

FPPC Bulletin



September 2006

Fair Political Practices Commission

Volume 32, No. 3

IN THIS ISSUE:

<i>I.E. facts and reporting</i>	1
<i>Williams is division chief</i>	4
<i>Questions and answers</i>	5
<i>Lobby deadlines coming</i>	7
<i>FPPC workshops</i>	9
<i>Legislative update</i>	9
<i>Enforcement summaries</i>	10
<i>Litigation report</i>	16
<i>Advice summaries</i>	18

Toll-free Advice Line: 1-866-ASK-FPPC

Public officials, local government filing officers, candidates, lobbyists and others with obligations under the Political Reform Act are encouraged to call toll-free for advice on issues including campaign contributions and expenditures, lobbying and conflicts of interest. *FPPC staff members answer thousands of calls for telephone advice each month.*

Independent Expenditures: Overview and Reporting Rules

By Liane Randolph, FPPC Chair
and
Carla Wardlow, Chief, FPPC Technical Assistance Division

During this first regularly scheduled gubernatorial election subject to Proposition 34 contribution limits, the media and political players have been giving a good deal of attention to independent expenditures. This article offers an overview of how independent expenditures are defined by law and how this type of spending must be reported.

What are Independent Expenditures?

California's Political Reform Act defines "independent expenditures" as payments made in connection with a communication which is not at the behest of the candidate or committee mentioned in the communication. The communication must expressly advocate the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified ballot measure.

The law further provides that a communication that doesn't contain express advocacy is also an independent expenditure if the communication, taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. However, courts have applied a narrowing construction to the statutory language, and the law is generally interpreted to require express advocacy to be considered an independent expenditure. (*The Governor Gray Davis Committee v. American Taxpayer Alliance*, 102 Cal.App.4th 449 (2002).)

(Continued on page 2)

**California
Fair Political
Practices Commission**

Commissioners

Liane Randolph, Chair
Philip Blair
Sheridan Downey III
A. Eugene Huguenin, Jr.
Ray Remy

Commission Meetings

Meetings are generally scheduled monthly in the Commission Hearing Room, 428 J Street, 8th Floor, Sacramento. Please contact the Commission or check the FPPC web site, <http://www.fppc.ca.gov>, to confirm meeting dates.

Pursuant to section 11125 of the Bagley-Keene Open Meeting Act, the FPPC is required to give notice of its meetings ten (10) days in advance of the meeting. In order to allow time for inclusion in the meeting agenda and reproduction, all Stipulation, Decision and Order materials must be received by the FPPC no later than three (3) business days prior to the 10-day notice date.

The Commission meeting agenda and supporting documents are available free of charge on the Commission's web site at <http://www.fppc.ca.gov>. Additionally, past and future agendas are posted on the web site.

...Independent Expenditures

(Continued from page 1)

The most typical independent expenditure is a payment for a campaign advertisement saying, "Vote for Candidate X." As long as the payment is an expenditure as defined by the Act, is independent of Candidate X, and expressly advocates a particular choice by voters - in the form of an imperative verbal expression like "vote for" or "support" - the person who paid for the advertisement has made a reportable independent expenditure.

The United States Supreme Court has held that so long as a communication is independent of the candidate, it is not subject to a contribution limit applicable to the candidate. Therefore, independent expenditures are not subject to contribution limits, even if the candidate mentioned in the communication has a committee that is subject to limits. The candidate may not consult with the maker of the independent expenditure or use an agent to coordinate with the independent expenditure committee or participate in any decision regarding the timing or content of the communication. (Some local jurisdictions impose limits on contributions to committees that make independent expenditures to support or oppose candidates or ballot measures in the jurisdiction. The FPPC has no jurisdiction over these local rules.)

A full discussion of the rules regarding the definition of independent expenditures, and what constitutes coordination between a candidate and an independent expenditure committee, may be found in Commission regulations 18225, 18225.4 and 18225.7. These rules can be found on our website at: <http://www.fppc.ca.gov/index.html?id=52>. In addition, section 85501 of the Political Reform Act prohibits a controlled committee of a candidate from making independent expenditures and from making contributions to other committees for the purpose of making independent expenditures to support or oppose other candidates. The full text of the Political Reform Act can be found on our site at: <http://www.fppc.ca.gov/index.html?id=51>.

(Continued on page 3)

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...Independent Expenditures

(Continued from page 2)

Reporting Independent Expenditures

While such payments are not subject to limits, candidates and committees must disclose all expenditures as defined in section 82025 and regulation 18225. For expenditures of \$100 or more, the name and address of the payee and a description of the payment must be disclosed. (Section 84211(j) and (k).) For independent expenditures, the date of the expenditure and the candidate or measure identified in the communication must also be disclosed.

For independent expenditures totaling \$1,000 or more to support or oppose a single candidate or ballot measure, the committee¹ making the expenditure must file additional reports:

- ◆ A Supplemental Independent Expenditure Report (Form 465). (Section 84202.5.) This is filed on regular pre-election and semi-annual filing deadlines if \$1,000 or more is spent to support or oppose a single candidate or ballot measure during the period covered by the report. The report is filed in the jurisdiction where the candidate or measure is being voted on to provide information about the expenditures to the voters in that jurisdiction. For example, if a state committee makes an independent expenditure of \$1,000 or more to support or oppose a candidate for city council, the Form 465 is filed in that city.
- ◆ Late Independent Expenditure Report. (Section 84204.) This report is filed during the 16-day period before an election if independent expenditures of \$1,000 or more are made to support or oppose a single candidate or measure being voted on in the election. This 16-day period begins the day after the closing date of the last pre-election campaign statement filed before the election. The report must be filed

within 24 hours in the jurisdiction where the candidate or measure appears on the ballot.

- ◆ 90-day Election Cycle Report. (Section 85500.) This is filed during the 90-day period before any state election if \$1,000 or more is spent to support or oppose a state candidate or a state ballot measure. It must be filed with the Secretary of State within 24 hours. The filing requirement is only applicable to state committees that have met the \$50,000 contribution/expenditure threshold requiring electronic filing of campaign reports.

All three reports must identify the candidate or measure supported or opposed by the independent expenditure, along with the date and a description of the expenditure. The late independent expenditure report and the 90-day election cycle report also must contain information about contributions of \$100 or more received by the filer since its last regular pre-election or semi-annual report was filed.

If an independent expenditure supports or opposes more than one candidate or ballot measure, a separate report (Form 465, late independent expenditure report, and/or 90-day election cycle report) may be required for each. Detailed reporting requirements can be found in the FPPC campaign disclosure information manuals, which are published on our website at: <http://www.fppc.ca.gov/index.html?id=234#2004>.

¹If not already a "committee," section 82013(b) provides that a person who makes independent expenditures totaling \$1,000 or more in a calendar year becomes an "independent expenditure committee."

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Williams Named FPPC Enforcement Division Chief

By Jon Matthews
FPPC Information Officer

The Fair Political Practices Commission has announced the appointment of Bill Williams as chief of the FPPC's Enforcement Division.

Williams previously was the division's assistant chief. He brings a broad range of government and private sector experience to his new post, including case litigation, management, and helping to implement new and innovative procedures for handling the Enforcement Division's heavy caseload.

"Bill's extensive administrative law experience, his knowledge of the Political Reform Act and his previous experience as both assistant and acting chief will be enormously helpful as he takes the helm of the Enforcement Division," said FPPC Chair Liane Randolph. "He is a bright and dedicated attorney and we are extremely pleased that he has accepted this key staff leadership role."

Williams has been on the FPPC's staff since 2001, when he became a Commission counsel in the Legal Division. Because of his extensive administrative and civil experience, he was transferred to the Enforcement Division in 2002. In the Enforcement Division, Williams was the primary Commission counsel in the landmark litigation with the Agua Caliente Band of Cahuilla Indians and the Santa Rosa Indian Community of the Santa Rosa Rancheria. He was also lead counsel in the major Commission civil case with the American Civil Rights Coalition.

In May of 2005, Williams, 51, was promoted to assistant division chief and has been integrally involved in the implementation of procedures to lessen the FPPC's case backlog and streamline case processing. In addition, he has done day-to-day supervision of the division's attorney staff. In August of 2006, he was made acting division chief.

He says he is looking forward to the many challenges that will be facing the division in this election year.

Williams is a 1981 graduate of the McGeorge

School of Law in Sacramento. After graduation, he went to work for the Peace Officers' Research Association of California (PORAC) as a staff counsel representing law enforcement organizations in collective bargaining and law enforcement employees in a variety of employment matters.

