount of \$3,500 and imposing upon Respondent McQuiston an administrative penalty in the amount  
15 of \$3,500, for a total administrative penalty of \$7,000. A cashier's check or money order from  
16 Respondents totaling said amount, made payable to the "General Fund of the State of California," is  
17 submitted with this Stipulation as full payment of the administrative penalty and shall be held by the  
18 State of California until the Commission issues its Decision and Order regarding this matter. The parties  
19 agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void,  
20 and within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected,  
21 all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to  
22 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the  
23 Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither any  
24 member of the Commission, nor the Executive Director, shall be disqualified because of prior  
25 consideration of this Stipulation.

1 Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary S. Winuk, Enforcement Chief,  
on behalf of the Fair Political Practices  
Commission

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4 Dated: \_\_\_\_\_

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Diane Oglesby, Respondent

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7 Dated: \_\_\_\_\_

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Jon McQuiston, Respondent

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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Jon McQuiston and Diane Oglesby,”  
3 FPPC No. 13/1144, including all attached exhibits, is hereby accepted as the final decision and order of  
4 the Fair Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_

9 \_\_\_\_\_  
10 Joann Remke, Chair  
11 Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Respondent Jon McQuiston (“Respondent McQuiston”) was an unsuccessful candidate for the Assembly in the 2012 Primary Election. Jon McQuiston for 32<sup>nd</sup> Assembly 2012 (“Assembly Committee”) was Respondent McQuiston’s controlled committee. At all relevant times, Respondent Diane Oglesby (“Respondent Oglesby”) was the treasurer for the Assembly Committee.

This case arose from the Franchise Tax Board’s (“FTB”) audit of the Assembly Committee for the period January 1, 2012 through June 30, 2012. The subsequent investigation by the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (the “Enforcement Division”) revealed that Respondent McQuiston and Respondent Oglesby committed violations of the personal use prohibitions of the Political Reform Act (the “Act”).<sup>1</sup>

For purposes of this Stipulation, the proposed violations of the Act are as follows:

#### Respondent Oglesby

COUNT 1: On or about September 6, 2012, Respondent Oglesby caused Jon McQuiston for 32<sup>nd</sup> Assembly 2012 committee to make an expenditure of campaign funds, totaling \$6,000, which conferred a substantial personal benefit on Respondent Oglesby, for purposes other than directly related to a political, legislative or governmental purpose, in violation of Section 89512.

#### Respondent McQuiston

COUNT 2: Between July 21, 2012, and August 24, 2012, Respondent McQuiston caused Jon McQuiston for 32<sup>nd</sup> Assembly 2012 committee to make expenditures of campaign funds, totaling approximately \$1,872, which conferred a substantial personal benefit on Respondent McQuiston, for purposes other than directly related to a political, legislative or governmental purpose, in violation of Section 89512.

### SUMMARY OF THE LAW

The Fair Political Practices Commission is charged with the duty to administer, implement, and enforce the provisions of the Political Reform Act of 1974. By enacting the Act, California voters specifically found and declared that previous laws regulating political practices had suffered from inadequate enforcement, and that it was their purpose to ensure that the Act be vigorously enforced. (Sections 81001, subdivision (h), and 81002, subdivision (f).

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<sup>1</sup> The 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.

## **Prohibitions Against the Personal Use of Campaign Funds**

All contributions to a campaign are held by the committee in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Section 89510, subd. (b).) An expenditure to seek office must be reasonably related to a political purpose, but if it confers a direct and substantial personal benefit on the candidate or any individual with authority to approve the expenditure of campaign funds held by a committee of more than \$200, the expenditure must be directly related to a political, legislative or governmental purpose. (Sections 89511, subdivision (b)(3), and 89512.)

## **Treasurer and Candidate Liability**

Under Sections 81004, subdivision (b), 84100, and 84213, and Regulation 18427, subdivisions (a), (b) and (c), it is the duty of a committee's treasurer and candidate 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. A committee's treasurer and candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006; Regulation 18316.6.)

## **SUMMARY OF THE FACTS**

Respondent McQuiston was an unsuccessful candidate for the Assembly in the June 5, 2012 Primary Election.<sup>2</sup> The Assembly Committee was Respondent McQuiston's controlled committee. At all relevant times, Respondent Oglesby was the treasurer for the Assembly Committee. In addition, Respondent McQuiston was a First District Kern County Supervisor for 15 years. He retired from the Supervisor position in January 2013.

This case arose from the FTB audit of the Assembly Committee. The subsequent investigation by the Commission's Enforcement Division revealed that Respondent McQuiston and Respondent Oglesby committed violations of the personal use prohibitions of the Act.

