



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

**To:** Chair Miadich and Commissioners Cardenas, Hatch, Hayward, and Wilson

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

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

**Date:** July 31, 2020

---

The following advice letters have been issued since the June 26, 2020, Advice Letter Report. An advice letter included in this report may be noticed for further discussion or consideration at the August 2020 Commission Meeting. Full copies of FPPC Advice Letters, including those listed below, are available at:

<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

### **Campaign**

**Andrew S. Becker**

[A-20-044](#)

Voter contact including paid canvassing, text banking, and phone banking supporting a specific candidate by a political party committee directed to registered voters with the same political party affiliation as the political party committee are considered “member communications” and therefore not subject to applicable contribution limits. However, these payments are subject to the Act’s reporting requirements. Additionally, the cost of a fundraiser held by the political party committee and open to the general public featuring the candidate as a guest speaker would be considered an in-kind contribution to the candidate and thus, would be subject to the applicable contribution limits.

**Jesse Mainardi**

[A-20-075](#)

Payments made by a slate mailer organization for the production and distribution of a slate mailer are not considered contributions to, or expenditures on behalf of, the candidates or measures supported or opposed in the slate mailers. Therefore, a slate mailer organization that retains the same campaign consultant as one of the slate mailer’s endorsed candidates is not considered to be making coordinated payments with the candidate so long as the impetus for establishing the slate mailer organization is independent of the candidate and the slate mailer organization has not otherwise qualified as a recipient committee.

### **Conflict of Interest**

**Claire Lai**

[I-20-067](#)

A planning commissioner is prohibited from making, participating in making or influencing decisions relating to his clients’ land use projects and entitlement applications to the extent that this involves contacting staff who are under the authority or budgetary control of the Planning

Commission, as well as staff shared with the Planning Commission. The Commissioner is also prohibited from representing his clients in Design Review Board meetings, because members of the Design Review Board are appointed by the Planning Commission. However, the Act does not prohibit a representative of the Commissioner's business (other than the Commissioner) from appearing before or communicating with the planning commission or other City staff provided the Commissioner properly recuses himself from the decision.

**Chris Moskal**[I-20-071](#)

A water board member has a prohibited financial interest in a decision regarding the implementation of a Vineyard Permit plan because it is reasonably foreseeable that participation in the development of a general permitting plan will have a material financial effect on a source of income to the official where the prospective expenses may exceed one percent of the entity's annual gross revenue.

**Heather Minner**[A-20-072](#)

A councilmember with a personal residence located 939 feet away from the project site, currently a mostly vacant mall, has a conflict of interest under the Act in all governmental decisions involving closed session litigation strategy for the property's owners challenge to recent amendments to the general plan. Considering the nature of the amendments, which removed office space as a permitted use, established a 60-foot height limit for the entire site, and permitted a maximum of 620 residential units, the Councilmember did not establish that the public generally exception applies to allow her to take part in the decisions.

**Stephanie Yu**[A-20-073](#)

The Act's conflict of interest provisions prohibit a regional water quality control board member from taking part in decisions relating to the adoption, establishment, or implementation of a total maximum daily load for certain pollutants in a waterbody because it is reasonably foreseeable that those decisions would have a material financial effect on the Board Member's financial interest in the Board Member's residential real property abutting that waterbody distinguishable from those decisions' effect on the public generally.

**Tom McCune**[A-20-074](#)

The Act's conflict of interest provisions prohibit a city councilmember from taking part in governmental decisions relating to the ongoing operation of a cross country running course located less than 500 feet from the Councilmember's residence because it is reasonably foreseeable that those decisions would have a material financial effect on the Councilmember's real property interest in his residence under Regulation 18702.2(a)(7).

**Shawn Hagerty**[A-20-078](#)

A councilmember, who had previously been a proponent of a local initiative measure, does not have a prohibited conflict of interest under the Act and is not prohibited from taking part in Council decisions related to the measure, because the Councilmember has no interests in the decision as specified in Section 87103.

**Heather L. Stroud**

[A-20-081](#)

A councilmember does not have a conflict of interest as the result of his position as Sustainability Program Manager with a bi-state regional environmental planning agency, because “income” does not include salary from a governmental agency. Further, there is no indication that the decision regarding a local ordinance would have a foreseeable personal financial effect on the official.

**Teresita J. Sablan**

[A-20-083](#)

Campaign contributions received by a Regional Water Quality Control Board member more than 12 months prior to the Board’s decision concerning a waste discharge permit for a desalination facility do not give rise to a conflict of interest under Section 84308. Additionally, the conflict of interest provisions of Section 87100 do not apply, because the Act specifically exempts campaign contributions from the definitions of “gift” and “income.”

**Revolving Door**

**Timothy O’Brien**

[A-20-090](#)

A former agency employee is not prohibited by the revolving door provisions of the Act from commenting on a proposal by his former agency post-retirement because he is not being compensated for such activity.

**Section 1090**

**Robert E. Cruse, Jr.**

[A-20-069](#)

A county supervisor does not have a prohibitory conflict of interest under Section 1090 in a decision by the Board of Supervisors to award his spouse, a county employee, with an Employee of the Month Award where the spouse will receive gifts that include \$150.00 in gift certificates, because there is no contract formed for purposes of Section 1090.

**Elizabeth M. Calciano**

[A-20-084](#)

Under the Act, a city councilmember is prohibited from taking part in a potential services contract between the city and his employer, given that the contract would explicitly involve his employer and therefore have a reasonably foreseeable, material financial effect on his source of income and business entity interests. Similarly, the councilmember’s financial interest in his employer also prohibits him from taking part in the contracting process under Section 1090. However, given the circumstances of his employment, including it predating his service as a councilmember and his status as an employee rather than an officer or director, his financial interest would be considered “remote” under Section 1091(b)(2) if he properly recuses himself. Accordingly, the city would be permitted to contract with the councilmember’s employer, despite his remote interest.