In 1987, Williams formed his own firm as a sole proprietor. He continued representing law enforcement organizations and employees, but branched out into other areas of labor and employment law, including "whistle blower" and employment discrimination litigation. His practice included extensive administrative, civil, and appellate work.

Williams and his wife Candy have two grown sons and are long-time residents of Rio Oso, a small rural community in South Sutter County.

The FPPC's Enforcement Division includes attorneys, investigators, accounting specialists, political reform consultants, analysts and support staff. The Enforcement Division is assigned to receive complaints from the public, investigate alleged violations of the Political Reform Act, and where appropriate, initiate formal administrative or civil enforcement proceedings. The division conducts investigations relating to both state and local matters.

Williams succeeds John Appelbaum as head of the division. Appelbaum returned in August to the state Office of Attorney General, where he is a veteran staff member. "We enjoyed working with John and deeply appreciate his contributions to the Enforcement Division — including assembling an excellent staff, instituting regular case reviews and other procedures that ensure more timely processing of cases," Randolph said.

The Fair Political Practices Commission was created by the Political Reform Act of 1974, a ballot initiative passed by California voters as Proposition 9. The Commission administers, interprets and enforces the law relating to financial conflicts of interest, campaign contributions and expenditures, and lobbying disclosure.

Answering Some Frequently Asked Campaign Season Questions

By Kevin S. Moen
FPPC Political Reform Consultant

Q: I am a candidate for city council on the November 2006 ballot. I am also currently a planning commissioner for the same city. Am I subject to any contribution limits?

A: *The state does not impose contribution limits on local candidates. However, your city may have contribution limits. Contact your city clerk's office for more information. Please note, as a planning commissioner, under certain circumstances, you may be restricted from accepting, soliciting, or directing contributions of more than \$250, or you may be restricted in what decisions you make or participate in making concerning contributors of more than \$250. (See Government Code section 84308 and also the FPPC fact sheet at: <http://www.fppc.ca.gov/index.html?id=103>.*

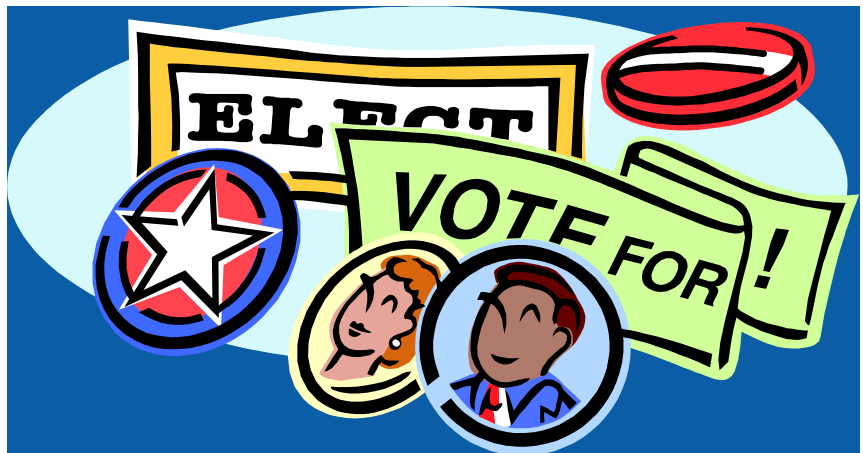
Q: I am a treasurer for a local candidate's campaign. Our consultant received a contribution for \$100 on July 20, 2006. However, he was unable to deliver it to me until July 27, 2006. What is the date I should report receipt of this contribution?

A: *The committee should report receipt of the contribution the day the committee's agent obtained possession of the*

check; in this case, you should report receipt on July 20, 2006.

Q: We received a check signed by Linda Lessa for \$100. However, the check was drawn on the joint account of Linda and Charles Lessa. How should we report the contribution?

A: *Report the contribution coming from the individual who signed the check—Linda Lessa. Only if both Linda and Charles had signed the check, or there was a*



document accompanying the check signed by both indicating that the contribution was from the both, would you report the contribution coming from both Linda and Charles. If both Linda and Charles had signed the check, you would attribute 50% of the contribution to Linda and 50% to Charles, unless they provided information indicating a different attribution rate.

Q: A professional graphic artist has used personal time to develop some graphic artwork for our campaign. The campaign

(Continued on page 6)

....Answering Some Common Questions

(Continued from page 5)

purchased the materials she used, but how do we report the time she spent on the art project?

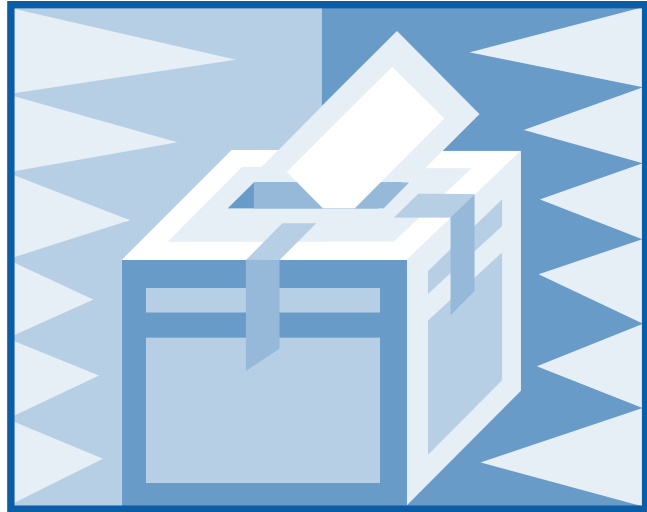
A: *Assuming the graphic artist was not paid by anyone, including her employer, for her time spent developing the artwork for your campaign, her time is considered to be voluntary personal services and, therefore, not a reportable contribution.*

Q: The public safety union in our city coordinated a mailing to their members to support my campaign. We provided them with a special picture of me specifically for this mailer, and discussed what language should be included in the mailer. Is this a contribution my campaign needs to report?

A: *No. As long as the mailer went only to the union's members, even though there was coordination between the union and your campaign, none of the costs associated with the mailer is considered a contribution reportable by you.*

Q: We have yet to receive our committee identification number from the Secretary of State's office. We want to publish some campaign literature. Is our committee identification number required to be on our literature? What about if the literature is sent through the mail?

A: *The identification number for your committee is not required to be on any campaign literature, even that which is sent through the mail. However, the name and address of the committee must appear somewhere on the outside of any mailing of more than 200 in a calendar month of the same or substantially the same piece. This sender identification must appear in no less than six-point type and in a style and color that contrasts*



with the background.

Q: I am a city council member running for mayor. My city council committee is still open. When I am required to file pre-election reports for my mayor's committee, am I required to file reports for the committee associated with my city council campaign?

A: *Yes. Whenever one of your controlled committee's is required to file, all your committees must file. In this way, a candidate is unable to hide any funds he or she may have available. In addition, your candidate controlled committee reports must include a reference to other committees controlled by you or formed primarily to support your candidacy. This reference is provided on the Cover Page – Part 2 of the Form 460.*

Q: I am a candidate for county supervisor. I have contributed more than \$10,000 of my personal funds to my committee. Am I required to file reports as a major donor?

A: *No. Only if you use personal funds to make contributions to other candidates or committees of \$10,000 or more in a calendar year are you required to report*

Lobby Registration Deadlines Are Approaching; Lobbyist Ethics Course Is Also Required

By Barbara Smith
FPPC Political Reform Consultant

All lobbyists, their employers and clients must file new registration forms for the 2007-2008 legislative session. The renewal period is held from November 1, 2006, through December 31, 2006, and registration forms must be on file with the Secretary of State's office before lobbying can commence. Over 4,000 filings will be processed during the 60 days. Here are some suggestions to ensure that your registration is complete. Remember, most lobbying filers must file registration forms both on paper and electronically.

Lobbying Firms

File your paper copies in one packet. Include for each client listed on the registration a Form 602, Lobbying Firm Authorization Statement. Include for each lobbyist a recent photo from the shoulders up, a \$25 registration fee and a certification statement, Form 604. Take the time to double check the information on all forms to ensure that the names, addresses and telephone numbers are correct.

Lobbyist Employers

Only lobbyist employers that employ one or more in-house lobbyists must file the registration statement, Form 603. Be sure to include for each lobbyist a recent photo from the shoulders up, a \$25 registration fee and a certification statement, Form 604.

