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VIA EMAIL

Mr. Adam Silver, Chair
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811
E-Mail: CommAsst@fppc.ca.gov

Re: Comment on FPPC Agenda Item 9: Opinion Request.

Dear Mr. Silver:

We offer these comments on behalf of our client, Palo Alto City Manager Ed Shikada. Mr. Shikada has served as the Palo Alto City Manager for six years. His spouse serves as a director in orthopedic clinical operations at Stanford Healthcare ('SHC'). We seek this opinion to determine his specific obligations as they relate to Stanford University, which is located in the City of Palo Alto and plays a large role in the City's activities.

The key issue for consideration by the Commission is the relationship between SHC and Stanford University, and whether this relationship results in SHC and Stanford University being treated as the same entity for conflict of interest purposes. The Commission's determination on this issue will have repercussions beyond just the facts of this specific situation and will affect the future analysis of all universities in California and their affiliated entities, as well as many nonprofits and their affiliated entities.

The Commission has not established a formal standard for the analysis of the relationship of nonprofit entities in the conflict of interest context under Government Code Section 87100. Thus, it is an issue ripe for consideration by the Commission and in need of a clear standard that can be applied by the regulated community. However, it is also an issue of specific and immediate concern to Mr. Shikada and the City of Palo Alto, who have numerous interactions with Stanford University that need the involvement of the City Manager.

We request the Commission take two specific actions. First, we request the Commission adopt the standard for determining control of one corporate entity over another found in FPPC Regulation 18700.2 (b) and apply its reasoning to the analysis of affiliated nonprofit entities under the conflict of interest rules of Government Code Section 87100. This can be accomplished by the Commission either through the issuance of an Opinion, or through the promulgation of a regulation.

FPPC Regulation 18700.2 (b)(3) states:

“(3) Otherwise related business entity. Business entities, other than a parent corporation as defined in subdivision (b)(1), are otherwise related if:
(A) The same person or persons together direct or control each business entity; or
(B) The same person or persons together have a 50 percent or greater ownership interest in each business entity.”

If applied to the nonprofit context, this standard could be extended to situations where (1) the same person or persons together direct or control each *nonprofit* business entity or (2) the nonprofits share a majority of the same board members on their respective board of directors. Adoption of this standard would provide a clear rule for public officials and the regulated community to apply and fill the current void in FPPC Regulations and advice of clear guidance on the issue.

If applied here, the standard would clearly show that Stanford University does not control SHC. Stanford University is a nonprofit trust organized under State law and tax-exempt under 501(c)(3). It comprises eight “schools,” including the School of Medicine. Stanford is a private, nonprofit university administered as a corporate trust governed by a privately appointed board of trustees with a maximum membership of 38. Trustees serve five-year terms (not more than two consecutive terms) and meet five times annually.

SHC is a separate nonprofit corporation with its own 501(c)(3) status, Employer Identification Number (EIN), and governance structure. SHC manages Stanford Hospital and associated clinics throughout the Bay Area, with authority over its employees, budgets, and strategic plans, and the ability to issue independent debt.

SHC’s bylaws, updated in 2020, outline its relationship with Stanford University. While Stanford University appoints and removes members of the SHC Board and approves bylaw changes, SHC maintains operational independence. SHC Board members are not required to be University Board members and currently only 1 of SHC’s 26 Board Members also serves on the University Board. SHC manages its own facilities, finances and staff.

This independence was confirmed by the California courts in the case *Young et al. v. The Leland Stanford Junior University et al.*, where the Alameda County Superior Court found that Stanford University and SHC are distinct entities with separate governance, staff, finances, and policies and rejected an alter ego liability argument. Although the FPPC staff stated that this finding was not relevant in this context, we disagree. The FPPC itself, in the *Hagin* Advice Letter, A-05-070, found that where a nonprofit “exists solely to benefit and serve the interests of its parent” and “in essence, functions as an *alter ego* for its parent nonprofit,” that piercing through one nonprofit to its parent is required. Here, a Court, considering the evidence and the law presented, found that Stanford University and SHC are not alter egos of one another.

Since Stanford University and SHC should not be considered related nonprofit entities for purposes of Section 87100 conflicts of interest, the Commission should also provide immediate relief to Mr. Shikada and the City of Palo Alto. The Commission should either rescind the *Vanni* Advice Letter, or direct other staff action to allow Mr. Shikada to fully perform his function as City Manager with regard to Stanford University. The Commission could issue the requested Opinion to this effect, or provide immediate relief through rescinding the Advice Letter while a draft Regulation is prepared for the Commission's consideration.

We appreciate your thoughtful consideration of this issue.

Sincerely,



Gary S. Winuk
Attorney
Kaufman Legal Group



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City of Palo Alto