



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Germond and Commissioners Cardenas, Hatch and Hayward  
**From:** Brian G. Lau, Acting General Counsel  
**Subject:** Advice Letter Report and Commission Review  
**Date:** July 9, 2018

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The following advice letters have been issued since the June Executive Staff Report. The Commission may review and discuss the following letters and may act to withdraw the advice provided. 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**

**Adam Wachter**

[A-18-041](#)

An unsuccessful city council candidate did not have to reopen his campaign bank account to satisfy a judgment using his personal funds that arose from his former campaign. However, because payment of the judgment would be directly related to his campaign, the candidate must report the activity by filing an additional campaign statement listing his personal contribution on Schedule A and the payment to the plaintiff as an expenditure on Schedule E.

**Amber Maltbie**

[I-18-051](#)

As a commercial vendor, a for-profit social media advertising platform that allows political committees to post video advertisements at no charge and then charges third parties a service fee for running the advertisement, has not contributed to the committee. However, the third party's payment of the platform's service fee is a payment made at the behest of the committee and an in-kind contribution to that committee. Advertisements must also contain a disclaimer from the committee that produced the video and may require an additional disclosure of the third-party paying to place the advertisement if the party also qualifies as a committee.

**Gary S. Winuk**

[I-18-101](#)

A "publicly funded nonprofit organization," as defined in Government Code section 54964.5, is required to register as a recipient committee if it meets any of the qualification criteria in Government Code section 84222.5(b) regardless of whether its campaign expenditures are derived solely from "nondonor funds." A publicly funded nonprofit organization qualifying as a recipient committee should disclose the "nondonor funds" as increases to cash on Schedule I of the relevant campaign statement.

**Richard S. Colman**[I-18-114](#)

Payments related to the production or display of an editorial in a regularly published newspaper do not trigger any campaign registration or reporting requirements.

**Conflict of Interest****Albert S. Yang**[A-18-074](#)

The Act does not prohibit an official from taking part in governmental decisions relating to a school's pending development applications because those decisions would not have a reasonably foreseeable financial effect on his financial interest in his spouse's psychotherapy practice. While the practice is listed on the school's psychotherapy referral list and receives potential client referrals from the school, it is unlikely decisions regarding the renovation of the school, which will allow for approximately 100 additional students, will have a significant effect on the practice's business.

**Jim Hill**[A-18-092](#)

The Act prohibits the Mayor of a City from taking part in decisions relating to a road interchange project because those decisions would have a reasonably foreseeable material financial effect on his real property interest in his residence, which is less than 2,600 feet from the three sites under consideration for the future location of on and off-ramps and within 920 feet of an intersection that may be improved.

**Eric Lucan**[A-18-096](#)

Councilmember, who owns a residential rental property within 1,000 feet of a proposed train station, is permitted to take part in decisions related to gap-funding for the station because neither the gap-funding nor completion of the station will not have a reasonably foreseeable material financial effect on the official's interests.

**Krishan Chopra**[A-18-098](#)

Two City Councilmembers may not take part in decisions related to rezoning actions permitting the construction of workforce and market housing on a school district-owned portion of a community park, nor may they take part in decisions related to the City's proposed purchase of the district-owned portion of the park, because the decisions will have a reasonably foreseeable material financial effect on the Councilmembers' real property interests, which are located in close proximity to the park.

**Karl H. Berger**[A-18-108](#)

A City Mayor and a Councilmember have disqualifying conflicts of interest in decisions related to the development of a downtown property and purchase of an adjacent property given both officials' interests, which are located in close proximity to the project. However, given the prior recusal of an additional Councilmember, the five-member Council may invoke the "legally required participation" exception to form a quorum of members with respect to the decisions, as specified in Regulation 18705.

**Amy R. Webber**[I-18-109](#)

Nothing in the Act prohibits a City Fleet Manager from serving as an unpaid board member of the Municipal Equipment Maintenance Association (“MEMA”), a 501(c)(6) nonprofit entity under the Internal Revenue Code. However, if a vendor provides the Fleet Manager and other attendees of a MEMA meeting with a free meal, the meal to the Fleet Manager is a gift, and the Fleet Manager must report the meal on his or her Statement of Economic Interests if the value of the meal and other gifts from that vendor equal \$50 or more in a calendar year.