Persons that only employ lobbying firms do not register. However, as noted above, an authorization statement, Form 602, must be included with the lobbying firm's registration. If an entity employs more than one lobbying firm, a Form 602 must be sent to each firm. Be sure that the name, address, telephone number and responsible officer information is the same on all forms.



Lobbyists

Lobbyists must complete the Form 604 and include the form as part of the registration documents filed by the lobbying firm or lobbyist employer. Do not send the paper Form 604 separately to the Secretary of State. Lobbyists must also attend an ethics class. A \$25 registration fee for the class is required. See the next page for more information.

(Continued on page 8)

(Continued from page 7)

Frequently Asked Questions

Q: A lobbying firm will start a contract with a new client beginning October 2006 and the contract will extend through 2007. The firm will immediately begin lobbying on behalf of the client's interests. Must the firm register the client for the 2005-2006 session and the 2006-2007 session?

A: Yes.

Q: A lobbyist registered in August and provided a photo with the registration at that time. Is another photo required with the registration documents filed for the 2007-2008 legislative session?

A: Yes.

Q: Our lobbying firm will not be lobbying for a client for the 2007-2008 legislative session. However, the firm may receive a payment in 2007 for services that were performed in 2006. Does the firm re-register this client?

A: No. If you are not lobbying for the client, do not list the client on your registration statement. When payments are received, list the payment on your quarterly form, Form 625, and note that the payment was for services provided in a prior legislative session.

Q: Am I required to file my registration statements electronically if I file them on paper?

A: Yes, once you have met the threshold to file electronically file, all statements and reports must be filed electronically from then on.

Ethics Course Requirement

Government Code Section 86103 requires lobbyists to attend an ethics orientation course as a condition of registration. The Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics jointly conduct the ethics course orientation programs for lobbyists. The scheduled course dates are November 16, 2006, January 18, 2007, February 8, 2007, and April 19, 2007, in Sacramento and one in Los Angeles on March 15, 2007. **For times, reservations, sign-up forms and further information on the courses offered, you may contact the Senate ethics committee at 916-651-1507.**

Lobbyists renewing their lobbying certification must take the course by June 30, 2007 if they have not completed the course in the previous 12 months. New lobbyists must complete the course within 12 months of registering. **THERE IS NO PROVISION FOR WAIVER OF THE ETHICS COURSE REQUIREMENT.**

Any lobbyist who does not complete the ethics course requirement and fails to comply with the related filing deadlines is prohibited from acting as a lobbyist in California and may be subject to criminal penalties and substantial fines.

Lobbyist Ethics Course Dates

(For times, reservations, sign up forms and further information on the courses offered, please contact the Senate ethics committee at (916) 651-1507.)

Sacramento: November 16, 2006
January 18, 2007
February 8, 2007
April 19, 2007

Los Angeles: March 15, 2007

FPPC Staff Busy With Seminars, Workshops

By Jon Matthews
FPPC Information Officer

FPPC staff members have had several busy months hosting a variety of workshops and seminars. Some of these sessions are continuing into September.

The events included Technical Assistance Division seminars to assist candidates and committee treasurers involved in a 2006 election, workshops to help agencies update agency conflict of interest codes, and other events. These events have not been held just in Sacramento but in a number of other communities throughout the state. For schedules check our website at:

<http://www.fppc.ca.gov/index.html?id=359>

Two delegations of foreign government representatives have also visited FPPC headquarters, learning about California's disclosure rules, administrative procedures and other subjects.



FPPC Political Reform Consultants Tara Stock and Teri Rindahl prepare for one of the many workshops offered by the Commission in recent months. This two-hour session in July helped local government agencies update and amend conflict of interest codes as required by the Political Reform Act.

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Legislative Update

California's 2005-2006 legislative session began its final recess on August 31. A summary of signed 2006 bills affecting the Political Reform Act will be published in our next issue. Updates on current and previous legislation can be found on the FPPC's website at :

<http://www.fppc.ca.gov/index.html?id=365>.

Enforcement Summaries

July Commission Meeting

Campaign Reporting Violations

In the Matter of William E. Simon, Jr., Bill Simon for Governor, and William R. Turner, FPPC No. 04-489. Staff: Commission Counsel Courtney Vaccaro and Accounting Specialist Luzmaria Bonetti. Respondent William E. Simon, Jr. was an unsuccessful candidate for Governor in the November 5, 2002, general election. Respondent Bill Simon for Governor was the controlled committee of Respondent Simon. Respondent William R. Turner was the treasurer for Respondent Bill Simon for Governor. Respondents failed to: properly disclose late contributions, in violation of section 84203, subdivision (a) of the Government Code (9 counts); timely report required information for payments made to subvendors, in violation of sections 84211, subdivision (k) of the Government Code and section 84303 of the Government Code (14 counts); disclose or timely disclose accrued expenses, in violation of section 84211, subdivisions (i) and (k) of the Government Code (10 counts); send or timely send major donor notifications to contributors, in violation of section 84105 of the Government Code (7 counts); and, disclose the lender of loans to Respondent Committee and the entity that pledged security for the line of credit from which the loans were made, in violation of section 84211, subdivisions (f), (g), (h) of the Government Code (5 counts). \$125,000 fine.

In the Matter of Arnold Schwarzenegger, Governor Schwarzenegger's California Recovery Team, and Thomas Hiltachk, FPPC No. 06-183. Staff: Commission Counsel Courtney Vaccaro and Political Reform Consultant Wayne Imberi. Respondent Arnold Schwarzenegger, his controlled ballot measure committee Respondent Governor Schwarzenegger's

California Recovery Team, and the committee treasurer Respondent Thomas Hiltachk failed to timely file online or electronically 24-hour campaign reports disclosing independent expenditures, in violation of section 85500, subdivision (a) of the Government Code (143 counts). \$200,200 fine.

In the Matter of American Agents Alliance Political Action Committee, FPPC No. 05-390. Staff: Commission Counsel Tom Dyer and Chief Investigator Sue Straine. Respondent American Agents Alliance Political Action Committee is a recipient committee formed by American Agents Alliance, a trade association comprised of auto-insurance brokers. Respondent violated the Act by failing to timely file a statement of organization, in violation of Government Code section 84101(a) (1 count), and failing to timely file a semi-annual campaign disclosure statement, in violation of Government Code section 84200(a) (4 counts). \$10,000 fine.

Campaign Reporting and Campaign Bank Account Violations

In the Matter of David Olivas and Committee to Elect David Olivas, FPPC No. 03-151. Staff: Commission Counsel Amanda Saxton and Supervising Investigator Dennis Pellón. Respondent David Olivas was a successful candidate for the Baldwin Park City Council in the March 4, 2003, election. Respondent Committee to Elect David Olivas was the controlled committee of Respondent Olivas with Respondent Olivas acting as its treasurer. Respondents failed to: file a statement of organization, in violation of section 84101, subdivision (a) of the Government Code (1 count); deposit the personal funds of Respondent Olivas into a single, designated campaign bank account prior to expenditure, in violation of section 85201, subdivision (d) of the Government Code (1 count); file a semi-annual campaign statement, in violation of section 84200, subdivision (a) of the Government Code (2 counts); and timely file a pre-election campaign statement, in violation of sections 84200.5, subdivision (c) and 84200.8 of the Government Code (1 count). \$14,500 fine.

(Continued on page 11)

(Continued from page 10)

Campaign Contribution Violations

In the Matter of George Runner, George Runner for Senate - 2004, and Rita Burleson, FPPC No. 05-776. Staff: Commission Counsel Margaret E. Figeroid and Investigator III Leon Nurse-Williams. Respondent George Runner was a successful candidate for State Senate in the March 2, 2004 primary, and the November 2, 2004 general elections. Respondent George Runner for Senate - 2004 was Respondent George Runner's controlled committee, and Respondent Rita Burleson served as its treasurer. In this matter, Respondents failed to establish a bank account upon receiving contributions for the 2004 State Senate elections, in violation of section 85201, subdivision (a) of the Government Code (1 count); accepted two contributions that exceeded the \$3,200 contribution limit, in violation of section 85301, subdivision (a) of the Government Code (1 count); and failed to disclose required information for contributors of \$100 or more, in violation of sections 84211, subdivision (f) and 85309, subdivision (a) of the Government Code (1 count). \$5,500 fine, and the respondents returned to the contributors the total contribution that resulted in the contributor exceeding the contribution limit.