### Respondent Oglesby

#### **Count 1: Prohibition Against Personal Use of Campaign Funds**

According to the Assembly Committee Semi-Annual Campaign Statement for the period of July 1, 2012, through December 31, 2012, Respondent Oglesby disclosed making a contribution in the amount of \$6,000 from the Assembly Committee to the Committee to Re-Elect Jon McQuiston Supervisor ("Supervisor Committee") on September 6, 2012. However, according to the bank statements for the Supervisor Committee, the \$6,000 was not deposited into the Supervisor Committee until October 9, 2012. In an interview, Respondent Oglesby admitted that she used \$6,000 to pay for her husband's tuition without the knowledge of the

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<sup>2</sup> Respondent McQuiston was an unsuccessful candidate for Assembly on the June 5, 2012 Primary Election. On or about July 1, 2012, the Assembly Committee funds became surplus, thus restricting how the surplus funds could be used. In this matter, surplus funds cannot be contributed to an officeholder account.

candidate. Approximately one month later, on October 9, 2012, she deposited \$6,000 from her personal joint checking account into the Supervisor Committee campaign bank account.

By making an expenditure to herself in the amount of \$6,000 which conferred a substantial personal benefit on her, for purposes other than directly related to a political, legislative or governmental purpose, Respondent Ogelsby violated Section 89512.

Respondent McQuiston

**Count 2: Prohibition Against Personal Use of Campaign Funds**

Between July and August 2012, after the election, Respondent McQuiston purchased a computer, scanner and an iPhone with the Assembly Committee credit card, which was paid for by the Assembly Committee.

According to an Assembly Committee credit card statement, on July 21, 2012, Respondent McQuiston spent approximately \$1,125.39 at Best Buy for a computer and technical support. On July 22, 2012, Respondent McQuiston purchased an iPhone at AT&T for \$247.11. On August 24, 2012, Respondent McQuiston purchased a scanner at Staples for \$500.42. Respondent McQuiston was personally using all of these items at his home. These purchases were made after the Primary Election.

By making expenditures of campaign funds in the amount of approximately \$1,872 which conferred a substantial personal benefit on him, for purposes other than directly related to a political, legislative or governmental purpose, Respondent McQuiston violated Section 89512.

**CONCLUSION**

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of \$5,000 for each violation, for a total of \$10,000.

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 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Historically, a middle-to-high range fine is levied against the violator for personal use of campaign funds. Personal use of campaign funds violates the trust of the contributors giving to that campaign, and is therefore a very serious violation of the Act. In this case, Respondent Ogelsby used campaign funds to pay for her husband's school tuition, an expense unrelated to any political, legislative or governmental purpose. In mitigation, Respondent Ogelsby did pay back the \$6,000 one month later to the Supervisor Committee prior to any contact from the Enforcement Division and has no history of violating the Act.

Respondent McQuiston used the Assembly Committee campaign credit card that was paid for with campaign funds to purchase a computer, a scanner and an iPhone that he was using at his home for his personal use which were unrelated to any political, legislative or governmental purpose. Respondent McQuiston contends that he purchased these items to replace equipment in connection with his Supervisor Committee and that he was not familiar with the rules to properly dispose of committee assets. However, none of these items were contributed to his Supervisor Committee. The items were not properly disposed of upon the termination of either the Assembly Committee or the Supervisor Committee, which was terminated in January 2013. Further, these items were a misuse of surplus funds and were used at his home for his personal use. Respondent McQuiston understands that he misused the campaign funds when he made purchases and ultimately used the campaign assets at his home for his personal use. Respondent McQuiston contends that he did not intend to misuse campaign funds in this way and donated the items to a local women's shelter once he realized that he had misused the campaign funds. Additionally, Respondents cooperated with the Enforcement Division, agreed to an early settlement of the matter and have no prior Enforcement history.

Recent penalties approved by the Commission for personal use of campaign funds include:

*In the Matter of Dean Florez, Dean Florez for Lt. Governor 2010 and Dean Florez for State Controller 2014*, FPPC Case No. 12/213. In this matter, Respondents violated the Act by using \$26,541.89 in campaign funds to make 168 personal purchases that were unrelated to a political, governmental, or legislative purpose. However, Respondent cooperated with the investigation and agreed to an early settlement of the matter. The Commission approved each count at \$5,000 per violation in November 2013.

*In the Matter of Martin Bertram*, FPPC No. 10/1093. In December of 2012, the Commission fined a candidate \$3,000 per count for two counts of improper personal use of campaign funds. The respondent made two expenditures totaling \$4,000 for personal legal fees unrelated to any political, legislative, or governmental purpose. The respondent cooperated with the investigation, had no prior history of violating the Act, and agreed to an early settlement of the matter.

In this matter, a fine amount of \$3,500 for each Count is recommended, for a total fine amount of \$7,000.

### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5 and consideration of the penalties imposed in recent cases, a penalty of \$3,500 for Count 1 for Respondent Oglesby is recommended and a penalty of \$3,500 for Count 2 for Respondent McQuiston is recommended, for a total penalty of \$7,000.