**Ashley Titus**[A-18-122](#)

A councilmember employed by a company, which has requested that the Town participate in a statewide infrastructure program so that it may take advantage of the program to finance a pending project, may not take part in discussions regarding participation in the program or preliminary discussion of program goals and policies. The public exception does not apply because the effect of the decision on the company is unique as compared to the significant segment of the public generally. Additionally, the preliminary discussions are inextricably interrelated to the discussion regarding participation in the program and cannot be segmented.

**Conflict of Interest Code****Gary W. Winuk**[A-18-099](#)

Considering the scope of the contract work performed for a state agency, a private attorney who provided legal services to the state agency from 2012 to 2017 is a consultant subject to full disclosure under the agency’s conflict of interest code. Accordingly, the attorney must file Statements of Economic Interests as a consultant subject to full disclosure as directed by the state agency.

**Section 1090****Michael Torres, Esq.**[A-17-270](#)

City Finance Committee Member may not take part in recommendations to the City regarding contract renegotiations between the City and a golf club in which he was an equity member under the Act’s conflict of interest provisions. However, under Section 1090, the Committee Member has a noninterest in any contract renegotiations, so the Committee was not prohibited from participating in the renegotiations of such contract(s).

**Dwight L. Moore**[A-18-070](#)

Under the Act, a Town Councilmember’s business may purchase a property from a court-appointed receiver provided that the Councilmember does not make, participate in the making, or influence a governmental decision. Additionally, Section 1090 does not prohibit the Councilmember’s business from purchasing the property so long as the Councilmember acts only in his private capacity.

**Marc G. Hynes**[A-18-093](#)

Under Section 1090, a Board President has a prohibitory financial interest in any contract between the District and the Farms property given that his spouse is a beneficiary of the Farms Trust, which owns the property. However, because the rule of necessity applies, the District may

enter into the contract with the Trust, but the Board President may not make or participate in any decisions involving the contract.

**Das Williams**[A-18-102](#)

County supervisor with property less than 500 feet from an onramp located within a specific phase of a high occupancy vehicle project may participate in decisions regarding other phases of the project where the decisions involving the phase in which the property is located are not dependent on the other phases of the project.

**James Bahringer**[A-18-112](#)

Section 1090 prohibits a District Board Member and his wife from renegotiating the terms of a restrictive covenant with the District because he has a financial interest in the covenant and the property it benefits. However, the “rule of necessity” exception to Section 1090 allows the District to participate in amending the covenant for the limited purpose of relocating a historic building to the District-owned property across the street from the Board Member’s property, so long as the board member acts solely in his private capacity. Additionally, under the “rule of necessity” exception, the District may develop an agreement with the historical society to facilitate the building’s relocation to the District-owned property provided that the Board Member abstains from participating in any agreement with the historical society regarding the use of the District’s property.

**Noel Tapia**[A-18-119](#)

Under the Act, a Councilmember is not prohibited from voting on the allocation of funds used to pay for law enforcement services by the County Sheriff’s Department (CSD”) where he is employed as a Law Enforcement Technician. However, pursuant to Section 1090, he has a remote interest in any contract between the two entities. Nonetheless, the City Council may approve the contract provided that the Councilmember discloses his interest in the contract to the City Council, the interest is noted in the City Council’s official records, and he abstains from any participation in making or approving the contract.

**Revolving Door****Scott Murtishaw**[A-18-082](#)

Former Energy Policy Adviser, who previously participated in two rulemaking proceedings, is not barred by the permanent ban from participating as a paid consultant in the on-going proceedings’ quasi-legislative matters of establishing methodologies, rules and policies related to distributed energy resources and plans of general application to a class of utilities. However, the official is barred under the permanent ban from further participation as a consultant in matters that do not apply equally to a class of utilities, to the extent that he previously participated in that aspect of the rulemaking proceeding.

**Scott McGrown, P.E.**[A-18-094](#)

A former Chief Environmental Engineer was not subject to the permanent ban prohibitions because the contract he intended to implement as a consultant in private practice is a new proceeding in which he had not previously participated.

**SEI**

**Meaghan Hassel-Shearer**

[I-18-071](#)

Without a history of recommendations being accepted by the City Council, members of the newly created advisory committee are not required to file Statements of Economic Interests because they are not public officials under the Act.