Major Donor Reporting Violations

In the Matter of Marc Nathanson, FPPC No. 06-164. Staff: Chief of Enforcement John Appelbaum and Political Reform Consultant Jeanette Turvill. Respondent Marc Nathanson qualified as a major donor committee in the first six months of 2004. Respondent failed to file a semi-annual campaign statement, in violation of Government Code section 84200, subdivision (b) (1 count). \$1,500 fine.

Major Donor – Streamlined Program

Failure to Timely File Major Donor Campaign Statements. Chief Investigator Sue Straine and Political Reform Consultant Mary Ann Kvasager. The following entities have entered into stipulations for failing to file major donor campaign statements that were due during calendar years 2002, 2003, 2004 and 2005, in violation of Government Code Section 84200:

- ◆ **In the Matter of Cartwright Termite & Pest Control, Inc., FPPC No. 06-020.** Cartwright Termite & Pest Control, Inc. of El Cajon failed to timely file a semi-annual campaign statement disclosing contributions totaling \$12,200 in 2004 (1 count). \$800 fine.
- ◆ **In the Matter of The Mills Corporation, FPPC No. 06-149.** The Mills Corporation of Arlington, Virginia failed to timely file semi-annual campaign statements disclosing contributions totaling \$37,000 in 2002 and \$22,750 in 2004 (2 counts). \$1,170 fine.
- ◆ **In the Matter of EBF & Associates, L.P., FPPC No. 06-170.** EBF & Associates, L.P. of Minnetonka, Minnesota failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Guitar Center, Inc., FPPC No. 06-171.** Guitar Center, Inc. of Westlake Village failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Geoffrey Hayton, FPPC No. 06-172.** Geoffrey Hayton of Victorville failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Sacramento A-1 Door, Inc., FPPC No. 06-177.** Sacramento A-1 Door, Inc. of North Highlands failed to timely

(Continued on page 12)

(Continued from page 11)

file semi-annual campaign statements disclosing contributions totaling \$15,350 in 2004 (2 counts). \$800 fine.

- ◆ **In the Matter of USCB, Inc., FPPC No. 06-178.** USCB, Inc. of Los Angeles failed to timely file a semi-annual campaign statement disclosing contributions totaling \$11,600 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Robert Eichenberg, FPPC No. 06-273.** Robert Eichenberg of Newport Beach failed to timely file a semi-annual campaign statement disclosing contributions totaling \$85,700 in 2004 (1 count). \$1,257 fine.
- ◆ **In the Matter of Bari Management, Inc., FPPC No. 06-284.** Bari Management, Inc. of Glendale failed to timely file a semi-annual campaign statement disclosing contributions totaling \$15,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Dolan Foster Enterprises, LLC, FPPC No. 06-287.** Dolan Foster Enterprises, LLC of Pleasanton failed to timely file a semi-annual campaign statement disclosing contributions totaling \$16,750 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Growth Capital Associates, Inc., FPPC No. 06-293.** Growth Capital Associates, Inc. of Santa Monica failed to timely file a semi-annual campaign statement disclosing contributions totaling \$15,500 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of John A. Harris IV, FPPC No. 06-294.** John A. Harris IV of Berwyn, Pennsylvania failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Harvest Management LLC, FPPC No. 06-295.** Harvest Manage-

ment LLC of Somerton, Arizona failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.

- ◆ **In the Matter of Hofer Ranch, FPPC No. 06-296.** Hofer Ranch of Ontario failed to timely file semi-annual campaign statements disclosing contributions totaling \$10,600 in 2004 (2 counts). \$800 fine.
- ◆ **In the Matter of Hof's Hut Restaurants, Inc., FPPC No. 06-297.** Hof's Hut Restaurants, Inc. of Signal Hill failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Hueter & Associates, Inc., FPPC No. 06-298.** Hueter & Associates, Inc. of Emeryville failed to timely file a semi-annual campaign statement disclosing contributions totaling \$35,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Henry R. Kravis, FPPC No. 06-301.** Henry R. Kravis of New York, New York failed to timely file a semi-annual campaign statement disclosing contributions totaling \$25,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Nancy Pelosi for Congress, FPPC No. 06-304.** Nancy Pelosi for Congress of San Francisco failed to timely file a semi-annual campaign statement disclosing contributions totaling \$1,500 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Republic Document MGMT, Inc., FPPC No. 06-306.** Republic Document MGMT, Inc. of Diamond Bar failed to timely file a semi-annual campaign statement disclosing contributions totaling \$13,500 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of RLMK, Inc., d.b.a. McDonald's, FPPC No. 06-307.** RLMK, Inc., d.b.a. McDonald's of Visalia failed to timely file a

(Continued on page 13)

(Continued from page 12)

semi-annual campaign statement disclosing contributions totaling \$13,650 in 2004 (1 count). \$400 fine.

- ◆ **In the Matter of Henry Segerstrom, FPPC No. 06-308.** Henry Segerstrom of Costa Mesa failed to timely file a semi-annual campaign statement disclosing contributions totaling \$25,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Thomas Curtis M.D., Inc., FPPC No. 06-311.** Thomas Curtis M.D., Inc. of Van Nuys failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Vaquero Energy Inc., FPPC No. 06-314.** Vaquero Energy Inc. of Bakersfield failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Weseloh Chevrolet Co., Inc., FPPC No. 06-315.** Weseloh Chevrolet Co., Inc. of Carlsbad failed to timely file a semi-annual campaign statement disclosing contributions totaling \$12,500 in 2003 (1 count). \$400 fine.
- ◆ **In the Matter of South Coast Emergency Medical Group, Inc., FPPC No. 06-335.** South Coast Emergency Medical Group, Inc. of Huntington Beach failed to timely file semi-annual campaign statements disclosing contributions totaling \$13,236.20 in 2004 (2 counts). \$800 fine.
- ◆ **In the Matter of SAMS Venture, LLC, FPPC No. 06-336.** SAMS Venture, LLC of Los Angeles failed to timely file a semi-annual campaign statement disclosing contributions totaling \$58,500 in 2004 (1 count). \$985 fine.
- ◆ **In the Matter of John P. Marcus, FPPC No. 06-337.** John P. Marcus of Palo Alto failed to timely file a semi-annual campaign statement disclosing contributions totaling \$30,300 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Phillip M. Ramos, Jr., FPPC No. 06-338.** Phillip M. Ramos, Jr. of Anaheim failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Susan Harding, FPPC No. 06-346.** Susan Harding of San Diego failed to timely file a semi-annual campaign statement disclosing contributions totaling \$20,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of SAFE Credit Union, FPPC No. 06-348.** SAFE Credit Union of North Highlands failed to timely file semi-annual campaign statements disclosing contributions totaling \$18,430 in 2002, \$15,297 in 2003, \$25,141 in 2004, and \$34,120 in 2005 (6 counts). \$3,154.71 fine.
- ◆ **In the Matter of Sanford R. Robertson/ Jeanne P. Robertson, FPPC No. 06-355.** Sanford R. Robertson/Jeanne P. Robertson of San Francisco failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Wes Keusder & Affiliated Entities, FPPC No. 06-356.** Wes Keusder & Affiliated Entities of Costa Mesa failed to timely file semi-annual campaign statements disclosing contributions totaling \$16,095 in 2004 and 11,050 in 2005 (3 counts). \$1,200 fine.
- ◆ **In the Matter of Jacquelynne M. Jennings, FPPC No. 06-357.** Jacquelynne M. Jennings of Walnut Creek failed to timely file a semi-annual campaign statement disclosing contributions totaling \$20,700 in 2004 (1 count). \$400 fine.

(Continued on page 14)

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- ◆ **In the Matter of Weseloh & Sons Chevrolet-Hummer-Honda, FPPC No. 06-358.** Weseloh & Sons Chevrolet-Hummer-Honda of San Juan Capistrano failed to timely file a semi-annual campaign statement disclosing contributions totaling \$12,200 in 2003 (1 count). \$400 fine.

Late Contribution – Streamlined Program

Failure to Timely File Late Contribution Reports – Proactive Program. Chief Investigator Sue Straine and Political Reform Consultant Mary Ann Kvasager. The following entities have entered into a stipulation for failure to file late contribution reports in 2004 and 2006 in violation of Government Code Section 84203:

- ◆ **In the Matter of Cartwright Termite & Pest Control, Inc., FPPC No. 05-851.** Cartwright Termite & Pest Control, Inc. of El Cajon failed to timely disclose late contributions totaling \$12,200 in 2004 (2 counts). \$1,830 fine.
- ◆ **In the Matter of California Hospitals Affiliated Insurance Services, LLC, FPPC No. 06-416.** California Hospitals Affiliated Insurance Services, LLC of Sacramento failed to timely disclose late contributions totaling \$15,000.00 in 2006 (2 counts). \$2,250 fine.

June Commission Meeting

Campaign Reporting Violations

In the Matter of Richard Griffin, Committee to Re-elect Richard Griffin, and Bettye C. Griffin, FPPC No. 03-524. Staff: Commission Counsel Margaret Figeroid and Investigator III Sandra Buckner. Respondent Richard Griffin was a successful candidate for Richmond City Council in a local election held on November 6,

2001, having previously served on the Richmond City Council since 1985. Respondent Committee to Re-Elect Richard Griffin was Respondent Richard Griffin's controlled committee and Respondent Bettye C. Griffin served as its treasurer. In this matter, Respondents failed to maintain required campaign records, in violation of section 84104 of the Government Code (3 counts); failed to disclose required contributor information for 41 contributions of \$100 or more, in violation of section 84211, subdivision (f) of the Government Code (3 counts); failed to disclose required information for 60 expenditures of \$100 or more, in violation of section 84211, subdivision (k) of the Government Code (5 counts); failed to disclose 2 late contributions in properly filed late contribution reports, in violation of section 84203, subdivision (a) of the Government Code (1 count); improperly reimbursed Respondent Richard Griffin \$3,000 for personal funds he used to pay a law firm more than 90 days after the expenditure was made, and failed to report the expenditure as a non-monetary contribution from Respondent Richard Griffin, in violation of section 89511.5, subdivisions (b) and (d) of the Government Code (1 count); and made twelve cash expenditures of \$100 or more, in violation of section 84300, subdivision (b) of the Government Code (1 count). \$24,000 fine.

In the Matter of Service Employees International Union Political Education and Action Fund (SEIU PEA) and Anna Burger, FPPC No. 05-886. Staff: Commission Counsel Amanda Saxton and Investigator Elaine Olmos-Flores. Respondent SEIU PEA is a state general purpose committee sponsored by the Service Employees International Union and Respondent Anna Burger serves as its treasurer. Respondents failed to file a late contribution report, in violation of section 84203 of the Government Code (3 counts); failed to file an odd-year campaign statement, in violation of sections 84200.3, subdivision (a)(3) and 84200.4, subdivision (a) of the Government Code (1 count); and failed to file a pre-election campaign statement, in violation of sections 84200.5, subdivision (e) and 84200.8 of the Government Code (3 counts). \$21,800 fine.

(Continued on page 15)

(Continued from page 14)

Statements of Economic Interests Violations - SEI Fast Track Program

In the Matter of Vinnie Lopes, FPPC No. 06-150. Staff: Enforcement Political Reform Consultant Wayne Imberi. Vinnie Lopes, a member of the Strawberry Commission, failed to timely file an assuming office statement of economic interests in violation of Government Code section 87300 (1 count). \$100 fine.

Major Donor – Streamlined Program

Failure to Timely File Major Donor Campaign Statements. Chief Investigator Sue Straine and Political Reform Consultant Mary Ann Kvasager. The following entities have entered into stipulations for failing to file major donor campaign statements that were due during calendar years 2004 and 2005, in violation of Government Code Section 84200:

- ◆ **In the Matter of Linda Dealy, FPPC No. 06-169.** Linda Dealy of Del Mar failed to timely file a semi-annual campaign statement disclosing contributions totaling \$18,550.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Kimberly Janovitch, PhD, FPPC No. 06-173.** Kimberly Janovitch, PhD of Van Nuys failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Claude S. Munday, FPPC No. 06-176.** Claude S. Munday of Fremont failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Christopher Stevens, Cambridge Communities, LLC & Affiliated Entities, FPPC No. 06-261.** Christopher Stevens, Cambridge Communities, LLC & Affiliated Entities of Sacramento failed to timely file semi-annual campaign statements disclosing contributions totaling \$10,750.00 in 2004 and \$11,300.00 in 2005 (2 counts). \$800 fine.
- ◆ **In the Matter of Dublin Insurance, FPPC No. 06-288.** Dublin Insurance of Dublin failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Scott Goldman, FPPC No. 06-290.** Scott Goldman of Glendora failed to timely file semi-annual campaign statements disclosing contributions totaling \$13,750.00 in 2004 (2 counts). \$800 fine.
- ◆ **In the Matter of Goldstein, Gurvitz, Marlowe & Miller, LLP, FPPC No. 06-291.** Goldstein, Gurvitz, Marlowe & Miller, LLP of Encino failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of William Josephs, PhD, LLP, FPPC No. 06-299.** William Josephs, PhD of Sherman Oaks failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Annette V. Murdaca, FPPC No. 06-303.** Annette V. Murdaca of Lodi failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of Thousand Oaks Toyota, FPPC No. 06-312.** Thousand Oaks Toyota of Thousand Oaks failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,200.00 in 2004 (1 count). \$400 fine.
- ◆ **In the Matter of University of California, Berkeley Foundation, FPPC No. 06-313.** University of California, Berkeley Foundation of Berkeley failed to timely file a semi-annual campaign statement disclosing contributions totaling \$16,268 in 2004 (1 count). \$400 fine.



Litigation Report

Here is a report on pending litigation prepared for the Commission's September 12, 2006, meeting:

California ProLife Council, Inc. v. Karen Getman et al.

This action challenged the Act's reporting requirements for express ballot measure advocacy. In October 2000 the Federal District Court for the Eastern District of California dismissed certain counts and later granted the FPPC's motion for summary judgment on the remaining counts. Plaintiff appealed, and the Ninth Circuit Court of Appeal affirmed that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. However, the Ninth Circuit remanded the matter back to the district court to determine whether California could in fact establish an interest sufficient to support its committee disclosure rules, and that its disclosure rules are properly tailored to that interest. On February 22, 2005, the court granted defendants' motion for summary judgment on these questions. Plaintiff again appealed. The parties, and amici who have filed two briefs supporting defendants, have now completed the appellate briefing, and the parties are awaiting a hearing date.

FPPC v. Agua Caliente Band of Cahuilla Indians, et al.

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions, and likewise failed to disclose more than \$1 million in late contributions made

between July 1, 1998, and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002, ballot. Defendants responded to the lawsuit by filing a motion to quash service, alleging that they could not be civilly prosecuted because of tribal sovereign immunity. On February 27, 2003, the Honorable Loren McMaster of the Sacramento County Superior Court ruled in the FPPC's favor. Defendants filed a petition for writ of mandate in the Third District Court of Appeal, challenging the decision of the trial court. The petition was summarily denied on April 24, 2003, whereupon defendants filed a petition for review in the California Supreme Court. On July 23, 2003, the Supreme Court granted review and transferred the case back to the Court of Appeal. On March 3, 2004, the Court of Appeal affirmed the Superior Court's decision, concluding that "the constitutional right of the State to preserve its republican form of government trumps the common law doctrine of tribal immunity." On April 13, 2004, defendants filed a Petition for Review in the California Supreme Court. On June 23, 2004, the Supreme Court granted the Petition for Review. On September 23, 2004, defendants filed an opening brief with the Supreme Court. The FPPC filed its opposition brief on December 30, 2004, and on April 1, 2005, defendants filed a closing brief. Amicus briefs have been filed by a number of interested persons. The parties are now awaiting a hearing date. [The hearing has been set for October 4, 2006, in Santa Barbara.]

FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria

In this action the FPPC alleges that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and propositions, and that defendants failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended on

(Continued on page 17)

...Litigation Report

(Continued from page 16)

October 7, 2002. On January 17, 2003, defendants filed a motion to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003, the Honorable Joe S. Gray of the Sacramento County Superior Court entered an order in favor of defendants. On July 14, 2003, the FPPC appealed this decision to the Third District Court of Appeal, where the matter was scheduled for oral argument. The Attorney General filed an amicus brief in support of the FPPC's position. The court heard oral argument on October 19, 2004, and on October 27, 2004, issued a decision in favor of the Commission overturning the trial court's granting of defendant's motion to quash. The tribe filed a petition for review with California Supreme Court which was granted on January 12, 2005. However, any action on the case has been deferred pending the outcome of the Agua Caliente case.

Citizens to Save California, et al. v. FPPC

On February 8, 2005, Citizens to Save California and Assembly Member Keith Richman filed a complaint for injunctive and declaratory relief in Sacramento Superior Court challenging the Commission's adoption of regulation 18530.9 in June 2005, which imposed on candidate-controlled ballot measure committees the contribution limit applied to the controlling candidate. Plaintiffs claim that the regulation violates the First Amendment,

and that the Commission lacked statutory authority to adopt the regulation. Another group of plaintiffs led by Governor Schwarzenegger intervened in the action, and the court granted plaintiffs' motion for preliminary injunction, barring FPPC enforcement of regulation 18530.9 pending final disposition of the lawsuit. The Commission appealed, noting that the Superior Court's injunction was stayed while the appeal was pending. On April 25, the Superior Court determined that its injunction remained in effect, and a writ petition challenging this finding in the Court of Appeal was denied. Ruling next on the Commission's demurrer to the complaints, on May 26 Judge Chang indicated that further proceedings in the Superior Court were stayed pending resolution of the Commission's appeal of the preliminary injunction. The parties have completed their appellate briefing and now await assignment of a hearing date.

FPPC v. Chad M. Condit, et al.

On January 10, 2006, the FPPC filed suit in Sacramento County Superior Court against Chad Condit, Cadee Condit, and the Justice PAC. The lawsuit seeks civil penalties against Chad Condit and the Justice PAC for violation of the Act's personal use provisions and its prohibition on cash expenditures, and civil penalties against Cadee Condit for violation of the personal use provisions. Discovery is now underway and a trial setting conference will take place in December.

Fair Political Practices Commission 2006 Commission Meeting Schedule

The Fair Political Practices Commission currently plans to meet on the following dates during the remainder of 2006:

Tuesday, October 24

**Tuesday, November 14
Thursday, December 14**

Meetings generally begin at 9:45 a.m. in the FPPC's 8th floor hearing room at 428 J Street, Sacramento. But please check the FPPC website regularly as dates and times can change. The direct link to our agenda page is: <http://www.fppc.ca.gov/index.html?id=329>

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the Act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I." Letters are summarized by subject matter and month issued.

Campaign

Diane M. Fishburn
The Children's Partnership
Dated: June 9, 2006
File Number A-06-075

A nonprofit multi-purpose organization is advised regarding the campaign reporting provisions of the Act with respect to the "first-bite" rule under regulation 18215(b)(1) and the sources from which it makes contributions or expenditures in order to determine whether the organization will qualify as a recipient committee.

Charles C. Plummer
Alameda County
Dated: May 31, 2006
File Number A-06-087

An elected official who plans to leave office in January 2007, must use unspent campaign funds for purposes that are reasonably or directly related to political, legislative, or governmental purpose. The letter discusses the use of campaign funds (and surplus campaign funds) for charitable donations and contributions to the official's successor.

Harold Griffith
Yes on Measure "E" Committee
Dated: June 13, 2006
File Number A-06-097

The Yes on Measure "E" committee may reimburse the campaign treasurer and honorary chairperson for expenditures if the expenditures are directly related to a political, legislative, or governmental purpose. Reimbursements for attorney's fees in connection with a lawsuit challenging wording in the ballot argument meet this standard.

Gene R. Browning
Ventura County
Dated: May 24, 2006
File Number A-06-099

The filing officer is advised that there is a mechanism in section 84205 that permits the combining of statements when an overlapping reporting period occurs or the filing of the semi-annual statement would be an additional, unnecessary filing to the two pre-election statements.

Stephen J. Kaufman
Kaufman Downing, LLP
Dated: June 19, 2006
File Number A-06-106

Because a senator's withdrawal from the 2006 primary election for State Treasurer effectuated a withdrawal from the general election, funds the senator raised for the general election to that office must be returned to contributors.

(Continued on page 19)

(Continued from page 18)

**Stephen J. Kaufman
Kaufman Downing, LLP**

Dated: June 28, 2006

File Number A-06-110

A candidate for State Senate who lost in the primary may use funds previously raised for the general election to pay campaign consultants and a fundraiser, if he was obligated under agreements with those professionals to pay those amounts to secure their services for the general election campaign. After these expenses are deducted from general election funds, the candidate must make a pro rata distribution of any remaining funds in that account to all those who had contributed to the general election campaign.

**Sheldon H. Sloan
Lewis Brisbois Bisgaard & Smith LLP**

Dated: May 1, 2006

File Number A-06-041

A law firm is advised that contributions made from an individual partner's "draw" account should be reported on a major donor campaign statement as a contribution from the partner and not from the law firm when the funds in the account are payment of the partner's share of the firm's profit and are the individual funds of the partner.

**Dennis Zell
Janet Fogarty & Associates**

Dated: April 28, 2006

File Number I-06-049

The Act does not prohibit the owner of a billboard to post a message urging passersby to vote for a statewide candidate, without any coordination with the candidate and without receiving compensation for use of the space. If the value of the message is \$1,000 or more, he will incur reporting obligations under the Act.

**Joe Brown
City of Laguna Niguel**

Dated: May 2, 2006

File Number A-06-056

This letter advises the requestor is not required to report independent expenditures of less than

\$1,000 made to support a candidate if the requestor does not qualify as a committee.

**Bruce Thompson
Committee to Elect Bruce Thompson**

Dated: May 3, 2006

File Number A-06-061

The Act does not require that automated telephone calls sent by a candidate's committee to promote the candidate's own candidacy contain identification regarding the candidate's committee.

**C. Thomas Keegel
International Brotherhood of Teamsters**

Dated: May 16, 2006

File Number I-06-065

Under the "first bite of the apple" rule, an out-of-state political action committee ("PAC") will qualify as a committee if it receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.

**Charles H. Bell, Jr.
Bell, McAndrews & Hiltachk, LLP**

Dated: May 24, 2006

File Number I-06-071

Section 85303(c) does not conflict with or preempt subdivision (c)(16) of regulation 18215. More particularly, a sponsor's payment to its sponsored committee is a contribution subject to the limit of section 85303(a), when the sponsor's payment is made to defray costs related to the committee's fundraiser for a candidate for elective state office. Without knowledge of specific facts and circumstances, it is not possible to answer questions on specific applications of regulation 18215(c)(16).

**Charles C. Plummer
Alameda County**

Dated: May 31, 2006

File Number A-06-087

The requestor is an elected official who will leave office in January of 2007, and asked about donating unspent campaign funds to a charitable organization or making a contribution to his successor's campaign fund. All expenditures of campaign funds must be re-

(Continued on page 20)

(Continued from page 19)

sonably or directly related to a political, legislative, or governmental purpose. Once an elected official leaves office, unspent campaign funds will become "surplus" and may be spent only for specified purposes.

Robert Cuthbert

Dated: May 22, 2006

File Number A-06-089

A candidate for State Assembly is advised that contributions up to the limit may be received for both the primary and general elections, and that unspent contributions may be carried over from the primary to the general election. The letter also discusses where Assembly candidates are required to file campaign statements.

Pat Driscoll

Peter Camejo for Governor 2006

Dated: April 13, 2006

File Number A-06-059

A state candidate's campaign committee is not prohibited by the Act from purchasing a book written and published by the candidate to sell as a fundraiser or to distribute to contributors, who provide \$100 or more, to the extent that such expenditure is directly related to a political purpose including publicizing the candidate's views, aiding candidate's political career, enhancing candidate's name recognition, and aiding the committee's fundraising efforts.

Ben Davidian

Tom Harman for Senate 2006 Election

Dated: April 25, 2006

File Number A-06-074

A candidate in a special primary election for a state Senate seat, who was named as a defendant in an election contest, may establish a legal defense fund under the provisions of section 85304 to raise money outside the contribution limits for defense of that action.

Conflicts of Interest

Amy Gonzalez

San Diego County

Dated: June 30, 2006

File Number I-06-103

An airport authority board member would not have a conflict of interest under the Political Reform Act by virtue of the board member contributing personal funds to a political action committee to support or oppose a ballot measure that the airport authority is in charge of submitting in the form of a countywide election ballot. However, a board member whose economic interest (as enumerated in the Act) may be financially affected, may have a disqualifying conflict of interest prohibiting the board member from making, participating in, or influencing any governmental decision relating to the ballot measure.

Craig A. Steele

City of Monrovia

Dated: June 9, 2006

File Number A-06-091

Under section 82015, payments from local government agencies to provide an employee or consultant to assist a city council member, an elected official, solely with her services on a water quality control board would not be considered gifts or contributions, as the principal purpose of the payments is governmental and not personal. However, the council member must report payments if any party makes payments aggregating to \$5,000 or more in a calendar year. Based on the facts submitted, the council member would not have an economic interest in any party as a source of gifts as the payments would not be considered a gift. The council member, by virtue of the payments, would not be prohibited from making, participating in making or influencing a governmental decision, provided there is no personal financial effect on her or members of her immediate family.

(Continued on page 21)

(Continued from page 20)

Dean Derleth
City of Los Alamitos
Dated: June 6, 2006
File Number I-06-064

The Act's conflict-of-interest rules are applicable to city council members serving on the city's restoration advisory board, regardless of whether the board is a decisionmaking body under the Act, because they are serving on the board in their official capacity as city council members.

Patrick L. Enright
City of Atascadero
Dated: June 6, 2006
File Number I-06-094

A planning commissioner may not participate in decisions involving a development project with boundaries that are more than 500 feet from his real property because such decisions are inextricably interrelated to decisions regarding a highway interchange which is located within 500 feet of his property and which will be redesigned or expanded as a mitigation measure for the development project. He may appear to represent his personal interests, provided the requirements of section 87105 and regulation 18702.5 are met.

Tony Daysog
City of Alameda
Dated: June 19, 2006
File Number I-06-098

A city council member may participate in decisions involving a developer that hired a consultant for a retail analysis, where the consultant in turn hired the council member's employer for \$1,200 and the council member is not involved in the consulting work, so long as the consultant and employer are not "otherwise related business entities."

M. Maggie Crow
State of California Board of Chiropractic Examiners

Dated: June 9, 2006
File Number A-06-104

A part-time employee of a state agency also works for another state agency as an independent subcontractor. The Political Reform Act (the "Act") does not prohibit public officials from holding two public positions concurrently. However, other laws outside the jurisdiction of the Fair Political Practices Commission may restrict the ability of a public official to hold two public offices simultaneously if those offices are "incompatible" offices. However, under the conflict-of-interest provisions of the Act, as a member of either public body, the official may not make, participate in making, or influence the governmental decisions of either public body when to do so will have a reasonably foreseeable, material financial effect on one or more of his or her economic interests.

Ted Mandrones
City of Lakeport
Dated: June 20, 2006
File Number I-06-111

A city council member who is also the mayor may not make, participate in making, or otherwise use his official position to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on the company that employs him, his brother-in-law who is the company's owner, or his personal finances.

Ourania M. Vlahos
Public Utilities Commission
State of California
Dated: May 19, 2006
File Number I-06-011

The conflict-of-interest provisions of the Act bar a supervisor of a state agency whose spouse is employed by a railroad company from performing those duties of her job in which she would be making, participating in making or in any way attempting to use her official position to influence a governmental decision if it is reasonably

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(Continued from page 21)

foreseeable that the decision will have a material financial effect on her husband's employer or the employer's parent company (which owns 100% of the employer's stock), if the employer has paid her husband \$1,000 or more during the 12 months prior to the decision.

Marguerite P. Battersby

City of Calimesa

Dated: May 4, 2006

File Number A-06-062

A council member is advised he may not make, participate or influence decisions concerning a power generation facility project initiated by a source of income to him, through his business. Moreover, as a city council member, he must: (a) immediately prior to the discussion of the item, publicly identify each type of economic interest involved in the decision, as well as details of the economic interest, on the record of the meeting; (b) recuse himself; and (c) leave the room for the duration of the discussion and/or vote on the item. In addition, the council member's pro rata share of the income from the source must be reported on his Form 700.

Stephanie L. Gomes

City of Vallejo

Dated: May 10, 2006

File Number A-06-063

A council member who owns a home in one redevelopment area sought advice as to whether she may participate in a decision to merge various redevelopment areas in the city, including the area which contains her real property. The official also sought advice as to whether she must recuse herself from making decisions regarding one of the redevelopment areas that is not currently within 500 feet of her home, if a merger of the various redevelopment areas occurs. The official may not participate in the decisions involving the potential merger of various redevelopment areas, and she must recuse herself from making decisions regarding the redevelopment areas if they are merged.

Vanessa W. Vallarta

City of Salinas

Dated: May 10, 2006

File Number I-06-067

The financial effect on the council member's property interest, in a lease, is presumed not to be material as the property is indirectly involved in the governmental decisions relating to a discrete project within a larger redevelopment area. While the council member's property interest alone would not prohibit the council member from participating in these decisions absent specific circumstances, as identified in regulation 18705.2(b)(2), the council member also has an economic interest in his wife's business as well as his personal finances. The council member may only participate in these decisions if he determines there will be no reasonably foreseeable material financial effect on his wife's business or his personal finances.

John Bakker

City of Los Altos Hills

Dated: May 2, 2006

File Number A-06-070

A city council member who owns property adjacent to horse-riding facilities owned by the city is presumed to have a conflict of interest prohibiting the council member from participating in a decision related to the facilities, as the Commission will presume that the decision will have a material financial effect on the council member. If, however, the decision will not have a reasonably foreseeable financial effect, the reasonable reliance on an appraisal by a disinterested and qualified real estate professional, based on an accurate understanding of the facts and circumstances, will be treated as a good-faith effort by the council member to assess the financial effect of the decision and may be used as evidence that the general presumption has been rebutted.

(Continued on page 23)

(Continued from page 22)

Tony Campos
Santa Cruz County
Dated: May 19, 2006
File Number I-06-072

A county supervisor's economic interest in real property is directly involved in governmental decisions to rezone nearby property and to amend the county's affordable housing program as the supervisor's property is within 500 feet of property subject to governmental decisions. The financial effect of such decisions is presumed to be material. The supervisor may not participate in decisions unless he can prove that the presumption has been rebutted and determine that there will be no other reasonably foreseeable material financial effects on his other economic interests. As the decision to amend the affordable housing program is only applicable to the properties that are rezoned, it does not appear that the decision can be segmented. Additionally, it appears that separate decisions regarding the individual parcels may act to determine, affirm, nullify, or alter any decisions regarding the parcels within 500 feet of the supervisor's real property. Accordingly, it does not appear that the decision to rezone the individual parcels can be segmented.

Susan C. Larson
Department of Motor Vehicles
Dated: May 25, 2006
File Number I-06-073

The deputy director of a division of a state agency who is a voting member of an agency technology council may not participate in governmental decisions in carrying out her duties if it is reasonably foreseeable that any such decision would have material financial effect upon any business entity in which she has an investment of \$2,000 or more.

Dale R. Molesworth
City of Buellton
Dated: May 25, 2006
File Number A-06-080

A city council member is not prohibited by the conflict-of-interest provisions of the Act from participating in city council decisions relating to

a project located within 500 feet of a mobile home park in which he resides because his month-to-month tenancy is not an economic interest in real property under section 87103 and regulation 18233.

Charles D. Seidler
California Department of Conservation
Dated: May 24, 2006
File Number I-06-083

A department manager sought advice as to whether the Act prohibits him from accepting outside employment as a consultant for governmental jurisdictions outside of California while he continues to serve as a manager with a state agency. The Act does not bar public officials from accepting outside employment during their tenure as public officials. However, such employment may give rise to conflicts of interests that disqualify the official from governmental decision-making.

Douglas P. Haubert
City of Irwindale
Dated: April 11, 2006
File Number A-06-039

A city council member who owns a truck parking business located on real property leased under a month-to-month tenancy may vote on decisions regarding the use of adjacent city-owned real property, as long as it is not reasonably foreseeable that decisions would have a material financial effect on either the council member's truck parking business or on his personal finances.

John A. Ramirez
Orange County Water District
Dated: April 12, 2006
File Number A-06-004

The Act's conflict-of-interest provisions prevent a local official from participating in a governmental decision that directly involves a source of income because the decision involves an "entitlement" to that source.

(Continued on page 24)

(Continued from page 23)

Thomas W. Hiltachk
City of Yuba City
Dated: April 12, 2006
File Number A-06-037

A city council member is not disqualified from participating in a decision to amend a disposition and development agreement for a movie theater/retail complex despite having personal loans from landowners of property leased to existing movie theater, 1.5 miles away, unless additional facts establish that the development/income producing potential, the use, or the character of the neighborhood of the property leased to the existing theater is affected.

Jennifer K. McCain
City of Escondido
Dated: April 14, 2006
File Number I-06-031

A city council member who owns rental property within a district which is the subject of workshops attended by planning commissioners, design review board members, and other city council members will have a disqualifying conflict of interest under the Act which will preclude his participation in the workshops if it is reasonably foreseeable that governmental decisions to be made by the attendees will have a material effect upon the council member's economic interests. Participants in the workshops will discuss planning issues for the district, including changes to the specific plan, changes to permitted uses, density, setbacks, parking, infrastructure, etc. The council member will be faced with similar decisions at city council meetings. He will have a disqualifying conflict of interest in those decisions which will have a reasonably foreseeable material financial effect on his economic interests.

The facts presented indicate that the council member has three potentially disqualifying economic interests: the property, the rental business and the tenants (sources of income). Each interest is to be analyzed separately to determine whether a disqualifying conflict of interest exists. If the council member is faced with such a decision noticed at a public meeting, he must recuse himself from that part of

the meeting when discussion of the decision is about to begin, after first verbally identifying, on the record, each type of economic interest involved in the decision as well as details of the economic interest.

John W. Stovall
Reclamation District 799
Dated: April 14, 2006
File Number A-06-042

An attorney for a reclamation district sought advice as to whether a conflict of interest would exist if a trustee participated in a decision involving a reimbursement agreement and a contract (to rebuild the district's existing drainage pump stations) between the district and a developer. The trustee, along with other homeowners in the area, have filed suit against the developer for alleged damage to their properties due to levee construction by the developer. Based on the facts presented, it appears that the trustee would not have a conflict of interest in participating in the decisions involving the district and the developer.

Kate J. Hart
California Regional Water Quality Control Board
Dated: April 18, 2006
File Number I-06-030

A member of a Regional Water Quality Control Board whose future spouse owns a lobbying firm which represents clients before the board will have a disqualifying conflict of interest under the Act which will preclude her from participating in governmental decisions involving the firm's clients if it is reasonably foreseeable that the decisions will have a material financial effect on her spouse's firm or on the firm's clients.

Larry Minor
Agri-Empire
Dated: April 20, 2006
File Number I-06-052

There is nothing in the Act that prohibits a local public official from holding two public positions concurrently. Holding two public positions does not, in itself, create a potentially disqualifying conflict of interest under the Act.

(Continued on page 25)

(Continued from page 24)

Richard A. McDonald
City of Pasadena
Dated: April 21, 2006
File Number A-06-044

A city planning commissioner's employment by a law firm does not preclude him from participating in commission decisions involving a developer who is a client of the law firm. Because the developer has hired a different law firm to represent it in matters pending before the commission, the commission's decisions will have no financial effect on the law firm. Because the commissioner's compensation from the law firm is in no way related to the firm's relationship with the developer, he has no economic interest in the developer.

Jonathan B. Stone
City of Vista
Dated: April 26, 2006
File Number A-06-007

An assistant city attorney sought advice as to whether a conflict of interest would exist if a council member participated in a city council decision to place the following measures on the ballot: to repeal a local proposition (the proposition limits the city's ability to redevelop land, including a parcel of land that is within 500 feet of real property owned by the council member); and if the local proposition is repealed, the city will consider placing on the ballot for a vote, a sales tax and a parcel tax. Placing the measure to repeal the local proposition on the ballot is an essential step, and is interlinked to the decision to build a new civic center for which the most probable site is a city-owned parcel located 500 feet from the council member's real property interest. The other ballot decisions are hypothetical in nature. The decision to place on the ballot, the repeal of the local proposition, therefore is inextricably interrelated to the decision to build a new civic center, because the determination of one decision will effectively determine, affirm, nullify or alter the result of the other decision. Therefore, the council member is presumed to have a conflict of interest and may not participate in either decision.

Mark Ashiku
City of Ukiah
Dated: April 28, 2006
File Number I-06-051

Because a city council member's brother is a source of income to him, the council member may not participate in any governmental decision in which it is reasonably foreseeable that the decision will affect the brother's income by \$1,000 or more or there are specific circumstances regarding the decision, its financial effect, or the nature of the real property which make it reasonably foreseeable that the decision will have a material financial effect on the brother's real property.

Gift Limits

Richard D. King
City of Fremont
Dated: May 9, 2006
File Number I-06-066

This letter states that the filer must report gifts worth \$50 or more received for speeches given to local Rotary clubs worldwide. The filer may determine the gifts' values by making comparisons to similar items on the open market. In addition, he may eliminate his reporting obligation if he donates the gifts to charities or to the government under certain circumstances.

Victoria Betancourt
City of Santa Ana
Dated: May 25, 2006
File Number A-06-096

A public official is advised that free air travel to and accommodations in Hawaii received as a part of a promotional offering to potential buyers of a condominium in Honolulu who have made a deposit of \$10,000, and to attend a groundbreaking ceremony and presentation regarding the sale of the property, is a rebate or discount made in the regular course of business to members of the public without regard to official status and is not a gift under the Act.

(Continued on page 26)

(Continued from page 25)

Honoraria

Todd Spitzer, Assemblyman
California Assembly
Dated: April 6, 2006
File Number A-06-029

Compensation paid to a member of the Assembly for hosting a weekly public affairs radio talk show would be an honorarium, where the proposed employment could not be connected to any business, trade, or profession other than the member's service as a state legislator or status as a candidate. If the member hosts the show without compensation, the provision of air time to the member will not be a "contribution" under the Act by reason of the exception provided at regulation 18215(c)(4). Finally, section 85310 will not apply to the broadcasts in question.

Mass Mail

Chad A. Jacobs
City and County of San Francisco
Dated: May 22, 2006
File Number A-06-076

Section 89001 does not prohibit a local agency from distributing over 200 recorded telephone messages featuring an elected official urging city residents to recycle. The distribution of a recorded telephone message does not result in receipt of a tangible item.

Miscellaneous

Shirley Fay
Corning Healthcare District
Dated: April 11, 2006
File Number I-06-054

The Commission has no jurisdiction to advise regarding the application of Government Code section 1090. However, there is currently pending legislation to create a pilot program by which the Commission can advise on section

1090, but this legislation has yet to be approved by the Legislature. Generally, however, the Act does not prohibit anyone from holding office. However, under certain circumstances, both may have an obligation to disqualify from decisions pursuant to section 87100 of the Act.

Revolving Door

Kathryn E. Donovan
California State Teachers Retirement System

Dated: May 9, 2006
File Number I-06-053

The Act does not prohibit a designated employee of a state agency after his separation from state service from accepting paid employment with a certain company to advise the company on implementation of a partnership agreement with his former employer. Following his separation however, he would become subject to the Act's one-year ban on communications with his former governmental employer. No conclusion is possible at present on the possible application of the Act's permanent ban on "switching sides."

Melissa Williams
Department of Transportation
Dated: May 8, 2006
File Number I-06-058

A former state employee should have been designated in her agency's conflict of interest code and accordingly, the employee is subject to the Act's post-governmental employment provisions including both the permanent ban and the one-year ban. In reference to the one-year ban, the employee may not make any appearances or communications for the purpose of influencing a governmental decision before or with her former agency including all districts and employees, but the employee may work "behind the scenes" for the new private employer.

(Continued on page 27)

(Continued from page 26)

Stephen L. Jenkins
California State Lands Commission
Dated: April 5, 2006
File Number A-06-050

The post-governmental employment provisions of the Act prohibit a former state employee from communicating with or appearing before his former employer in connection with making a proposal for and preparing an environmental impact report as a consultant for a private company.

Leroy Griffith
City of Lathrop
Dated: April 19, 2006
File Number I-06-040

Section 87406.3, the new post-governmental employment provision of the Act applying a one-year ban to certain local government agency employees, does not prohibit appearances or communications made before, on, or after the July 1, 2006 operative of the statute by employees who leave their local government agency position prior to the operative date.

Statements of Economic Interests

Susan Klasing
Office of Environmental Health Hazard Assessment
Dated: May 4, 2006
File Number A-06-055

If a credit received on a realtor's commission as a result of selling a home is made in the "regular course of business" without regard to an official's status, it would not be considered a gift or income for purposes of the Act's reporting, gift limit, or conflict-of-interest rules.

Andy Rogerson
Department of Transportation
Dated: April 4, 2006
File Number A-06-036

The requestor is not required to report payments by a federal agency for transportation, lodging, subsistence, or honorarium for his participation on a review panel. Therefore, receipt of the payments is not a prohibited honorarium or subject to the gift limits.

